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XPRESS e-Newsletter

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California's *Proposition 65*

March 28th 1:00 pm ET

Business

NETHERLANDS

Retailers are No Longer Allowed to Offer High-End Brands Via Online Platforms

[Guus van Lieshout, LL.M.](#)

[Russell Advocaten, B.V.](#)

Amsterdam, Netherlands

Manufacturers of luxury goods are allowed to prohibit retailers from offering the products for sale on websites such as amazon and eBay.

The European Court of Justice so ruled in a case in Germany last week. Coty Germany sells high-end cosmetics in Germany. They market the luxury goods via authorised resellers. These resellers have to fulfill a number of requirements regarding setting, services and store design. Said requirements are set to guarantee the luxury image of the products.

[Full Article](#)

NETHERLANDS

New Dutch Corporate Governance Code Effective From 1 January 2018

[Reinier W.L. Russell, LL.M.](#)

[Russell Advocaten B.V.](#)

On 1 January 2018, the new Corporate Governance Code 2016 became effective. What will be the consequences for your company?

The Dutch Corporate Governance Code contains principles and specific provisions regarding the relations between the management board, the supervisory board and the general meeting of shareholders of a company. The Code applies to all companies with registered offices in the Netherlands and whose shares or certificates are traded at the stock exchange. In practice, the Code will be used in case law as a standard for good governance for other companies also.

[Full Article](#)

PERU

Current Government Seeks to Build Flexible and Attractive Legislation to Benefit Investors

[Llona & Bustamante Abogados](#)

San Isidro, Peru

Peruvian Social Market Economy model is guaranteed by our Constitution and based on recognition by the state of the coexistence of a diverse variety of businesses.

This model is laid on a legal framework characterized by the promotion and protection of private property, business freedom, free competition, and private investment granting equal treatment to national and foreign investors in various productive sectors.

[Full Article](#)

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Copyright & Trade Marks

HONG KONG

Legislative Proposals for the Hong Kong Trade Marks (Amendment) Bill 2018

[ONC Lawyers](#)

Hong Kong, Hong Kong

Introduction

In "Applying for Trade Mark Protection in Multiple Jurisdictions: the Madrid System" Part I and Part II, we introduced the international registration of trademarks and the outcome of the three-month consultation exercise on the proposed application of the proposed application of the Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks ("Madrid Protocol") conducted in November 2014.

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Debt Collection

UNITED STATES

District Court Dismisses Suit Over Collection Letter

[Caren D. Enloe, Esq.](#)

[Smith Debnam Narron Drake Saintsing & Myers, LLP](#)

Raleigh, North Carolina

Any opinion that starts out by stating "[t]his case is about \$82.00" is not likely to go well for one party and in this instance, that was the case for Nestor Saroza. A New Jersey district court recently held that a debt collection letter was not false or deceptive when it included court costs in its demand for the balance. In *Saroza v. Lyons, Doughty & Veldhuis*, 2017 U.S. Dist. LEXIS 208913 (D.N.J. Dec. 19, 2017), the collection law firm filed a collection suit seeking recovery of the balance due (\$9,971.55), plus court costs. Its subsequent collection letter demanded a balance of \$10,053.55. The difference, \$82.00, was comprised of court costs. The consumer filed suit asserting that the demand letter violated the FDCPA because the \$82.00 was not part of the debt. The demand letter in question read as follows:

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Health Care

PERU

Cannabis for Medicinal Use

[Llona & Bustamante Abogados](#)

San Isidro, Peru

After several debates, and repeated requests by a large part of the population that have, or are relatives of people who have, ailments or chronic diseases without the possibility of cure; the Congress of the Republic of Peru approved Law 30681, which regulates the medicinal and therapeutic use of cannabis and its derivatives, on November 17, 2017. The purpose of the Law is to guarantee the fundamental right to health, allowing access, exclusively for medicinal and therapeutic use, of cannabis and its derivatives.

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Insolvency & Restructuring

HONG KONG

Litigation Funders - How Early Would Their Identity be Disclosed in a Litigation?

[ONC Lawyers](#)

Hong Kong, Hong Kong

Introduction

Funding is one of the most common frustrations for liquidators in Hong Kong as insufficiency of funds would render the liquidators unable to pursue good causes of actions. The liquidators may enter into funding arrangements with third parties in order to pursue those claims. It is not usual for the courts to order disclosure of funding agreements, as there is a real risk that disclosure of the amount of funding available to the liquidator may enable the defendants to assess and implement the extent to which they could, by way of interlocutory processes, eat up the liquidator's funding before the conclusion of the trial, thereby frustrating or impeding the purpose of the funding agreement: *Re Kingsheath Club of Clubs Ltd* [2003] FCA 1034.

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Insurance Law

UNITED STATES

Continuous Trigger Applies to Third-Party Construction Defect Claims and Ends When Nature of Damage is Known

[Thomas Paschos & Associates, P.C.](#)

Haddonfield, New Jersey

In *Air Master & Cooling, Inc. v. Selective Insurance Company of America*, 2017 WL 4507547, 452 N.J. Super 35, 171 A.3d 214 (2017), the coverage issues arose out of lawsuits brought by a condominium association and unit owners to remediate construction defects within a residential building. The insured, Air Master & Cooling, Inc. ("Air Master"), had performed work as a subcontractor on the roof and elsewhere in the building. The construction defects concern property damage resulting from, among other things, the apparent progressive infiltration of water within the building. After Air Master was named as a third-party defendant in the underlying construction defects cases, it sought a defense and indemnity from Selective Insurance Company of America ("Selective"). Selective was one of a series of different insurers that had issued CGL policies to Air Master over successive policy periods.

[Full Article](#)

UNITED STATES

Reservation of Rights Letter and the Insured

[Donato Minx Brown & Pool, P.C.](#)

Houston, Texas

Introduction: Reservation of Rights Letter

A reservation of rights is a means by which an insurer agrees to defend an insured against a claim or suit while simultaneously retaining its ability to evaluate, or even disclaim, coverage for some or all of the claims alleged by the plaintiff.[1]

Insured's Options After Receiving a Letter

After receiving a reservation of rights, an insured may either accept or deny the defenses asserted in the letter. Most courts have held when an insurer has issued a reservation of rights, an insured who accepts a defense under the reservation has tacitly agreed to the reservation unless he states an objection.[2] In Texas, an insured's silence is considered an implied consent.[3] By allowing the insurer to defend the action, the insured implicitly agrees that the insurer will not thereby waive its right to later contest coverage.[4]

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Intellectual Property

UNITED STATES

USPTO Updates Section 101 "Subject Matter Eligibility" Judicial Decisions

References

[Ann Robl, Esq.](#)

[Dunlap Codding](#)

Oklahoma City, Oklahoma

You may be aware that the USPTO has a "Subject Matter Eligibility" webpage with links to resources regarding how patent examiners are to evaluate claims for patent subject matter eligibility under 35 U.S.C. § 101. This month, the USPTO updated their "Quick Reference" sheet of Federal Circuit and Supreme Court "decisions holding claims eligible and identifying abstract ideas," as well as their chart of subject matter eligibility court decisions (downloadable from the main Subject Matter Eligibility webpage), which was previously referred to as "Appendix 3."

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Labor and Employment

AUSTRALIA

Service Provider Blues: Recent Australian Federal Court Decisions Puts Service Provider on Ezy Accounting for Employment Breaches of the Fair Work Act

[Greg Rogers, Esq.](#)

[HHG Legal Group](#)

West Perth, Australia

Under Australia's Fair Work Act, all manner of third parties can be held liable for (and ordered to pay penalties in respect of) breaches by employers of the Fair Work Act ("FW Act"). Since 2010, the year in which the FW Act came into operation, Australian Courts have typically penalised such third parties as directors and senior management of employers for a range of breaches of the FW Act, including underpayments, failure to keep proper records and obstructing Fair Work investigations.

In November 2017, the Australian Federal Court, in the decisions of Fair Work Ombudsman v Blue Impression Pty Ltd (No 1) & (No 2) ("Blue Impression"), for the first time, ordered that a third party service provider, namely an accounting firm engaged by that employer, pay penalties in excess of \$50,000 in respect of breaches of the FW Act by that employer.

[Full Article](#)

NETHERLANDS

What About Liability in Voluntary Work?

[Jan Dop, LL.M.](#)

[Russell Advocaten, B.V.](#)

Amsterdam, Netherlands

A volunteer is not an employee. But what if accidents occur during voluntary work? Is the organisation for which the volunteer performs services liable or not?

A recent case dealt with a volunteer who, as a member of a group that performed odd jobs in a parish, had to install lights on a church roof. During the installation he fell off the roof which caused paraplegia, among other things. Does the parish have to pay for the damage?

[Full Article](#)

UNITED STATES

The Ninth Circuit Rejects the Department of Labor Guidelines for Determining Whether Unpaid Interns at For Profit Companies are "Employees"

[Horace W. Green, Esq.](#)

[Buchman Provine Brothers Smith LLP](#)

Recent years have seen an increase in lawsuits filed by unpaid interns seeking to be deemed "employees." In 2010, the U.S. Department of Labor Wage and Hour Division ("DOL") issued a Fact Sheet that set forth a six-part test applicable to this issue. The sheet stated that individuals would be deemed "employees" unless all six factors were met. The factors required, inter alia, that the employer receive no economic benefit from the intern's activities, the intern not displace regular employees, the internship be "similar" to the educational environment, and the intern did not expect to be paid.

[Full Article](#)

UNITED STATES

Employee's Protected Activity Must Be the "But-For" Cause of Adverse Actions to Support a Retaliation Claim Under the False Claims Act

[Thomas Paschos & Associates](#)

Haddonfield, New Jersey

In *DiFiore v. CSL Behring, LLC*, No. 16-4297 (3d Cir. 2018, January 3, 2018), plaintiff Marie DiFiore worked for CSL Behring from 2008 until her resignation in 2012, first as an Associate Director of Marketing/New Products, and then, after a promotion in August 2011, as Director of Marketing. While at CSL, and particularly after her promotion, DiFiore became concerned about the activities of CSL and its employees in marketing drugs for off-label use and including off-label use in sales forecasts. DiFiore expressed her concerns to her supervisors, and she contended that CSL initiated a third-party compliance audit in part because of her complaints. Plaintiff alleged that as a consequence of expressing her concerns, she suffered several adverse employment actions. Plaintiff eventually submitted her resignation.

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Litigation & Dispute Resolution

UNITED STATES

Insured's Demand for Arbitration and Selection of Arbitrator Did Not Toll Statute of Limitations

[Thomas Pachos & Associates](#)

Haddonfield, New Jersey

In *Erie Insurance v. Bristol*, ___A.3d ___, 2017 WL 5617628, (Pa., November 22, 2017), Bristol was injured in a hit-and-run accident on July 22, 2005 while engaged within the scope of his employment as a lineman for RCC, Inc. Bristol had uninsured motorist coverage through an Erie policy with RCC. The Erie policy contained an arbitration clause which provided for binding resolution of disputes over liability and the amount of damages under the Endorsement, reserving other disputes, including the applicability of any statute of limitations, to the courts. Bristol's attorney notified Erie of an uninsured motorist claim on June 19, 2007. Both parties then selected arbitrators, and Erie obtained Bristol's statement under oath. No other action was taken other than an exchange of correspondence in September 2012. Erie then filed an action for declaratory judgment on May 29, 2013, seeking a ruling that appellant's UM claim was barred by the applicable four-year statute of limitations. Erie then filed a motion for summary judgment on its claim for declaratory judgment.

[Full Article](#)

UNITED STATES

New York State's Top Court Grants Defendants Access to "Private" Facebook Discovery

[Jason T. Katz, Esq.](#)

[Lewis Johs Avallone & Aviles, LLP](#)

Islandia, New York

In a game-changing decision, the New York Court of Appeals unanimously held that a personal injury plaintiff can be required to disclose "private" Facebook photographs and posts. This decision has the potential to profoundly impact discovery and trials in personal injury actions.

[Full Article](#)

UNITED STATES

Permissive Interlocutory Appeals

[Donato Minx Brown & Pool, P.C.](#)

Houston, Texas

Introduction & Overview

As a general rule, Texas appellate courts may only hear a case after judgment is finalized at the trial level.[1] Consequently, interlocutory orders are typically not immediately appealable.[2] This prevents a party in trial from delaying the proceeding to seek an appellate court's opinion. However, § 51.014 of the Texas Civil Practice and Remedies Code enumerates different types of orders which a party may appeal prior to the final judgment at trial.[3]

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Real Estate & Leasing

AUSTRALIA

Ease Up! NSW Court of Appeal Rejects Attempted Extension of Accepted Principles When Assessing the Legality of a Residential Easement

[Selwyn Black, Esq.](#) and [Nathan Gately, Esq.](#)

Sydney, Australia

The NSW Court of Appeal in *Stolyar v Towers* [2018] NSWCA 6 considered whether an easement over residential land for the purposes of standing, parking or garaging vehicles was invalid because that easement either amounted to a joint occupation, or substantially deprived the servient owner of rights of proprietorship or possession of the servient land.

To be legally recognised and enforceable, an easement must;

1. There must be a dominant and a servient tenement;

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Transportation Law

UNITED STATES

The ELD Mandate's Grandfather Clause Allows Existing AOBRD's to be in Compliance Until December 2019

[Anna Beck, Esq.](#)

[Roberts Perryman](#)

St. Louis, Missouri

As of December 18, 2017, motor carriers are required to comply with the Electronic Logging Device (ELD) Rule which mandates the use of ELD's in trucks. This rule is intended to create safer work environments for drivers and make it easier to accurately track a driver's records of duty status by automatically recording their driving time. But, the transition to ELD's can be costly and overwhelming for drivers and trucking companies. And some vehicles may not have to fully transition to an ELD until December 16, 2019.

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-- Webinar --



PROP 65

LEE SMITH - COLEMAN & HOROWITT, LLP
JACK HENNING - DILLINGHAM & MURPHY, LLP
ANKUR SINGHAL - EXPONENT

MARCH 28TH
1:00 PM ET

Proposition 65 is the California law that requires manufacturers, and retailers to provide warning labels on products that contain certain chemicals identified by the State of California -or be subject to citizen enforcement actions that include penalties and attorneys' fees awards. There are also warning requirements for environmental exposures such as in restaurants, parking areas and workplaces. Of current interest is new regulation that requires the revision of the labels for products manufactured after August 18, 2018, new internet warnings and revision of warnings for environmental exposures.

This webinar will provide a synopsis of Prop 65, the current warning scheme, and a discussion of the new revisions. This webinar is essential for companies that manufacture products for sale in California, including food products and including sales over the internet, as well as California retailers, and those who own facilities in California that may require environmental warnings. Additionally the new regulations contain specific requirements for manufacturers of alcohol products, food products, dental products, furniture, diesel engines, parking facilities, service stations and restaurants.

Presenters

[Lee N. Smith](#) is a partner with Coleman & Horowitz in their Fresno and Sacramento



offices. He has practiced environmental law in California for almost 30 years, including with several national firms, and has represented a number of clients in the Prop 65 arena including hardware manufacturers, beverage producers, furniture manufacturers and several national hardware chains. He has currently been working with his clients to meet the new regulatory requirements including labeling and internet issues.



Jack C. Henning is a partner with Dillingham & Murphy in San Francisco. For over 25 years his practice has focused on product liability, transportation/trucking litigation, construction defect, and Proposition 65 defense. His Proposition 65 clients include companies involved in every aspect of the chain of distribution of clothing, clothing accessories, furniture, household, industrial, and other products.



Mr. Ankur Singhal is an exposure science consultant with extensive experience in conducting Proposition 65 assessments. He has evaluated numerous consumer products to evaluate exposure within the meaning of Proposition 65 for a number chemicals, including lead, phthalates, BPA, formaldehyde and others. Mr. Singhal has also developed internal Proposition 65 compliance programs for companies looking to enter the California market and for companies planning on becoming compliant with the upcoming Proposition 65 regulatory changes.

There is no charge to attend this webinar, but registration is required.

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Paradigm Magazine



The **2017 Fall Paradigm Magazine** delivers articles regarding developments and trends in legal issues relevant to corporate clients around the world, while showcasing Primerus members as leaders with the expertise to assist clients with any legal needs they may have. It is published twice a year and mailed to Primerus members as well as clients around the world.

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- [**A Survey of the Law of Legal Malpractice - A Professional Liability Practice Group Compendium - September 2015**](#)
- [**A Survey of The Law of Non-Contractual Indemnity and Contribution - Products Liability Practice Group Compendium - April 2015**](#)
- [**Compendium of Principles of Law Regarding Bad Faith in the Fifty States and D.C. - 2013 Edition**](#)
- [**A State by State Update of Tort Reform - 2013 Edition**](#)
- [**Principles of Law Regarding Establishment and Operation of a Business in Various Countries Compendium - International Transactional Services Practice Group - March 2012**](#)
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