

February 17, 2016

Related Practices

Privacy & Cybersecurity

February 2016 Banking and Financial Services Newsletter

Don't Neglect Your Cyber Liability Insurance

By: Eric G. Barber

Cyber security promises to remain at the forefront of the minds of financial institutions' directors, officers, IT professionals and risk managers, and rightfully so. However, inadequate attention is often paid to financial institutions' cyber liability insurance, both in applying for (or renewing) the insurance or in securing state-of-the-art improvements to the terms and conditions of the policy. While the unabated changes to cyber threats and regulatory requirements require vigilance, financial institutions must apply similar attention to the asset most likely to respond if a hack or other privacy event.

[Read Full Cyber Liability Article](#)

EU-US Privacy Shield Agreement Announced

By: Eric G. Barber and Derek C. Stettner

On February 2, 2016, the United States and European Union Commission announced the EU-US Privacy Shield Agreement. The Agreement will govern regulation of data flows between the United States and the European Union (EU) and, as one of the EU Commissioners stated, the agreement addresses concerns by EU members regarding use of European citizens' data and personal information by U.S. companies and the U.S. government.

The full text of the Agreement will not be released for a number of weeks, but the dual announcements highlight the Agreement's major points:

[Read Full Privacy Shield Article](#)

Wisconsin Enacts a Written Credit Agreements Law

By: Ann Ustad Smith

Wisconsin has enacted legislation that should create more certainty in credit transactions and reduce lender liability claims against financial institutions. 2015 Wisconsin Act 120; Wis. Stat. §241.02(3).

Wisconsin now joins the majority of states (including Illinois, Minnesota, Iowa, Missouri, Nebraska, Kansas, Colorado, Washington, Florida, California, Texas and more) that have enacted some requirement that credit agreements must be in writing to be enforceable.

[Read Full Credit Agreements Article](#)

New Sales and Use Tax Exemption Could Affect Your Upcoming Construction Project

By: Michelle Wagner Ebben and Steven R. Battenberg

Punxsutawney Phil did not see his shadow yesterday, meaning spring – and the beginning of Wisconsin's busy construction season, is just around the corner. Luckily, a recent change in Wisconsin's sale and use tax law could make many upcoming construction projects run a bit smoother.

Signed into law by Gov. Scott Walker on December 16, 2015, Wis. Stat. § 77.54(9m) allows construction contractors to directly purchase construction materials for certain qualifying tax-exempt entity owned projects without having to pay Wisconsin sales and use tax. Previously, in order to benefit from their tax-exempt status, tax-exempt owners were required to either directly purchase construction materials for their construction projects or require their construction contractors to set up captive or related purchasing companies. The recent change in Wisconsin sales and use tax law, which went into effect on January 1, 2016, will avoid the administrative headaches the previous system often caused.

[Read Full Sales and Tax Exemption Article](#)

The Continuing Relevance of FIRREA's Jurisdictional Bar to Post Receivership Claims

By: John D. Finerty, Jr. and Tanya M. Salman

The 2008 credit market collapse and ensuing foreclosure crisis are fading to the dark recesses of our memories. Likewise, claims against banks that arose years ago as the housing market cleared are also

resolving. One enduring defense to claims in a financial crisis however, as the latest spike in foreclosures taught us, is the Financial Institutions Reform, Recovery and Enforcement Act (FIRREA) of 1989. Under FIRREA, “no court shall have jurisdiction over...any claim relating to any act or omission of a bank” under control of the FDIC. See 12 U.S.C. § 1821(d)(13)(D). This is an affirmative defense in litigation that Congress created in response to the savings and loan crisis of the 1980s that allows successor banks to avoid liability for the wrongful acts of lending institutions they buy out of FDIC receivership. As recent cases show, FIRREA remains relevant today.

[Read Full Post Receivership Claims Article](#)

U.S. Supreme Court Rejects Class Action Defendants’ Attempt to “Moot” Named Plaintiffs’ Claims through Early Settlement Offer

By: Paul E. Benson, Evan S. Strassberg and Joseph L. Olson

The United States Supreme Court has ruled that “an unaccepted settlement offer or offer of judgment does not moot a plaintiff’s case,” even if the offer includes everything the plaintiff would be entitled to recover at trial. By a 6-3 majority, the Court in *Campbell-Ewald Co. v. Gomez* rejected the defendant’s contention that the named plaintiff in a putative nationwide class action could no longer pursue a claim, either individually or on behalf of a class, after he refused to accept an offer that both sides agreed “would have fully satisfied the individual claims that were asserted, or that could have been asserted” by the plaintiff. This ruling appears to be in direct conflict with the 2013 Supreme Court case *Genesis HealthCare Corp. v. Symczyk*.

[Read Full Class Action Article](#)

How to Prepare For The Upcoming Changes In Employee Classifications

By: Daniel A. Kaufman, Mitchell W. Quick and Katherine L. Goyert

In June 2015, the U.S. Department of Labor (DOL) released proposed rules that will significantly expand the number of employees who may be eligible for overtime under the Fair Labor Standards Act (FLSA). The DOL estimates that its proposed rules would cause approximately five million employees who currently are exempt to become “non-exempt” and, thus, entitled to overtime pay for all hours worked over 40 in a workweek.

The major changes the DOL envisions concern the amount of salary required for the executive, administrative and professional exemptions, and the total amount of annual pay required for the highly compensated employee exemption. The DOL proposed raising the minimum salary level for the executive, administrative and professional exemptions from its current level of \$455 per week (\$23,660

annualized) to approximately \$921 per week (\$47,892 annualized) in 2015 and \$970 per week (\$50,440 annualized) in 2016. The DOL proposed automatically updating this salary amount, so it will increase without additional rulemaking.

[Read Full Employee Classifications Article](#)

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