VENABLE LLP business news digest

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Venable LLP, an *AmLaw* 100 firm, is headquartered in Washington, DC and has offices across the country.

Our nearly 600 attorneys practice in all areas of corporate and business law, complex litigation, intellectual property, and regulatory and government affairs. To learn more about Venable's capabilities, please see our complete list of services.

Venable attorneys produce periodic alerts and newsletters covering a variety of topics and practice areas. For your convenience, we have assembled below a collection of the latest alerts and newsletters from April 2011. To view the full text of an article, please click on the title of the piece.

A Collection of Venable's Nonprofit Legal Articles and Presentations from the First Quarter of 2011

As we have done previously (click **here** for our first quarter 2010 Nonprofit Alert, click **here** for our second quarter 2010 Nonprofit Alert, and click **here** for our third and fourth quarters 2010 Nonprofit Alerts), Venable's Nonprofit Organizations Practice Group will share the best of the nonprofit legal articles and PowerPoint presentations published or delivered by our attorneys. Our group has put together some very interesting, useful materials that should be of help to your organization as you tackle the always-challenging array of legal issues facing nonprofits.

Capitol View - April 2011 Edition

In this issue:

- The Looming Threat of a Government Shutdown Remains
- Dodd-Frank Act: Slowly Repeal it All or Just Slow It Down?
- Long-Term FAA Reauthorization Passes in House
- Congress Passes Form 1099 Repeal Legislation

Could the Hospitality Industry be the Latest to Fall Under the FCPA Microscope?

The hospitality industry is particularly susceptible to FCPA risk. Hospitality companies often operate in corruption prone areas, such as Asia, India, Latin America and the Caribbean. Furthermore, by the very nature of their business, hospitality companies must interact with the governments in these areas to obtain a panoply of licenses, permits, approvals and services. Given these frequent dealings with foreign government officials in some of the most difficult places to operate in the world, not to mention the recent enforcement activity against an industry member, it would not be surprising if the hospitality industry found itself following the pharmaceutical, defense, logistics and financial services industries as the latest group to face an industry-wide probe from DOJ and the SEC.

EEOC's Recently Published Final Rule Implementing ADA Amendments Act of 2008 Takes Effect on May 24

The Equal Employment Opportunity Commission ("EEOC") recently published its final rule revising the existing Americans with Disabilities Act ("ADA") regulations and interpretive guidance in light of the ADA Amendments Act of 2008 ("ADAAA"). The new regulations take effect on May 24, 2011, significantly changing the legal landscape under the ADA by overturning a series of court decisions narrowly interpreting the definition of a disability. Its effect has been to expand the reach of the ADA, making it easier for individuals to establish the existence of a covered disability.

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Because of the changes arising from the ADAAA and now the EEOC's final regulations, employers should review and revise, if necessary, their ADA policies, procedures, and practices, especially as they relate to hiring, reasonable accommodation, medical leaves of absence, and workers' compensation. Employers should develop and implement a process for handling reasonable accommodation requests, taking extra caution to ensure legal compliance. Lastly, and most important, employers should train supervisors and managers at all levels on the expanded scope of the ADA, as well as how to recognize and respond to requests for accommodations or other situations where accommodations may be appropriate.

Form 5500 Update: IRS Issues Guidance on Replacement to Schedule SSA

Until April 20, 2011, plan administrators can submit either the old Schedule SSA or the new Form 8955-SSA to report terminated participants who have deferred vested benefits, for any filings they are making for the 2009 or 2010 plan years. However, after April 20, 2011, plan administrators must use the new Form 8955-SSA. Therefore, plan administrators should take steps now with their recordkeepers to make sure that this new filing requirement will be satisfied.

Health Care Reform: Form W-2 Reporting of Employer-Provided Group Health Coverage

Beginning in 2013, large employers will need to report on Forms W-2 the cost of the group health coverage that they provide to their employees. Small employers issuing fewer than 250 Forms W-2 will be exempt, for now. To prepare for this reporting obligation, employers should begin working with their payroll administrators to make sure that their systems are updated by the end of 2011, so that they can track the cost of any coverage provided in 2012 and report it on the Forms W-2 that will be issued in January 2013.

Johnston v. Carnegie Corporation of New York: How Strong Are Your Nonprofit's Severance Agreements?

Nonprofits often feel like Davids in a world of Goliaths. Struggling with tight budgets and lean staffs, the last thing they want to add to their basket of worries is a complex regime of human resource policies. Often, overworked senior staffers rely on outdated, internally generated employment documents that haven't been reviewed by a lawyer in years. Worse still, these documents have frequently been overwritten to the point where they are so ambiguous and confusing so as to become meaningless. In these moments, the would-be Davids become vulnerable themselves to legal challenges from disgruntled employees.

This phenomenon appears to be perfectly captured in a recent New York federal court decision, *Johnston v. Carnegie Corporation of New York*, wherein Magistrate Judge Debra Freeman allowed a pro se plaintiff's state and federal disability discrimination claims to survive a motion to dismiss, even though the plaintiff-employee had signed a severance agreement that included a full release of those claims. Why? Applying a multi-factor analysis, Judge Freeman concluded that the severance agreement was confusing and ambiguous to the point that it created a factual issue as to whether the employee's release was knowing and voluntary.

New Women-Owned Small Business Regulations: What Do They Mean for Your Federal Contracting Business?

The Small Business Administration (SBA) recently issued a final rule implementing the women-owned small business (WOSB) Program, after a decade of delays and multi-billion dollar annual shortfalls in federal procurement contracts being awarded to WOSBs. Businesses that qualify as WOSBs or Economically Disadvantaged Women-Owned Small Businesses ("EDWOSBs") will be eligible to compete for set-asides under the WOSB Program.

The anticipated contract value for WOSB Program set-asides must not exceed $5 million dollars for a procurement under a manufacturing North American Industry Classification System ("NAICS") code or $3 million dollars under all other codes. 13 C.F.R. § 127.503. WOSBs will be eligible to compete for set-asides

under 38 of the 83 NAICS codes, while EDWOSBs will be eligible to compete in competitions under all of them.

Protection of Charitable Assets Act: What the New Uniform Law Would Mean for Nonprofits

The committee tasked with drafting a new uniform law that regulates charities and charitable assets has released the newest version of the proposed law, renamed the Protection of Charitable Assets Act, which is currently under consideration by the drafting committee. If ultimately approved, the uniform act could become law in many states.

SEC Considers Extending Compliance Dates for Private Fund Adviser Registration and "Mid-Sized Adviser" Transition to State Regulation

On April 8, 2011, Robert Plaze, Associate Director of the Division of Investment Management of the Securities and Exchange Commission, issued a letter to the North American Securities Administrators Association regarding the Dodd-Frank Wall Street Reform and Consumer Protection Act. The SEC is considering extending the date by which:

- mid-sized advisers impacted by its rulemaking under the Dodd-Frank Act must transition to state regulation; and
- investment advisers required to register with the SEC as a result of the repeal of the “private adviser exemption” by the Dodd-Frank Act must register and come into compliance with their obligations as an SEC-registered investment adviser.

Trade Association Asks FMC to Reopen NRA Rulemaking

On April 12, 2011, counsel for the National Customs Brokers and Forwarders Association of America ("NCBFAA" or "the Association") submitted a letter to the Federal Maritime Commission ("FMC") offering commentary and a request for a reopening of proceedings under Docket No. 10-03, Non-Vessel Operating Common Carrier Negotiated Rate Arrangements. Docket No. 10-03 resulted in a final rule which provided non-vessel operating common carriers ("NVOCCs") with an exemption from tariff publication requirements of the Shipping Act of 1984. Under the new regulations, NVOCCs may enter into Negotiated Rate Arrangements ("NRAs") with individual shippers without publishing and/or adhering to rate tariffs for ocean transportation While the NCBFAA letter applauded this final rule, the Association remarked that the "benefits of the exemption have been mitigated by the retention and/or imposition of unnecessary restrictions." In view of this, the Association asked that the FMC "reopen" the proceeding to "complete the job started by the final rule issued in this docket."

Whether the FMC may ultimately elect to reopen this proceeding is unclear. It appears unlikely due to the logistics and timing of the matter, given that the effective date of the final rule produced pursuant to Docket No. 10-03 is April 18th, 2011. This novel re-regulatory initiative by the FMC may result in a sea-change of business practices, including those of both U.S. and foreign-based NVOCCs and their shipper-customers. The move by the NCBFAA is bound to create a bit of uncertainty for the industry, just as the NRA rule is set to become live.

We would also like to highlight an upcoming Venable event that you may be interested in attending. Please click on the event title for additional information.

What Investors Need to Know About Municipal Bankruptcies and Insolvencies

May 24, 2011
Breakfast and Networking: 8:00 a.m. - 8:30 a.m. (EST)

Program: 8:30 a.m. - 10:00 a.m. (EST)

Join **Venable LLP** and **Piper Jaffray** as we discuss what issues municipal finance investors should be considering including the current state of the market and the potential for municipal insolvencies. How big is the threat?

Topics will include:

- market analysis and key trends;
- legislative insights and the potential Congressional responses;
- will States be added to list of potential debtors;
- what to expect in a Chapter 9 bankruptcy case; and
- what investors should consider before, after and during a municipal insolvency.

Speakers:

Edith ("Edie") Beher
Vice President/Senior Credit Officer, Public Finance Group – Moody's Investors Service

William Donovan
Partner – Venable LLP

Jorian Rose
Partner – Venable LLP

Yaffa Rattner
Managing Director, High Yield Municipal Analytics – Piper Jaffray

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MetLife Building
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New York, NY 10166

To RSVP, please contact Patti Reisman at **NYEvents@Venable.com** or 646.277.8158.

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