

UPDATE

News of Developments in the Financial Sector and Related Areas

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Trucking Companies - Overtime Pay

Wilson v. Notheis, Inc., a United States District Court case in the Northern District of Georgia, Atlanta division, reprinted in [2000 Federal Carrier Cases] Federal Carriers Rep. (CCH) ¶ No. 84126, involved a trucking company that utilized "hostler-tractors" or "yard tractors" to move trailers within a trailer staging area. Hostler-tractors are one-seat vehicles that travel at only ten to fifteen miles per hour and are not licensed for use on public highways. The drivers of the hostler-tractors claim that they were entitled to overtime pay under the Fair Labor Standards Act ("FLSA"). Under FLSA most employees are entitled to at least time and a half per hours work beyond 40 in a work week period. Excepted from this requirement are employees for whom the Secretary of Transportation has the authority to establish qualification and maximum hours of service pursuant to the Motor Carrier Act. Based on

the facts in the case, the court determined that the employer of the drivers was a motor carrier that engaged in interstate commerce, that a significant portion of the drivers' activities involved moving trailers loaded with goods that had been moved in interstate commerce, and that the drivers' activities impacted the safety of the transportation of these goods. As a result, drivers were employed subject to the authority of the Secretary of Transportation and exempt from the overtime requirements of FLSA.

Audit Committee Disclosure for Publicly Traded Companies

New rules have been adopted by the Securities and Exchange Commission that require publicly traded companies to have the companies' financial information reviewed by independent auditors prior to filing their Quarterly Reports and to require companies to include in their proxy statements certain disclosures about their audit committees in order to enhance the reliability and credibility of financial statements of public companies. (Securities and Exchange Commission Release No. 34-42266, dated December 22, 1999 effective January 31, 2000.)

Internet-Related Activities of Banks

In Interpretive Letter No. 875, the Office of the Comptroller of the Currency ("OCC") permitted a national bank to acquire and hold a non-controlling, minority interest in a limited liability company that will provide certain Internet-related activities to merchants and also for the bank to expand its activities through a limited liability company which the bank holds a non-controlling, minority interest which will provide Internet-related services to

merchants. Both companies propose to offer merchants a package of electronic services that bundle payment processing services with ancillary support necessary for merchants to have retail websites that will be linked to a "virtual mall" website. The Internet-related services will be offered to other financial institutions on a wholesale basis so that those institutions may offer similar Internet services to their merchant customers. The activities of both companies involve those types of risk normally associated with the processing of debit and credit card transactions and other payment transactions. The OCC concluded that the bank could hold non-controlling minority interests in both companies subject to the following conditions:

1. Both companies will engage only in activities that are part of, or are incidental to, the business banking;
2. The bank will have veto power over any activities and major decisions of either company that are inconsistent with condition number 1, or will withdraw from participation in the event that either company engages in an activity that is inconsistent with condition number 1;
3. The bank will account for its investment in the companies under the equity method of accounting; and
4. The companies will be subject to OCC supervision, regulation and examination.

Insurance Activities of Trust Companies

In Interpretive Letter No. 877, the Office of the Comptroller of the Currency ("OCC") held that a trust company that is an uninsured, limited purpose national bank, specializing in preneed funeral trusts and estate planning, may establish a trust office in a place with a population of 5,000 or fewer inhabitants and engage in the sale of insurance pursuant to

12 U.S.C. §92 so long as the proposed office performs core fiduciary functions. This is the first interpretive ruling by the OCC addressing insurance activities of a trust company located in a place of less than 5,000 inhabitants.

Nonpublic Personal Information

Title V of the Gramm-Leach-Bliley Act (the "Act") sets forth the provisions that require financial companies engaged in financial services whether or not they are affiliated with a bank, to protect nonpublic personal information. Every finance company, insurance company or agency, securities broker or dealer and travel agencies are covered by the privacy provisions of the Act. The Act requires institutions to disclose both initially and annually to customers the institution's policies and procedures for protecting and disclosing nonpublic personal information. Customers must be given the opportunity to opt-out of having their nonpublic personal information and financial information shared with unaffiliated third parties. If a customer does not take advantage of the opt-out option, information of a customer may be provided by the institution to others.

Insurance of Deposits

On March 7, 2000, the Chairman of the Federal Deposit Insurance Corporation told those attending the annual meeting of the Independent Community Bankers of America that her agency would conduct a study to raise insurance coverage to approximately \$200,000 per account. The last increase in deposit insurance coverage was in 1980. At least one brokerage firm has indicated that it will start investing customers' idle cash funds in insured deposit accounts at banks instead of uninsured money market accounts.