

# UPDATE

## News of Developments in the Financial Sector and Related Areas

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#### *Accounting for Derivatives*

The Financial Accounting Standards Board has delayed the effective date for the new standard for reporting derivatives and hedging. The new standard, Statement No. 133, will apply to fiscal years beginning after June 15, 2000.

#### *Arkansas Definition of Trade Secret*

In a recent case decided by the Arkansas Supreme Court on May 27, 1999, Saforo & Associates, Inc. v. Porocel Corp., 337 Ark. 553, the Court adopted the six factors articulated in Vigor Industries, Inc. v. Cleveland Chemical Co. of Arkansas, Inc., 866 F.Supp. 1150 (E.D. Ark. 1994), as the controlling analysis for determining whether any particular information constitutes a trade secret. The six factors are as follows:

- the extent to which the information is known outside the business;

- the extent to which the information is known by employees and others involved in the business;
- the extent of measures taken by the business to guard the secrecy of the information;
- the value of the information to the business and to its competitors;
- the amount of effort or money expended by the business in developing the information;
- the ease or difficulty with which the information could be properly acquired or duplicated by others.

#### *Banking at Wal-Mart*

Wal-Mart Stores, Inc. has filed an application with the Office of Thrift Supervision seeking approval to purchase Federal BankCentre, Broken Arrow, Oklahoma, for the purpose of entry into the banking business and the opening of branches at certain of its supercenters. (Refer to related article on "Unitary Thrifts" in the June 1999 issue of UPDATE.)

#### *EEOC Enforcement Guidance*

On June 18, 1999, the Equal Employment Opportunity Commission issued enforcement guidance in the area of employer liability for unlawful harassment by supervisors. The guidelines cover such areas as who is a supervisor, harassment by a supervisor that results in employment action, harassment by a supervisor that does not result in an

employment action, and related issues regarding sexual harassment in the workplace. The guidelines were issued following two Supreme Court decisions, Burlington Industries, Inc. v. Ellerth, 118 S. Ct. 2257 (1998) and Faragher v. City of Boca Raton, 118 S. Ct. 2275 (1998) in which the Supreme Court made clear that employers are subject to vicarious liability for unlawful harassment by supervisors. The principles on which the standard liability in these two cases are based upon (i) an employer is responsible for the actions of its supervisors, and (ii) employer should be encouraged to prevent harassment and employees should be encouraged to avoid or limit the harm from harassment. The guidelines are available on the EEOC web site at [www.eeoc.gov](http://www.eeoc.gov).

### *FDIC Insurance Coverage*

Under recent rules issued by the Federal Deposit Insurance Corporation relating to joint and payable-on-death accounts, the maximum insurance coverage that a person can obtain for individual interests in joint accounts will remain at \$100,000. However, the new rules will expand the maximum coverage for any joint account owned by more than one person to \$100,000 for each owner. Under the old rules, a joint account was insured only up to \$100,000, regardless of the number of owners. For payable-on-death accounts, parents and children may be counted as qualifying beneficiaries.

### *Employees with Disabilities*

The United States Supreme Court recently ruled that persons whose disabilities that can be corrected by medicine or medical devices cannot claim protection from the discrimination provisions of The Americans With Disabilities Act (the "Act"). In Albertsons, Inc. v. Kirkinburg, No. 98-591, the Court ruled that a truck driver blind in one eye was not disabled in overturning a Ninth Circuit decision requiring Albertsons to defend its requirement that truck drivers meet the minimum vision standard required by the

Department of Transportation ("DOT"). Kirkinburg was a truck driver who was employed by Albertsons, a grocery-store chain, and suffered from amblyopia, an uncorrectable condition that left him with 20/200 vision in his left eye. At the time Kirkinburg was hired by Albertsons, the DOT regulations required all drivers of commercial motor vehicles to have distant visual acuity of at least 20/40 in each eye, and distant binocular acuity of at least 20/40. Prior to being hired by Albertsons, a physician mistakenly certified that Kirkinburg met the minimum DOT standard. Subsequently, Kirkinburg was injured on the job and took a leave of absence. Before returning to work, he was required to undergo a physical examination, at which time his vision was properly assessed and he failed to meet the minimum DOT standard, resulting in him being discharged from his employment with Albertsons. Sometime later, Kirkinburg received a waiver from the DOT vision standards, however, Albertsons declined to rehire him, and Kirkinburg filed a discrimination suit against Albertsons under the Act. The Supreme Court concluded that Kirkinburg was not an individual with a disability finding that his condition did not result in a significant limitation of a major life activity and even though he was an individual with a disability, he was not a "qualified" individual with a disability because he was not able to meet the DOT's basic vision standards, and that the existence of the waiver program did not obligate Albertsons to hire Kirkinburg. In another case, Sutton v. United Air Lines, No. 97-1943, the Court held that twin sisters with severe myopia that could be corrected with glasses did not have a claim under the Act when they were denied jobs as pilots. Lastly, in Murphy v. United Parcel Service, No. 97-1992, the Court ruled a mechanic who used medication to control high blood pressure was not disabled under the Act.