

UPDATE

News of Developments in the Financial Sector and Related Areas

* *IN THIS ISSUE* *

Americans with Disabilities Act

NASD Year 2000 Kit

FDIC Insurance Coverage

Insurance Agency Activities of Banks

Location of ATMs

Americans with Disabilities Act

Fjellestad v. Pizza Hut of America, Inc., 182 F.3rd 609 (8th Cir. 1999), involved an action by Ellen Fjellestad against her former employer, Pizza Hut of America, Inc., under the Americans with Disabilities Act ("ADA"). *Fjellestad* had been a unit manager of a Pizza Hut restaurant from 1978 until 1994, when she was seriously injured in an automobile accident which left her with a permanent 30% impairment of her upper right extremity and weakness in her arms. The Court overturned the District Court's summary judgment in favor of Pizza Hut that *Fjellestad* was not disabled within the meaning of the ADA and not qualified to perform the essential functions of her position with reasonable accommodation finding that there were material issues of fact to preclude the summary judgment. Unrelated to the outcome of the case, it is helpful to note the tests utilized by the Court in connection with the claim of *Fjellestad*. Under the ADA, an individual must show:

- that such individual is disabled within

the meaning of the ADA;

- that such individual is qualified to perform the essential functions of the job either with or without accommodation; and
- that such individual has suffered adverse employment action because of the disability.

The ADA defines disability as:

- a physical or mental impairment that substantially limits one or more of the major life activities of such individual;
- a record of such an impairment; or
- being regarded as having such an impairment.

Major life activities include caring for one's self, performing manual tasks, walking, seeing, hearing, breathing, learning and working. Sitting, standing, lifting and reaching also are considered major life activities. The following factors are considered in determining whether an individual is substantially limited in a major life activity:

- the nature and severity of the impairment;
- its duration or anticipated duration; and
- its long-term impact.

The United States Court of Appeals, Third Circuit, has held that once the employer knows of the individual's disability and the individual has requested accommodation, then such individual must demonstrate the following factors to show that an employer failed to participate in an informal, interactive process with the individual in need of an accommodation:

- the employer knew about the individual's disability;
- the employee requested accommodations or assistance for his or her disability;
- the employer did not make a good faith effort to assist the employee in seeking accommodations; and
- the employee could have been reasonably accommodated but for the employers' lack of good faith.

NASD Year 2000 Kit

The National Association of Securities Dealers, Inc. ("NASD") has recently released the "Business Continuity Planning Information Kit for Member Firms" as part of its ongoing efforts to help member firms and other industry participants. The purpose of the kit is to ensure that members of the NASD are informed about its Business Continuity Planning program ("BCP"). The NASD developed more than 25 Year 2000 BCP Plans for NASD companies. The kit defines how firms can communicate with the NASD during the Year 2000 transition period and provides guidance to organizations that use NASD systems. The NASD Business Continuity Planning program provides the structure and processes to ensure readiness and continuity of critical business functions and services that may be lost because of failure induced by Year 2000 date-related malfunctions. The Member Firm Business Continuity Planning Information Kit may be obtained through the NASD website at www.nasd.com, or by calling

1-888-227-1330.

FDIC Insurance Coverage

The Federal Deposit Insurance Corporation ("FDIC") has released a revised version of The Financial Institution Employee's Guide to Deposit Insurance which explains insurance coverage of deposits in a nontechnical way. The guide may be obtained through the FDIC website at www.fdic.gov.

Insurance Agency Activities of Banks

In Interpretive Letter No. 864, the Office of the Comptroller of the Currency ("OCC") held that under federal law, specifically 12 U.S.C. §92, an insurance agency located in a place of less than 5,000 in population which is a subsidiary of a national bank, may establish auxiliary locations of the agency outside of the place of 5,000 and engage in insurance activities generally in the same manner permissible for non-bank insurance agencies in Illinois and Michigan. This ruling is consistent with the OCC's prior Interpretive Letters No. 753 (November 4, 1996), reprinted in [1996-1997 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ No. 81-107 and Interpretive Letter No. 844 (October 20, 1998), reprinted in [Current Binder] Fed. Banking L. Rep. (CCH) ¶ No. 81-299 regarding the activities of national banks engaging in insurance agency activities.

Location of ATMs

In *Bank One, Utah v. Guttau*, No. 98-3166 filed September 2, 1999, the United States Court of Appeals for the 8th Circuit overturned an Iowa law that limited ATM terminals to be only established by a financial institution with its principal place of business in Iowa. Since the federal banking laws excluded ATMs from the term "branch," Iowa had no authority to regulate ATMs established by Bank One with its main office located outside of Iowa.