

## Employers Beware: Tough Immigration Enforcement Is Still Here – And Is Getting Even Tougher

Employers, especially in the construction industry, have long had to deal with the necessary headache of ensuring compliance with immigration regulations when using non-permanent residents as part of their work force. During the Bush years, the task of ensuring compliance went from being a headache to a very real source of potentially drastic consequences for employers—including criminal liability. The Immigration and Customs Enforcement division of the Homeland Security Department, known simply as “ICE,” has taken over the old INS agency’s enforcement role, and is doing what the INS typically did not do—charging employers with criminal felonies. Even an employer’s failure to properly complete an I-9 form for a new hire may now result in felony charges for knowingly making false statements. ICE has also sought charges against employers (including managers) for felony “alien harboring” arising from the employment of undocumented workers, a charge which carries a maximum penalty of ten (10) years when done for commercial advantage or financial gain. These stricter enforcement policies seem to be here to stay—the Obama administration has publicly announced that it will continue to pursue prosecution of employers who knowingly employ unverified workers.

Employers in the construction industry should be particularly vigilant, as both federal and state governments

are tying compliance to the ability of contractors to get work. For example, as a condition to being granted federal contracts, contractors must agree to use electronic employment eligibility verification systems for all persons hired by that contractor during the contract term, requiring employers to check a worker’s eligibility through an electronic database. A number of states have enacted similar legislation requiring electronic verification of employees. Pennsylvania has recently passed two bills out of committee, up for consideration by the full House, which would establish requirements for electronic verification for construction industry employers. The proposed legislation includes potentially devastating sanctions against construction industry employers who fail to verify status, such as being barred from working on public contracts as either a contractor or subcontractor for up to three years or, even more severely, revocation of the contractor’s license.

Despite the expectations of many, the first year of the Obama administration has not produced a comprehensive immigration reform bill that would allow undocumented workers to become legally employed in the United States. Regardless of the politics that may explain the lack of a comprehensive reform bill at the federal level, the fact is that employers, particularly those in the construction industry, must remain vigilant in ensuring they have complied with immigration laws, both at the federal and the state levels.

### The legislation being considered in Harrisburg would have dramatic consequences for employers using undocumented workers.

Highlights of the legislation, which has already passed committee, include the following:

- all construction firms statewide would be required to use an electronic verification system to verify employment eligibility of workers through social security numbers (similar requirements are already in place in a dozen states);
- construction industry employers who knowingly use unverified workers could have their contractor’s licenses revoked;
- for public projects, if a company is found to have violated the verification requirements multiple times, the company could be banned from future state contracts or subcontracts for three years; the state’s department of labor would make both complaint-based and random audits of construction industry employers to ensure compliance.



**Mohammad A. Ghiasuddin** is a principal in the firm’s Construction Law and Business & Commercial Litigation groups. In his litigation practice, Mohammad represents developers, general contractors, construction managers, trade contractors, design professionals, insurers and bonding companies. He also assists his clients in negotiating and implementing contracts and addressing workplace-related immigration issues. You can reach Mohammad at 610.941.2546 or by email to [mghiasuddin@kaplaw.com](mailto:mghiasuddin@kaplaw.com).

# Seminars

**Barry A. Furman**, a principal in the Tax and Business Law groups, presented a program on "Sales and Use Tax Audits" to the Associated Builders & Contractors, Southeastern PA Chapter, on January 25, 2010. The program covered the scope of the audit, recordkeeping requirements, audit procedures, audits of construction contracts, post-audit conferences, the appeals process, penalties and criminal aspects.

**Joshua C. Quinter**, of the Construction Law group, presented a Public Works Contracts Seminar on February 17, 2010 to the Associated Builders & Contractors, Eastern PA Chapter. Josh was also a featured speaker at the 41st Annual Metal Building Contractors & Erectors' Association Conference in San Antonio, Texas on February 24, 2010.

**Neil A. Stein** and **Amee S. Farrell**, of the Land Use, Zoning & Development group, will be presenting a "Green Building Liabilities" CLE program for the Montgomery Bar Association's Real Estate Committee on March 18, 2010.

**Mohammad A. Ghasuddin** and **Joshua C. Quinter**, of the Construction Law group, will present an Immigration/Labor Law seminar on March 25, 2010 to the Associated Builders and Contractors, Southeast PA Chapter. This seminar will focus on the impact of immigration and labor law on construction companies and provide guidance on how to navigate these difficult issues.

**Pamela M. Tobin**, a member of the Commercial Litigation and Land Use, Zoning & Development groups, will present a program to the Associated Builders and Contractors' Women in Construction group on April 16, 2010 on "Handling and Protecting Electronic Information." She will give an update on the law and discuss a business owner's obligations to preserve and produce electronic information in litigation cases.

**Maury B. Reiter**, a principal in the Real Estate, Business & Finance group, will be presenting a program entitled "Best Tax Strategies for the Real Estate Investor" for the Temple Real Estate Institute on April 22, 2010 and on May 4, 2010.

## Attorney News

**Maury B. Reiter**, managing principal, attended the MSI Global Alliance North American Local Members' Meeting in New Orleans, LA on January 23 & 24, 2010. As a member of MSI Global Alliance, Kaplin Stewart is linked to a worldwide network of top law and accounting firms who provide high quality services. The MSI Global Alliance firms are committed to personal service, responsiveness and value to their clients. Our membership in MSI enables us to provide you with integrated services in multiple jurisdictions in over 100 countries.

**Andrew B. Cohn**, a principal in the Construction Law group, has become a member of the Government Affairs Committee of the Building Industry Association of Philadelphia. The Committee studies policy and legislation that could impact development in Philadelphia and its surrounding counties, and works with the 'Fix It' Coalition as well as City agencies and departments to create a more transparent and efficient development process.

**Lisa M. LaPenna**, a paralegal in the Commercial Litigation group, served as a panelist for a program presented to the paralegal students in the Legal Studies Program at Pierce College in Philadelphia on December 1, 2009. Lisa is dedicated to promoting the paralegal profession and spends many hours sharing her personal experiences with students of the profession.

## Congratulations!

**Joshua C. Quinter** has been named a principal of Kaplin Stewart. Josh has been with Kaplin Stewart since 2004 practicing in the Construction Law and Business & Commercial Litigation groups. In recent years, Josh has been named as both a *Lawyer on the Fast Track* and a *Rising Star*. He is a member of various trade and business organizations where he assumes leadership roles.

**Marc B. Kaplin** and **Ronald B. Glazer** were recently selected by their peers for inclusion in *The Best Lawyers in America*®. (Copyright 2009 by Woodward/White, Inc. of Aiken, S.C.). Mr. Kaplin was selected in the field of Land Use & Zoning Law, and Mr. Glazer was selected in the field of Real Estate Law.

**Neil A. Stein**, a principal in the Land Use, Zoning & Development group, has been appointed to the Board of Directors of the Homebuilders Association of Bucks and Montgomery Counties, an organization he has been active in for many years. In addition, he has been re-appointed Chair of the Political Action Committee of the same group. Mr. Stein lectures frequently for professional organizations and occupies a leadership role in many builder and developer trade groups and bar association committees.

**Mohammad A. Ghasuddin**, a principal in the Construction Law and Business & Commercial Litigation groups, has been named Co-Chair of the American Citizenship Committee of the Montgomery Bar Association. The committee's focus is immigration issues. As part of his law practice Mr. Ghasuddin advises clients on I-9 related immigration issues. Mr. Ghasuddin is also active in the South Asian Bar Association and Council for Advancement of Muslim Professionals.

**Pamela M. Tobin**, a member of the Commercial Litigation and Land Use, Zoning & Development groups, has been named Vice-Chair of the Women in the Law Committee of the Montgomery Bar Association for 2010. Ms. Tobin hopes to make this committee a forum for women lawyers to brainstorm ideas for taking on leadership roles in the law. In her practice, Ms. Tobin handles complex litigation matters in state and federal courts.





# Attorney Spotlight

This month Kaplin Stewart shines the spotlight on Pamela Tobin. Pamela Tobin handles complex commercial litigation on behalf of the firm's clients.

Upon graduation from Temple Law School, Pam began her legal career at Dechert LLP in Philadelphia. Her first assignment was to review voluminous documents warehoused in a dirty, dingy, dark and drafty basement. She represented a group of directors of a failed savings and loan sued for breach of fiduciary duty, who claimed that the bank's management had pulled the wool over their eyes. As she toiled away in said "d, d, d and drafty basement," she happened to find two different versions of the same meeting minutes. One showed a loan approval while the other did not. This became the smoking gun that the government eventually used to indict the former bank president. Pam was elated that her toiling had serendipitously produced fruit. She was not, however, sorry to leave the "d, d, d, and drafty" basement.

Change came when Pam tried her first case in Montgomery County and was mentored through the trial by a senior attorney from LaBrum & Doak. He convinced her to leave Dechert for LaBram & Doak. While that might not have been the wisest career move – considering L&D's ultimate demise – Pam did acquire a wealth of

experience there. She was able to argue a case before the Third Circuit, successfully assist in a significant federal trial and, again, lead the charge in another failed savings and loan litigation.

Sensing trouble on the employment waters, Pam grabbed for a life raft and into the welcoming arms of Fox Rothschild. At Fox, Pam worked on another massive case assisting the Pennsylvania Department of Insurance to recover damages on behalf of a dissolved insurance company. While the work was interesting and Fox was growing, Pam's husband was bitten by the start-up Internet bug and insisted that the family decamp to try their luck in Silicon Valley. While to most people that would seem like a dream come true, not so to Pam who had called Philadelphia her home for practically forever. Pam negotiated to take care of their three children full-time in California while said husband



**Pamela Tobin**

got the bug out of his system. Eventually, Pam managed to persuade all concerned that Pennsylvania really was the place to be. Arriving back in 2007, Pam landed happily at Kaplin Stewart where she has been working on complex commercial litigation in her bright and warm second-floor office ever since. Pam enjoys the challenging work, the clients, her colleagues and does not regret for a single moment being back home!

## Do You Know—

Effective January 1, 2010, the statewide building construction code for Pennsylvania is the 2009 International Code Council's bundle of building codes ("IBC 2009"). However, if a design or construction contract for proposed work was executed prior to December 31, 2009, that project can be reviewed under the IBC 2006 instead of IBC 2009 (and even under IBC 2003 in certain circumstances). This exception has significant ramifications for residential projects in particular as IBC 2009 contains provisions that require the installation of automatic sprinklers in all townhouse construction, effective immediately, and in all one- and two-family residential buildings beginning January 1, 2011; whereas IBC 2006 has no residential sprinkler requirements for townhouses or one- and two-family construction. There are a multitude of other differences between IBC 2006 and IBC 2009 that may make this exception worthwhile for other construction types as well.

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# "IBC 2009"

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# Legal Perspectives

## Purchasing Distressed Loans

There is currently a great opportunity to acquire real estate as a result of the recent number of loans that are on the brink of foreclosure. Real estate developers might have the ability to purchase these loans at a discount and then foreclose on the real estate securing such loans.

When purchasing such loans, there are certain protections that purchasers should keep in mind. Although lenders may initially be unwilling to make any representations or promises related to the loans, with some negotiation and insistence, a lender might agree to represent:

1. That it is the sole owner of the loan and has the authority to sell the loan;
2. That it has delivered to the purchaser copies of all the loan documents;
3. That it has informed the purchaser about all litigation related to the loan;
4. That, to the best of its knowledge, the borrower of the loan does not have any offset or counterclaim against any payment due under the loan;
5. The amount due from the borrower under the loan and what payments have been made; and
6. That it is not holding any escrow funds or reserves with regard to the loan or, if they are holding such amounts, the amounts then being held.

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In the agreement of sale to purchase the loan, purchasers should add provisions to ensure that the lender does not amend the loan documents or commence any litigation without the purchaser's prior consent. Also, the purchaser should, prior to completing the purchase of the loan, investigate whether there have been any bankruptcy filings made by the borrower or the lender, and investigate whether there are any environmental or title problems with the real estate.

It has been said that for every problem, there is an opportunity. The number of distressed loans is no exception to that rule. However, the foregoing representations and other protections are important to confirm that the purchaser is getting the deal that it expects.



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