

# EgbbL LEGAL REPORT

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## Employers should take care when confronted with disability claims

by DOUGLAS E. LEE

Although a trio of recent U.S. Supreme Court decisions clarifies employers' responsibilities under the Americans with Disabilities Act, Illinois employers cannot comfortably rely on these decisions until the Illinois Department of Human Rights embraces their reasoning.

In the three decisions announced at the end of its 1998-99 term, the U.S. Supreme Court held that determining whether an individual is "disabled" under the ADA must include consideration of the individual's ability to correct or reduce the effect of the condition through medication or other treatment. Thus, persons who can treat high blood pressure with medication or correct visual impairments with eyeglasses are not covered by the ADA.

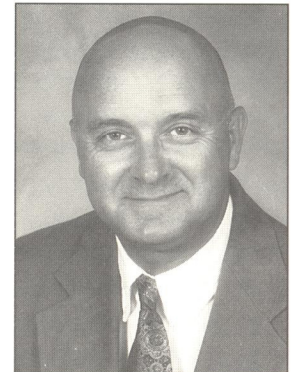


The Supreme Court's holdings, however, interpret only the ADA. Many state laws - including Illinois' Human Rights Act - are more protective of the disabled than the ADA. In Illinois, for example, the disability anti-discrimination provision applies to all employers, while the ADA covers only larger companies.

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## Judges select Beckman

These are the bittersweet days at EGBBL. As most of our clients and friends already have heard, Charles Beckman recently was appointed an Associate Circuit Court Judge. We expect that Chuck will take the bench in mid-September.



We of course are happy for Chuck and his accomplishments. Nevertheless, we cannot help but be sad that Chuck will be leaving EGBBL. He has been our partner and friend for many years, and we will miss his wisdom, judgment and wit. Chuck is a true credit to the legal profession, and we know that he will be an outstanding judge.

All of us are working hard to ensure that the transition is as smooth as possible and that all of our clients continue receiving the quality legal services they have come to expect. Chuck has started contacting his clients to discuss future handling of their files and hopes to complete this process by the end of August. As always, clients of Chuck's who have questions should feel free to call.

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## Tax-exempt organizations face new regulations

by GARY R. GEHLBACH

Federal tax laws require private foundations and organizations that are exempt from federal income tax to make their annual financial and information returns, as well as their applications for exemption, available to the public. Recent regulations took this requirement a step further, obligating tax-exempt organizations (but not private foundations) to implement procedures no later than June 8, 1999, for responding to requests for this information.

The recently finalized regulations address:

- the time and place the organization must make documents available for public inspection;
  - the conditions the organization may place on requests for copies of documents;
- and

REGULATIONS continued on page 3

# Banks may be held liable for invalid check endorsements

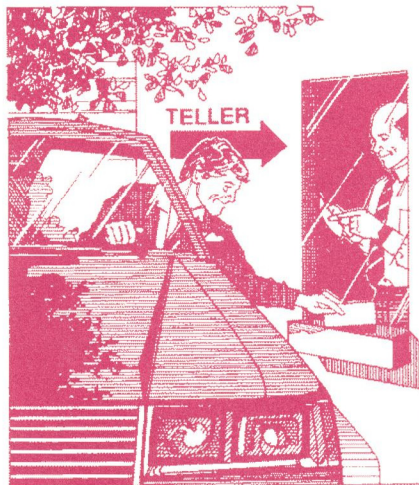
by MEGAN G. HEEG

A recent Illinois appellate court decision reminds banks to re-examine their signature verification procedures when accepting checks. As the court held, a bank that accepts a check with an invalid endorsement may bear the ultimate liability for paying the check.

In this case, the customer had a certificate of deposit with First National Bank of Chicago. When the CD matured, the customer asked First National to close the CD account, issue a cashier's check payable to the customer and mail it to the customer's home address. First National fulfilled the customer's requests, ultimately mailing the customer a check for \$157,611.30.

During this time, the customer was sharing his residence with his nephew. The nephew obtained the check, forged his uncle's signature and deposited the check into an account at MidAmerica Federal Savings Bank. After the nephew lost the money at a riverboat casino, First National was required to issue a new check to the customer because the purported signature on the first check was a forgery.

After issuing the new check to the customer, First National sued MidAmerica, claiming that MidAmerica was responsible for accepting a check with an invalid endorsement. The trial court agreed with First National, as did the appellate court. The appellate court held that the endorsement on the cashier's check, being forged, was



unauthorized and ineffective, resulting in a breach of MidAmerica's presentment warranties to subsequent transferees.

As stated by the appellate court, a bank that accepts a check warrants to subsequent transferees the validity of prior endorsements and can be held liable on that warranty if the endorsement is forged. The purpose of the warranty is to place on the bank taking an instrument the responsibility of collecting from the person who made the unauthorized endorsement. The ultimate responsibility is placed here because the first bank was closest to the person causing the loss and is presumed to have had the best opportunity to have prevented the loss.

Given this warranty, what should banks do? Long-standing customers may take offense at a new teller's request to see two forms of identification. Therefore, a bank's signature verification procedures must be accommodating. In establishing procedures, consider the following: Is the check a third-party check? Is the presenter a long-standing customer or a stranger? Does the presenter maintain a deposit account balance with the bank in excess of the check amount? Is the check for \$25 or for \$25,000?

In recognizing the warning signals in check verification procedures, banks can minimize liability without affecting the service customers have come to expect.



## Claims . . .

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While the Illinois Department of Human Rights could choose not to follow the recent Supreme Court decisions, most observers believe that these cases ultimately will become part of Illinois law.

The issue in each of the three recent cases was whether the individual's untreated condition constituted an impairment that "substantially limited" a "major life activity." These individuals claimed that their conditions - severe vision problems and high blood pressure - could substantially limit their major life activities and that they therefore were entitled to protection under the ADA. The employers countered that these conditions did not actually limit the individuals' major life activities because treatments lessened the conditions' adverse effects.

The individuals relied heavily on a regulation adopted by the Equal Employment Opportunity Commission, which interpreted the ADA to require that disability determinations be made without considering possible corrective measures. The Supreme

Court rejected this interpretation, holding that Congress did not intend the law to cover every employee who suffered from a correctable condition.

If Illinois adopts this reasoning, employers will be able to more realistically evaluate an employee's or applicant's disability claim. If an individual can reasonably perform all major life activities with a treated condition, that individual will not be considered disabled solely because the condition prevents him or her from performing a specific job.

Unfortunately for employers, the recent decisions might make interviewing more problematic. Under current regulations, employers are prohibited from exploring the nature and extent of obvious or disclosed disabilities. An employer therefore cannot ask an applicant whether his or her disability can be treated and, if so, the degree to which such treatment has alleviated the condition's effects on the employee. These and other lingering uncertainties about the recent Supreme Court decisions suggest that employers should remain careful when presented with disability claims.



## Internet information can benefit lawyers and non-lawyers alike

by Rolfe EHRMANN

Just 25 years ago, complicated legal research could be conducted only in the libraries of the highest courts, the largest law firms and the most prestigious law schools. Today, that same research can be conducted almost anywhere - provided that you have access to the Internet.



Legal books and journals available over the Internet now total in the millions. Most of these materials are available to lawyers and non-lawyers. Of course, a non-lawyer who spends a few hours on the Internet cannot hope to have the same understanding of the law as an individual who has obtained a doctorate in law after many years of study and has had years of experience. Nonetheless, the legal system is effective only if the public is informed, and the Internet is a tool that gives the public direct access to the rules, statutes and cases that underlie our justice system.

To find a statute, public act or proposed bill in Illinois, you need only the URL [www.legis.state.il.us/index.html](http://www.legis.state.il.us/index.html). At this address is an index of all the statutes, organized by topic. To find a federal statute, you can conduct a similar search at <http://law.house.gov/uscsrch.htm>.

Other law libraries available through the Internet include:

- Find Law — <http://www.findlaw.com>;
- Cornell University Legal Information Institute - <http://www.law.cornell.edu>;
- Hierso Gamos - <http://www.hg.org>;
- Washburn University's WashLaw - <http://washlaw.edu>;
- CataLaw - <http://www.catalaw.com>; and
- Internet Legal Resource Guide - <http://www.ilrg.com>.

Not surprisingly, thousands of web sites contain all forms of legal research materials. Attorneys today frequently find materials faster, cheaper and more comprehensively on the Internet than they used to in paper libraries. These materials are equally available to non-lawyers, who must be careful not to misread or misinterpret research results. With the proper guidance of a lawyer, however, non-lawyers can use this material to supplement informed decision-making, which benefits both the public and the legal system.



## Alternative minimum tax can result in higher, unexpected income taxes

by GARY R. GEHLBACH

In addition to the regular federal income tax, Congress years ago adopted an alternative minimum tax (AMT). The AMT was designed to ensure that persons with significant income who are able to minimize their federal income tax through certain tax exemptions and deductions would nonetheless pay some tax.

The AMT recomputes federal income tax without regard to these tax preferences. The actual federal tax owing is the greater of the regular income tax or the AMT. Married persons filing a joint return have an exemption against the AMT of \$45,000. This exemption is reduced by 25 percent of the amount by which taxable income computed under the AMT rules exceeds \$150,000. The exemption for single individuals and heads of household is \$33,750. Corporations receive a \$40,000 exemption.

Tax preferences excluded in computing the AMT include personal exemptions and itemized deductions. Because the exemptions under the AMT are not indexed to inflation, individuals with relatively few tax preferences are finding that the AMT sometimes applies. That is, individuals are finding that the federal income tax that they thought they owed was not what they actually owed. Rather, the AMT is producing a significantly higher income tax bill.

In one nationally reported case, this AMT trap struck a couple with 10 children. With their adjusted gross income, personal exemptions and itemized deductions, they paid a regular federal income tax of \$5,100. The IRS, however, calculated the AMT without regard to the itemized deductions and personal exemptions and assessed the couple with an additional \$1,000 in AMT.



## Regulations . . .

Continued from page 1

■ the amount, form and time of payment of any fees the organization may charge for duplication and postage.

Tax-exempt organizations may make required information available via the Internet in a manner so that any individual with access to the Internet should be able to access, download, view and print the posted documents in a format that exactly reproduces the image of the original document as it was filed with the IRS. At least for now, private foundations are exempt from these regulations.

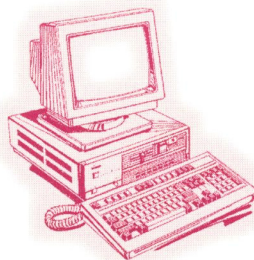


# Consumers need protection when purchasing computer systems

by DOUGLAS E. LEE

As the Internet and other technologies advance faster than most people's ability to keep up with them, consumers should proceed carefully when contracting for large computer purchases or the development of software or Internet products.

Recent experiences of two local businesses demonstrate the benefit of taking preventative protective measures. One business contracted for the purchase of a networked billing system that included new hardware and specifically designed software. When ordering these products, the business signed the contract presented by the vendor, which, unknown to the business, disclaimed all meaningful liability and



did not require the vendor to complete the system within any specified timeframe.

After the business had paid more than \$20,000, the vendor failed to deliver a workable system. The produced billings were so unreliable that the business ultimately chose to discontinue billing until the system was corrected. Unfortunately, the vendor never fulfilled its promises, and

the business was forced to purchase a new system from a different vendor. Because the contract was so favorable to the first vendor, the business was unable to recover any of its payments or any of the losses it suffered from its lost billings.

Contrast that experience with that of a business seeking to develop a web site. The business retained a computer consultant to work with legal counsel in drafting a contract that set forth specific deadlines and itemized the particular features desired for the web site. While the contract could not prevent the vendor from failing to deliver the promised product, the business was able - without litigation - to recover almost all of its \$15,000 down payment.



## In Print and At the Podium

**Mr. Gehlbach** published an article in the summer issue of the LAUTUM News, the state-wide publication of the Illinois Association of Mutual Insurance Companies. The article analyzed a recent Illinois appellate court opinion setting forth insurance companies' obligation to maintain evidence of policy cancellations . . . **Mr. Lee** continues to write two First Amendment commentaries each month for the web site of The Freedom Forum First Amendment Center ([www.freedomforum.org/first/welcome](http://www.freedomforum.org/first/welcome)). Recent topics have included a California Supreme Court decision establishing the public's right to attend civil trials and Illinois Attorney General Jim Ryan's lawsuit against a white supremacist organization . . . **Mr. Ehrmann** recently has spoken to several civic groups throughout Northern Illinois concerning his family's relationship

with Albert Einstein . . . In July, **Mr. Lee** was re-elected as President of the Board of Directors of Open Sesame Child Care Center . . . **Mr. Gehlbach** will speak at the annual Illinois State Bar Association seminar for real estate attorneys this fall . . . **Mr. Ehrmann** recently was elected Vice President of the Dixon Rotary Club . . . **Mrs. Heeg**, a member of the Board of Directors of Forreston Mutual Insurance Company, joined with other farm mutual insurance company representatives who traveled to Washington, D.C., to brief Sen. Peter Fitzgerald and Reps. Don Manzullo and Lane Evans on issues affecting the property/casualty insurance industry . . . The Barristers, the Dixon senior girls' slow-pitch softball team sponsored by EGBBL, won the end-of-season tournament. The squad was coached by **Mr. Gehlbach** and Tom Shaw.



## Deals and Decisions

The Illinois Supreme Court recently ruled in favor of a client represented by **Mr. Ehrmann** and returned the case for a new trial . . . A client represented by **Mr. Lee** received a favorable ruling from the Illinois appellate court. The ruling affirmed a trial court decision construing a will . . . **Mr. Gehlbach** is representing developers of a 31-lot residential subdivision in Dixon. The developers intend to limit one-half of the lots to persons 55 years of age and older . . . As city attorney for a local municipality, **Mr. Ehrmann** drafted a com-

prehensive code of ordinances . . . **Mr. Beckman** and **Mr. Lee** recently assisted an area company sell the bulk of its assets in a transaction involving over \$1 million . . . **Mr. Lee** is representing an out-of-state company seeking to rezone property in Lee County for construction of a peaking power generating facility . . . **Mrs. Heeg** is representing a client in a mortgage foreclosure action involving a commercial property and loan in excess of \$2.1 million . . . **Mr. Lee** recently obtained a settlement for clients in a negligence action against a nursing home.