

# EGBL LEGAL REPORT

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## Farm landlords, tenants adjust to new crop lien rules

by David W. Badger

As the beginning of the 2002 farm lease year approaches, both landlords and tenants of farm ground should familiarize themselves with changes in Illinois law that affect the landlord's lien on crops.

The changes to Article 9 of the Illinois Uniform Commercial Code became effective July 1, 2001. While these amendments are designed to make it easier for landlords to collect rent from tenants in financial difficulty, the new law requires landlords to satisfy several procedural requirements before they can assert those rights.

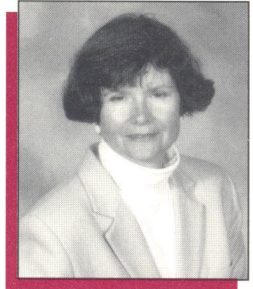
Under Article 9 as amended, the landlord's lien, if properly perfected under Article 9, takes priority over all other agricultural liens or security interests arising under Article 9 of the Commercial Code.

To properly perfect a landlord's lien, the landlord must

CROP LIENS continued on page 2

## Heeg named Trustee

EGBL proudly announces that Megan G. Heeg, an associate with the Firm, has been appointed to the private panel of Chapter 7 bankruptcy trustees by the United States Trustee for Region II. Mrs. Heeg's appointment was effective Jan. 1, 2002.



As a member of the private panel of trustees, Mrs. Heeg will administer Chapter 7 bankruptcy cases in the Dixon/Sterling area, beginning with cases filed February 11, 2002. As trustee, Mrs. Heeg will collect the property of bankruptcy estates and close estates as expeditiously as is compatible with the best interests of the parties in interest. She will also be required to investigate the financial affairs debtors and preside at meetings of creditors.

Mrs. Heeg, who has practiced bankruptcy law since joining EGBL in 1997, will incorporate her duties as trustee into her practice at EGBL. Mrs. Heeg concentrates her practice in bankruptcy, civil litigation, collection and family law.

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## Employers consider cell phone policies

by Douglas E. Lee

If recent litigation is any indication, employers whose employees regularly use cell phones while driving might want to consider adopting policies restricting such use.

Typical of a small but increasing trend is the \$30 million lawsuit brought against a New York law firm after one of its attorneys, who was talking on a cell phone while driving, struck and killed a 15-year-old girl. The girl's parents' lawsuit is based in large part on their allegation that the firm encouraged attorneys to use cell phones for work but failed to have an adequate safety policy concerning phone use while driving.

As a result of these types of claims, many employers are considering whether to adopt cell phone policies and, if so, how significantly to restrict employees' use of car phones. Unfortunately, because the issue is so new, little definitive guidance exists.

CELL PHONES continued on page 2

## Crop liens . . .


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file a financing statement with the appropriate governmental office. If the tenant is an individual who lives in Illinois, the proper place to file is the office of the Illinois Secretary of State. However, if the tenant is an individual who does not live in Illinois - a tenant who lives in Iowa and farms in Illinois, for example - the proper place to file appears to be the office of the Secretary of State in the state in which the tenant resides. If the tenant is a business entity, the landlord should file the financing statement with the Secretary of State in the state of the tenant's organization. The landlord should be sure to use the tenant's exact name, as the financing statement may fail if filed under an incorrect name.

When to file the financing statement also is important. The law is clear that a financing statement filed to perfect a landlord's lien may be filed after the tenancy has begun. However, it is not yet clear whether a financing statement relating to a year-to-year oral farm tenancy

must be filed annually. The best practice therefore is to have a written lease authorizing the filing of a financing statement to perfect the landlord's lien. Landlords also should be aware that, even if the lien is perfected, the lien may be lost if the landlord does not provide written notice of the lien to the elevator or warehouse where the tenant sells the grain.

Article 9 as amended has improved

the position of landlords who do not receive rent at the beginning of the lease term. However, there remain numerous pitfalls that must be considered to fully secure the payment of delayed rent. Landlords therefore should consider whether they can better protect themselves by asking for rent to be paid at the beginning of the year, with a discount to the tenant for paying the rent early. 

- ### Landlord's lien checklist
- ✓ Have a written lease with the farm tenant.
    - ✓ Require the tenant to disclose the names and addresses of all possible purchasers of the grain.
    - ✓ Include language creating a security interest in the crop to be grown in favor of the landlord.
  - ✓ File a UCC-1 financing statement with the appropriate Secretary of State.
  - ✓ Send notices to all intended purchasers of the crop.
    - ✓ The notice of the landlord's lien should follow the statutory guidelines.
    - ✓ The notices should be sent by certified mail, return receipt requested.
    - ✓ The notices should be sent annually, within six months of the time the crop would be purchased.

## Cell phones . . .

Continued from page 1


The most conservative approach is to adopt a policy similar to the New York statute banning drivers from using hand-held cell phones. Under such a policy, employers require employees to either pull over and stop or use headsets when telephoning from their cars.

A more moderate approach is a policy that generally prohibits employees who are driving from conducting business that distracts them. A concern about this kind of policy, however, is the fear that it could be used against the employer, as it shows that the employer was aware of the risks of distracted driving but nevertheless relied

on employees' unchecked discretion to guard against those risks. A policy that specified some of the instances in which cell phone use interferes with driving, however, would limit some of this discretion and minimize the risk that the policy could be used against an employer.

Like any employment policy, however,



er, a cell phone policy is only as good as its enforcement. A moderate policy, when coupled with appropriate education and enforcement, is much more likely to protect an employer from liability than a more conservative policy that is enforced sporadically, if at all. As an employer considers its response to this new litigation threat, it therefore should weigh the importance of its employees' cell phone use, its ability to provide technology that reduces driving distractions and its willingness to enforce the policy adopted. 

## New statutes, court decisions affect employers

by DOUGLAS E. LEE

As always, recent months have brought a number of new laws and court decisions affecting employers. The highlights of these new laws and decisions include:

- The Seventh Circuit Court of Appeals recently upheld a \$50,000 jury verdict against an auto dealership for failing to properly train managers about age discrimination. While the dealership had a policy against age discrimination, the hiring manager testified he did not know age discrimination was unlawful. The appellate court called this lack of training "an extraordinary mistake."
- A new Illinois law requires employers to provide reasonable unpaid break time to any nursing mother employee who desires to express breast milk. The break time can run concurrently with other breaks. The law also requires employers to make a reasonable effort to provide a room close to the work area, other than a toilet stall, where the employee can express her milk in privacy.
- Under new Illinois legislation, employers with 50 or more employees that offer group health insurance are required to cover "serious" mental illnesses on the same basis as physical illnesses, except that the plan may limit coverage of inpatient treatment to 45 days and outpatient treatment to 35 visits in a calendar year. "Serious" mental illnesses are schizophrenia, paranoid and other psychotic disorders, bipolar disorders, major depressive disorders, depression in childhood and adolescence and panic disorder.
- A California state court has held that staring can constitute sexual harassment. In the case, a male worker who had been ordered to stay away from a female co-employee after more overt sexual harassment continued to stare at her from a distance for as long as five and ten minutes at a time. The court said the male employee's "staring campaign," because it followed his overt sexual remarks, constituted a continuing course of unlawful conduct.



### Practice spotlight: Business law



EGBL has considerable experience in helping its clients analyze their business needs. Messrs. Gehlbach, Badger and Lee represent a number of business clients in a wide variety of contexts.

Much of EGBL's business practice involves the formation of business entities. Choosing a form with which to do business has become somewhat complex. No longer are clients limited to forming a sole proprietorship, a partnership or a corporation. In addition to those basic entity forms, clients now can utilize limited partnerships, limited liability companies, limited liability partnerships and general and specific forms of trusts, including land trusts. With the clients and their other advisors, EGBL assists in choosing the appropriate form of entity, forming the entity and registering the entity with the appropriate governmental agencies.

For business entities involving more than one person, EGBL frequently drafts buy-sell agreements, which become an important blueprint to enable the owners to transition in and out of the business entity. A typical buy-sell agreement addresses an owner's withdrawal from the business, retirement, desire to sell or transfer his or her interest to another and the death or disability of an owner.

In addition to businesses that are formed and operated for profit, EGBL also represents a wide variety of not-for-profit organizations, including religious and charitable organizations as well as civic and community entities.

After forming the business entity, EGBL helps clients maintain it with appropriate annual reports and corporate or partnership minutes. As part of its business practice, EGBL also assists its clients in major acquisitions and sales, drafting employment agreements with key personnel, mergers, zoning issues, leases and regulatory compliance.



# My slice is finally in: Golfer's liability

by GARY R. GEHLBACH

The Illinois Supreme Court has ruled that a person who builds a residence along a golf course has no legal expectation that the home should be free from the slices and hooks of outrageous golfers. In the case, a couple whose new home was along one of the fairways found its abode continually pelted with golf balls from the duffers on the course and decided to file suit. The couple wasn't able to get beyond the first tee, however, as the trial court dismissed its claim for relief, and the Illinois Supreme Court

eventually affirmed. According to the court, if you construct your home along a golf course, you should reasonably expect that the house will be assaulted. The court apparently assumed that most golfers just can't control themselves, or at least their shots, on the course.

The same supreme court, however, a few months later ruled that a golfer who was hit by a flying golf ball while on the course had a reasonable expectation that he should not be hit. The golfer, who allegedly sustained some injuries, was struck by a ball from a shot by another

golfer on the same course. The offending golfer argued that an errant golf ball is a reasonable risk of participating in this sport, but the court didn't buy it.

Read together, these two cases create a rule of law that favors my style of golf: Shots within the fairways, and maybe even the in-bounds rough, may result in significant liability, while shots careening out of bounds may result in a penalty stroke but not a judgment for damages to neighboring homes. My slice is finally in.



## In Print and At the Podium

**Mr. Lee** in November was named Dixon's "Citizen of the Year." The annual award, which is sponsored by the Dixon Area Chamber of Commerce & Industry and the *Dixon Telegraph*, is presented in recognition of significant contributions to the community. **Mr. Lee** was recognized for his volunteer service to Open Sesame Child Care Center, the Dixon Chamber and several other local organizations . . . **Mr. Gehlbach** recently was re-elected as secretary of the Lee County Industrial Development Association . . . As a member of the Claims Committee for the Illinois Association of Mutual Insurance Companies, **Mrs. Heeg** recently met with other committee members to plan the committee's upcoming claims seminar . . . **Mr. Gehlbach** presented a seminar to real estate brokers and salespersons on tax-

deferred exchanges. He also spoke to an area service club about the Dixon School District and school board, of which he serves as president . . . **Mr. Lee** was elected vice-president of the Dixon school board and vice-president of the board of the Lee County Special Education Association . . . As treasurer of the Dixon Family YMCA, a post to which he recently was re-elected, **Mr. Gehlbach** gave the financial report at the Y's annual meeting . . . **Mr. Lee's** most recent commentary for the web site of The Freedom Forum First Amendment Center ([www.freedomforum.org/first](http://www.freedomforum.org/first)) examined several court decisions in which trial judges improperly interfered in newspapers' editorial processes . . . **Mr. Lee** again this year is quoted in The Freedom Forum's First Amendment calendar.



## Deals and Decisions

**Mr. Lee** was retained by The Center for Individual Freedom to write the Center's amicus curiae brief to the United States Supreme Court in a case involving the jailing of a book author who refused to reveal the names of confidential sources to a grand jury. The Center, a nonpartisan, non-profit organization founded to protect and defend individual freedoms and individual rights guaranteed by the U.S. Constitution, is based in Alexandria, Va. In the Center's brief, **Mr. Lee** urged the Court to review the case in order to clarify the extent to which reporters and authors can protect the confidentiality of their sources and other unpublished information . . . **Mr. Gehlbach** is involved on

behalf of various clients in a number of transactions connected with Rochelle's new internodal facility, including negotiating sales of land to the Union Pacific Railroad Company, positioning area land for development and structuring contracts related to the infrastructure of the rail hub . . . In separate cases, **Mrs. Heeg** successfully represented two police officers, each of whom suffered permanent injuries while in the line of duty, resisting the efforts of the employers to exclude compensation for future medical treatment and, in one case, establishing that the police officer's injuries were related to an accident at work.

