CASES, REGULATIONS AND STATUTES

by Robert P. Achenbach, Jr.

ADVERSE POSSESSION

POSSESSION. The disputed strip of land was located between the lands owned by the parties. A series of stone markers existed along the boundary that the parties believed was the boundary between their properties but the markers were actually several feet on the defendant's property. The disputed property was unimproved, remote and wild. Shortly after acquiring the property, the plaintiff excavated a road along the stone markers; however, the road was rarely used. within ten years after the plaintiff acquired the property, the plaintiff built a fence along the stone marker boundary and the defendant objected and ordered a survey. The court held that the excavation of a road was insufficient in itself to constitute hostile and open possession of the disputed strip. In addition, the court held that the plaintiff did not have possession for the full ten years because the defendant objected to the plaintiff's possession when the fence was built. **Flowers v. Roberts, 979 S.W. 2d 465 (Mo. Ct. App. 1998)**.

The disputed property was just over 4 acres located on a neighbor's side of the boundary of the plaintiff's land. The neighbor had hired the defendant in developing the land and the plaintiff sued the defendant for trespass. The evidence showed that the plaintiff had a chicken house on the property and had rebuilt the house in 1966. The plaintiff had also maintained a fence on a portion of the disputed property. The court held that there was sufficient evidence of open possession to support a jury verdict of the plaintiff's title by adverse possession. **KDS Properties, Inc. v. Sims, 506 S.E.2d 903 (Ga. Ct. App. 1998)**.

BANKRUPTCY

GENERAL-*ALM* § 13.03.*

DISCHARGE. The debtor was a tobacco farmer who had a history of loans from a creditor which were used to plant and harvest tobacco. The loan at issue was made on December 29, 1995 for the 1996 crop year and was to be secured by that crop. The evidence showed that the debtor had decided to cease farming operation on December 15, 1995 and had allowed general liability insurance to lapse. No tobacco crop was grown by the debtor in 1996 and the loan proceeds were used to pay other creditors. The court found that the debtor had knowingly misrepresented to the creditor that a 1996 crop would be produced and the creditor had justifiably relied on the debtor's history of farming in making the loan. The court held that the loan would be a nondischargeable claim and the claim would include legal fees incurred by the creditor, as provided in the loan agreement. ***In re* Baird, 229 B.R. 361 (Bankr. D. S.C. 1997)**.

EXEMPTIONS

EARNED INCOME CREDIT. The debtor claimed a federal income tax refund, resulting from the earned income credit, as exempt under La. Rev. Stat. § 46:111. The state exemption covered "all assistance." The court held that the state exemption statute covered only payments made under state assistance law and denied the exemption. ***In re* Collins, 99-1 U.S. Tax Cas. (CCH) ¶ 50,414 (5th Cir. 1999)**.

CHAPTER 12-*ALM* § 13.03[8].*

Chapter 12 has been extended to September 30, 1999. Legislation has been introduced to make Chapter 12 permanent but has not yet passed. **Pub. L. No. 106-5, 106th Cong., 1st Sess. (1999)**.

FEDERAL TAXATION-*ALM* § 13.03[7].*

DISCHARGE. The debtors did not file their income tax returns for 1983 through 1989 until an IRS investigation in 1992. The debtors sought a ruling that the taxes were dischargeable because the debtors relied on advice of an accountant that no tax would be due for those years and the debtor had no assets to pay the assessment of tax and penalties; therefore, the debtors did not willfully fail to pay the taxes. The court held that summary judgment for the debtors could not be granted because several factual issues remained: (1) whether the taxpayers had the ability to pay the taxes when due, (2) whether the debtors stopped paying the taxes before seeking the accountant's advice, and (3) the taxpayers' knowledge of their duty to pay taxes and file accurate W-4 forms. ***In re* Thorngren, 229 B.R. 170 (Bankr. N.D. Ill. 1998)**.

The debtor had been assessed for tax deficiencies and had challenged the assessment in the Tax Court. When the Tax Court case was clearly going against the debtor, the debtor transferred most of the debtor's assets to the debtor's new spouse. The transfer was made within ten months after a prenuptial agreement had been executed which had limited the spouse's rights in the debtor's property. No consideration was given for the transfers. The court held that the transfers were fraudulent and a willful attempt to evade payment of taxes, causing the taxes owed to be nondischargeable. **United States v. Sternberg, 229 B.R. 238 (S.D. Fla. 1998)**.

CONTRACTS

WARRANTY DISCLAIMER. The plaintiff was a tobacco farmer who purchased and planted seeds produced by the defendant. The label on the seed can limited the seller's liability to the purchase price of the seed. The plaintiff claimed that the seed was defective and resulted in a loss of most of the crop. The plaintiff sued for economic damages of lost profits from the defective seed. The defendant argued that the warranty disclaimer limited the defendant's liability to the cost of the defective seed. The plaintiff argued that the disclaimer was unenforceable as unconscionable. The court held that the disclaimer was unconscionable because (1) the disclaimer was not negotiated by the parties; (2) the plaintiff had no recourse to reduce the losses if the seed failed; (3) the plaintiff had no ability to test the seed before use; (4) the plaintiff invested considerable time and money in the planting of the crop before discovering the defect; and (5) the defendant was in a better position to spread out the cost of lost profits from defective seed. The case comes very close to making all warranty disclaimers on seed packages unenforceable and the court cites several cases in other jurisdictions which have similar holdings. **Mullis v. Speight Seed Farms, Inc., 505 S.E. 2d 818 (Ga. Ct. App. 1998)**.

FEDERAL AGRICULTURAL PROGRAMS

DISASTER ASSISTANCE. The CCC has issued an interim rule amending the regulations with respect to the Noninsured Crop Disaster Assistance Program (NAP) which is conducted under Section 196 of the Federal Agriculture Improvement and Reform Act of 1996. Currently, the regulations specify that the Executive Vice President, CCC, or designee determines areas, prices, and yields for NAP. The regulations are being revised to inform the public that the Deputy Administrator for Farm Programs (DAFP) has been delegated the authority to determine areas, prices, and yields for NAP. The regulation has also been revised to specify that DAFP has the discretion to delegate to selected Farm Service Agency (FSA) State committees (STC's) and other FSA officials, authority to determine areas, prices, and yields for NAP. Additionally, amendments made by the interim rule specify that seed crops may be considered separate eligible crops under NAP if certain criteria are met, and provide a definition for industrial crops. **64 Fed. Reg. 17271 (April 9, 1999).**

The CCC has adopted as final regulations setting forth the terms and conditions under which producers who suffered crop losses as a result of a natural disaster may apply for benefits to compensate for their losses for the crop year 1998 or for at least 3 of the years from 1994 through 1998. Producers who seek benefits under these regulations must file an application for benefits during the sign-up period, February 1, 1999, through April 9, 1999, or other ending date as determined by the Deputy Administrator. Because funding for the program is limited, national factors for reducing payments will be determined after the end of sign up, if necessary, to ensure that total outlays do not exceed the amount of funds made available under this program. The regulations set a payment limit on the amount of benefits that can be received and limit the multi-year benefits to “producers” with the qualifying history for which purposes changes in the farming operation will be considered to involve different producers. Further, as to the multi-year program, the regulations build on existing programs which have identified the general federal policy on when crop losses should be covered. Existing policy has emphasized the importance of crop insurance where such insurance is available and, in cases of crops for which federal crop insurance is not available, has allowed only for coverage in limited instances in which there is a verified area-wide loss. **64 Fed. Reg. 18553 (April 15, 1999)**.

GRAZING PERMITS. The plaintiffs were ranchers whose federal grazing permit was canceled. This ruling involved only the extent of the plaintiffs’ rights in the water which ran through the permit property. The court ruled that the plaintiffs had a vested right to allow their cattle to drink the water in a ditch running through the property and this right included 50 feet on each side of the ditch. The court also held that the plaintiffs had a right to forage on the 50 feet on each side of the ditch. See also *Hage v. United States, 35 Fed. Cl. 147 (1996)*. **Hage v. United States, 42 Fed. Cl. 249 (1998)**.

ORGANIC FOODS. The FSIS has announced the availability of guidance concerning the use of the claim “certified organic by (a certifying entity)” on the labeling of meat and poultry products. The claim “certified organic by (a certifying entity)” will be permitted on the labeling of meat and poultry products if the labeling is submitted to FSIS for approval, the labeling meets certain criteria, and the labeling submitted is accompanied by specified certification documentation that has been provided by the certifying entity to the meat or poultry producer seeking labeling approval. **64 Fed. Reg. 17607 (April 12, 1999)**.

PERISHABLE AGRICULTURAL COMMODITIES ACT. The AMS has announced that it is USDA policy to recognize a limited liability company (LLC) as a legal entity under the PACA, and that any member of an LLC, and/or any other person authorized by the members to conduct business on behalf of an LLC, may be considered to be “responsibly connected” with the LLC. **64 Fed. Reg. 18397 (April 14, 1999)**.

The plaintiff was a producer and seller of cranberries and sold over $7 million of cranberries to the defendant corporation which resold the cranberries to a related corporation, both controlled by the third individual defendant. The sales agreement provided for payment of 75 percent of the purchase price within 10 days, with the remainder to be paid four and five months later. The plaintiff sued for recovery from the PACA trust for the unpaid cranberries. The defendants argued that the plaintiff had waived its rights to the PACA trust because the sales agreement allowed payment more than 30 days after delivery. The plaintiff argued that, because 75 percent of the payment was due within 10 days, at least 75 percent of the trust was still available. The plaintiff also argued that the individual was personally liable for the PACA trust under the pierce-the-corporate-veil doctrine. The court recognized that the partial payment issue had no direct judicial precedent but held that the plaintiff was entitled to PACA trust protection for 75 percent of the unpaid cranberries, because (1) the sales agreement was clear that 75 percent of the price was to be paid in 10 days, (2) the delayed payments were allowed only if the initial 75 percent payment was made, and (3) failure to provide any PACA trust protection was contrary to the policy of liberal interpretation of the remedial purposes of the PACA trust provisions. The court upheld the trial court’s refusal to pierce the corporate veil to make the individual defendant personally liable because the sales agreement was clear that the buyer was only the corporation. **Hiller Cranberry Products, Inc. v. Koplovsky, 165 F.3d 1 (1st Cir. 1999)**.

***Agricultural Law Manual* (ALM)..**

FEDERAL ESTATE AND GIFT TAX

APPORTIONMENT OF ESTATE TAXES. The decedent executed a will with a revocable trust approximately two months before death. The will also established a marital trust. The decedent's will explicitly provided that all estate taxes imposed on any property deemed a part of decedent's taxable estate were to be paid from the estate residue, without apportionment. The revocable trust granted the trustee the discretion to pay estate taxes out of the revocable trust estate. If this discretion was exercised, the taxes could not be paid from the marital trust. However, the IRS ruled that the discretionary authority granted to the trustee did not override the mandatory provision in the will that estate taxes be paid from the residuary estate without apportionment. The IRS noted further that, if the trustee had the discretion to contribute or not contribute to the payment of taxes, the marital deduction would be reduced, even if the trustee did not so contribute. *See* Rev. Rul. 79-14, 1979-1 C.B. 309. The estate argued that the directive of the will that the estate taxes be paid from the residue and not be apportioned applied only to estate tax attributable to items of personalty. However, the IRS ruled that the direction against apportionment applied to all taxes generated by the taxable estate, and exonerated from apportionment all persons holding any interest in, or entitled to receive any items included in, the taxable estate. The IRS also ruled that the property in the revocable trust was included in the decedent’s gross estate. **Ltr. Rul. 9915001, Dec. 21, 1998**.

CHARITABLE DEDUCTION. The taxpayer transferred an insurance policy on the life of the taxpayer’s spouse, to a charitable unitrust. If necessary, the trustee could pay the premiums on the policy. The terms of the governing instrument provided that any amount received by the trust from the insurance policy would be allocated to the trust's principal, and not income. Because the trust was an “income exception” unitrust within the meaning of I.R.C. § 664(d)(3) and Treas. Reg. §1.664-3(a)(1)(i)(*b*), the unitrust amount payable to the noncharitable beneficiary was limited to the Trust's income as described in Treas. Reg. §1.664-3(a)(1)(i)(*b*) if such income was less than the fixed percentage of the net value of the trust's assets. Because amounts received from the insurance policy on the spouse’s life would not be allocated to income under the terms of the governing instrument, the IRS ruled that these amounts would not be used in computing the amount of the trust's income and, thus, would not be used in determining the income limitation on the unitrust amount payable to the noncharitable beneficiary. Rather, amounts received from the insurance policy would be allocated to the trust's principal and would become part of the remainder that was payable to qualified charitable organizations. Therefore, the IRS ruled that the insurance policy was irrevocably payable for a charitable purpose under I.R.C. § 677(a)(3). Because the policy was so payable, the IRS ruled that the existence or exercise, if necessary, of the trustee's power to pay annual premiums on the insurance policy did not cause the taxpayer or the spouse to be treated as the owner of all or any portion of the trust under I.R.C. § 677(a)(3). The IRS also ruled that the value of the remainder interest, including the life insurance policy, was eligible for the charitable deduction and the trust property would not be included in the taxpayer’s gross estate. **Ltr. Rul. 9915045, Jan. 19, 1999**.

GENERATION-SKIPPING TRANSFERS. The taxpayer established two trusts prior to September 25, 1985. The trust provided for remainders to the taxpayer’s children. The taxpayer later adopted two children who, under state law, would not be entitled to the same remainder interest rights as the taxpayer’s natural children. The taxpayer petitioned for and received a state court order allowing the adopted children the same remainder rights as the natural children. The IRS ruled that the state court decision would make the trusts subject to GSTT. **Ltr. Rul. 9915038, Jan. 13, 1999**.

MARITAL DEDUCTION. The decedent’s will established two marital trusts for the surviving spouse. The trusts were funded with corporate stock and were QTIP. The stock was exchanged for the stock of another corporation in a reorganization. State trust law provided that a portion of the net proceeds of sale of any part of principal which has not produced an average net income of at least 1 percent per year of its inventory value for more than a year (including as income the value of any beneficial use of the property by the income beneficiary) shall be treated as delayed income to which the income beneficiary is entitled. The two marital trusts had not produced more than 1 percent of value as income. The trustee petitioned a state court to determine whether delayed income was required to be distributed to the surviving spouse from the reorganization. The state court held that delayed income resulted from the reorganization. The trustee then distributed the delayed income amount to the surviving spouse in a lump sum. The IRS ruled that the distribution was income to the surviving spouse and not a disposition of the spouse’s qualifying income interest. **Ltr. Rul. 9915052, Jan. 20, 1999**.

RETROACTIVE APPLICATION OF TAX RATES. Section 13208 of the Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, 107 Stat. 312, 469 (1993), set the maximum federal estate and gift tax rates at 53 percent and 55 percent. Section 13208 was enacted on August 10, 1993, and provided that these rates apply to the estates of decedents dying and gifts made after December 31, 1992. The decedent died on January 12, 1993 and the estate tax was increased by the retroactive application of the reinstated higher estate tax rates. The estate argued that the application of these tax rates during the eight-month period prior to the statute's enactment violates the Due Process Clause or Takings Clause of the Fifth Amendment of the United States Constitution, or the Constitution's prohibition on direct taxation without apportionment. The court held that the retroactive application of a revenue statute was constitutional. **Quarty v. United States, 99-1 U.S. Tax Cas. (CCH) ¶ 60,338 (9th Cir. 1999)**.

FEDERAL INCOME TAXATION

ABANDONMENT LOSS. The taxpayer was the sole shareholder of a corporation which operated a wave pool business which failed. In 1984, the corporation attempted to sell the business equipment and moved the equipment to storage when no buyers were found. The corporation was liquidated in 1988 and the taxpayer claimed a loss deduction in 1988 for abandonment of the equipment, although the equipment was still in storage. The court held that, although the corporation may have abandoned the equipment in 1984, no abandonment took place in 1988; therefore, no loss deduction was allowed for 1988. **Buda v. Comm'r, T.C. Memo. 1999-132**.

ALTERNATIVE MINIMUM TAX. The taxpayers, husband and wife, had 10 children. The taxpayers filed their income tax return, claiming only regular income and regular tax on that income. The taxpayers had medical expenses in excess of 10 percent of AGI and claimed deductions for state and local taxes and $29,400 in personal exemptions. The IRS assessed a deficiency based on a determination that alternative minimum tax was owed, resulting from the large medical deduction, state and local tax deduction and personal exemptions. The taxpayers had not claimed any tax preference items as a deduction. The taxpayers argued that application of the alternative minimum tax adversely affected large families, contrary to congressional intent. The court held that the statute was clear as to the AMT requirements and the statute was the best indication of congressional intent. The appellate court affirmed in a decision designated as not for publication. **Klaassen v. Comm'r, 99-1 U.S. Tax Cas. (CCH) ¶ 50,418 (10th Cir. 1999), *aff'g*, T.C. Memo. 1998-241**.

CAPITAL ASSETS. The taxpayer was a partnership which owned and operated a ranch. The taxpayer had owned irrigation water use rights under a state-federal water use program for water from the lower Colorado River. The federal government purchased these water use rights from the taxpayer and the issue was whether the water use rights were capital assets or whether the proceeds from the relinquishment of the rights were ordinary income. The court held that the water use rights were capital assets because (1) the water use rights arose from the ownership of the land, (2) the water was used in the business of the partnership but was not resold as a commodity or otherwise used to directly produce ordinary income for the taxpayer, and (3) the taxpayer had to purchase water from another source. The IRS argued that no sale or exchange occurred because the taxpayer's receipt of the funds was subject to reimbursement of the water irrigation district in case the reimbursement was revoked. The court held that, although a reimbursement liability existed, the funds were transferred primarily as compensation for relinquishment of the water use rights; therefore, a sale did occur. The taxpayer argued that a portion of its tax basis in the land could be allocated to the water use rights relinquished. The court found that the original purchase price of the ranch did not include any cost for water use rights because the water use rights did not exist when the ranch was purchased; therefore, the court held that no tax basis of the land could be allocated to the water use rights. **Gladden v. Comm'r, 112 T.C. No. 15 (1999)**.

CHARITABLE DEDUCTION. The taxpayer corporation gave a tax-exempt foundation an option to purchase stock at the public closing price. The option was subject to a favorable ruling in this letter ruling. The foundation assigned the option to a charitable organization for a price equal to the difference between the fair market value of the taxpayer's common stock subject to the option as of the date of the purchase of the option and the exercise price of the option, less an agreed upon discount. The IRS ruled that the amount of the taxpayer's charitable contribution and eligible deduction equaled the excess of the fair market value of the shares on the date of exercise of the option over the exercise price. **Ltr. Rul. 9915037, Jan. 12, 1999**.

COURT AWARDS AND SETTLEMENTS. The taxpayer had worked for an insurance company as an agent. After the taxpayer's employment was terminated, the insurance company failed to pay the taxpayer commissions claimed by the taxpayer. The taxpayer filed suit for breach of contract and conversion against the employer. A jury awarded back commissions and punitive damages. The taxpayer claimed that the punitive damages were excludible form gross income because, under South Carolina law, punitive damages had an element of compensation. The taxpayer argued that the punitive damages for the conversion action were excludible as damages for personal injury. The court held that punitive damages were not compensatory under South Carolina law; therefore, the punitive damages were included in the taxpayer's gross income. **Whitley v. Comm'r, T.C. Memo. 1999-124**.

CUMULATIVE BULLETINS. In response to comments from taxpayers, tax practitioners and government agencies concerning the IRS's proposed discontinuance of the cumulative bulletin (CB), the IRS has decided to continue to publish the CB with format changes. Beginning with CB 1998-1, the CB will contain the same information but with a new format. Reprints of the weekly Internal Revenue Bulletins (IRBs) issued during the year will now be bound together to form the CB. Volume 1 will contain the first 26 issues of the IRB (1998-27 to 1998-52). Also, the CB will now include a new cumulative list titled "List of Rulings and Decisions Under the Internal Revenue Code of 1986", organized by code section. In addition, the cumulative "Finding List of Current Actions on Previously Published Items" and the "Index" will identify both the IRB and CB page numbers. Further, announcements that are published in IRBs will now be included in the CB. Finally, public laws relating to taxes will continue to be provided in volume 3 of the CB. If additional volumes are needed, they will be labeled consecutively. **Ann. 99-36, I.R.B. 1999-__, __**.

FRAUDULENT CONVEYANCE. In June 1985, the IRS sent the taxpayers, husband and wife, a notice of deficiency for 1980 and 1981. The taxpayers appealed the notice in the Tax Court and lost. In April 1984, when the taxpayer's liabilities exceeded their assets, the taxpayers formed a corporation and transferred all farm property to the corporation in exchange for all stock. The taxpayers then transferred the stock to their children and one parent. The parent later transferred the stock to the children and one share to the taxpayers. The court had found in an earlier hearing, *United States v. Hansel, 999 F. Supp. 694 (N.D. N.Y. 1998)*, that the stock transfers to the children and the parent were fraudulent. The current hearing focused on whether the retransfer of the stock by the parent to the taxpayers was also fraudulent. The court held that the retransfer was also fraudulent because the taxpayers provided no consideration for the stock at a time when the corporation was insolvent. **United States v. Hansel, 99-1 U.S. Tax Cas. ¶ 50,432 (N.D. N.Y. 1998).**

During the pendency of a Tax Court proceeding in which the taxpayers challenged income tax deficiencies assessed by the IRS, the taxpayers transferred their only major asset, their residence, to a revocable trust for the benefit of the taxpayers. The IRS had filed a tax lien to secure the assessment. The transfer of the residence left the taxpayers insolvent. The trust was later made irrevocable. The taxpayers continued to live in the residence as beneficiaries of the trust. The court applied the Ohio Uniform Fraudulent Conveyances Act which was in effect on the date of the transfer. The court held that the transfer of the residence to the trust was a fraudulent conveyance under the Ohio act and the tax lien attached to the residence, free of the trust. **United States v. LaBine, 99-1 U.S. Tax Cas. (CCH) ¶ 50,448 (N.D. Ohio 1999)**.

PENSION PLANS. For plans beginning in April 1999, the weighted average is 6.11 percent with the permissible range of 5.50 to 6.42 percent (90 to 106 percent permissible range) and 5.50 to 6.72 percent (90 to 110 percent permissible range) for purposes of determining the full funding limitation under I.R.C. § 412(c)(7). **Notice 99-21, I.R.B. 1999-__, __**.

RETURNS. The IRS has announced that all applications for extension of time to file Forms 5500, 5500-C/R, and 5500-EZ will be automatically approved if the request (Form 5558) is filed on or before the normal due date of the return or report. The Form 5558, Application for Extension of Time To File Certain Employee Plan Returns, must be properly completed and signed in order for the filer to receive an automatic approval of up to 2-1/2 months. Because the extension is automatically approved, the IRS will no longer return approved copies of Form 5558 to the filer to be filed with the return. Instead, filers will be required to attach a photocopy of the completed and signed Form 5558 to the return or report. The new procedures were reflected in the instructions for the March 1999 revision of Form 5558. The form is now available at the IRS internet web site(www.irs.ustreas.gov). **Ann. 99-37, I.R.B. 1999-__, __**.

SAFE HARBOR INTEREST RATES
May 1999

	Annual	Semi-annual	Quarterly	Monthly
		Short-term		
AFR	4.90	4.84	4.81	4.79
110% AFR	5.39	5.32	5.29	5.26
120% AFR	5.89	5.81	5.77	5.74
		Mid-term		
AFR	5.22	5.15	5.12	5.10
110% AFR	5.75	5.67	5.63	5.60
120% AFR	6.28	6.18	6.13	6.10
		Long-term		
AFR	5.66	5.58	5.54	5.52
110% AFR	6.23	6.14	6.09	6.06
120% AFR	6.81	6.70	6.64	6.61

PRODUCT LIABILITY

CULTIVATOR. The plaintiff was injured while attempting to lower one of the wings of a cultivator owned by the plaintiff's employer. The cultivator was purchased used by the employer. The plaintiff had introduced evidence of prior accidents which were known to the defendant manufacturer and sought recovery in negligence for failure to warn the plaintiff about the danger of standing under a cultivator wing while releasing a pin which held the wing upright. The trial court had submitted a jury instruction including a general post-sale duty to warn which was similar to the standard used for time of sale duty to warn about known defects. The court found that the Iowa Legislature had acknowledged a post-sale duty to warn when it passed Iowa Code § 668.12, the product liability state-of-the-art design defense. The court adopted the factors of the Restatement 2d of Torts for liability under the post-sale duty to warn: (1) the seller knows or reasonably should know that the product poses a substantial risk of harm to persons or property; (2) those to whom a warning might be provided can be identified and can reasonably be assumed to be unaware of the risk of harm; (3) a warning can be effectively communicated to and acted on by those to whom a warning might be provided; and (4) the risk of harm is sufficiently great to justify the burden of providing a warning. The court held that the failure of the trial court to include these factors in the jury instruction on post-sale duty to warn was reversible error, requiring a new trial. **Lovick v. Wil-Rich, 588 N.W.2d 688 (Iowa 1999)**.

SECURED TRANSACTIONS

WAIVER OF SECURITY INTEREST. The plaintiff was a bank which loaned money to a dairy farmer which granted the bank a security interest in farm equipment, crops and livestock. The financing statement, however, did not expressly include milk in the list of collateral. The farmer purchased some dairy cows from the defendant and assigned milk proceeds as payment for the cows. The bank was aware that the dairy farmer had assigned a portion of the milk proceeds to various creditors but had not learned that the defendant was receiving such assignments. After the farmer went bankrupt, the bank sued the defendant for conversion of collateral. The defendant argued that the bank had waived its security interest by never requiring the farmer to obtain written consent to sell collateral. The trial jury held for the defendant on the waiver defense. In 1994, the Nebraska legislature had amended § 9-306 during the period in which the defendant received milk proceeds and the court held that the amendment applied only prospectively to the payments received after the amendment's effective date; therefore, the defendant's waiver defense was clearly allowed under Nebraska law. The court also held that the amendment, which disallowed the waiver defense for buyers of farm products except under certain conditions, did not apply to the defendant because the defendant was not a buyer of farm products but was a seller of the cows. The court also noted that an exception, under the amendment, applied because the plaintiff did not provide notice to the defendant that it claimed a security interest in the milk proceeds. **Battle Creek State Bank v. Haake, 587 N.W.2d 83 (Neb. 1998)**.

AGRICULTURAL LAW PRESS
P.O. Box 50703 Eugene, OR 97405

Printed on recycled paper using soy ink.