

From the Attorneys of Strauss & Troy, Cincinnati, Ohio, and Northern Kentucky

Fall 2001

A Note About September 11 and Security

The hopes and prayers of all of us at Strauss & Troy are with the victims and the friends and families of all who were affected by the national tragedy that occurred on September 11. We share in the patriotic pride that is sweeping this great nation. Our employees made a significant contribution to the relief efforts of the American Red Cross, and we urge others to join us in our efforts to provide relief to those in New York, Washington, D.C., and Pennsylvania.

With heightened security now the norm in most public places, you can rest assured that every possible measure is being taken to assure that our offices are safe for our employees and clients. You may have noticed increased security measures, including temporary barriers in the front of our building. These were put in place immediately after the tragedy, and they will be replaced by planters that will provide both protection and a splash of beauty. Your safety is very important to us, and we ask for your patience and understanding as we all adjust to the changes taking place at offices throughout our great City and Country.

Ohio Expands Premises Liability of Landowners

By: Thomas P. Glass

The Ohio Supreme Court recently adopted the legal doctrine known as "attractive nuisance." This doctrine imposes liability upon those in possession of land in certain situations where liability did not previously exist. While the new rule adopted by the Court extends the liability of those who occupy land, such liability is limited to situations involving children since they "are entitled to a greater level of protection than adults are."

Previously, occupiers of land owed no duty to trespassers except to refrain from willful, wanton, or reckless conduct. Under the new rule, one in possession of



land (typically an owner or lessee) is liable for physical injury to or death of children caused by an artificial condition on the land if:

- the owner knows or has reason to know that children are likely to be present at the place where the condition exists;
- the owner knows or has reason to know that the condition is one involving an unreasonable risk of death or serious bodily harm to children;
- because of their youth, the children do not discover the condition or realize the risk;
- the utility of maintaining the condition and the burden of eliminating the danger are slight when compared with the risk; and
- the owner fails to exercise reasonable care to eliminate the danger or otherwise to protect the children.

The case of *Bennett v. Stanley*, in which the Court adopted the attractive nuisance doctrine, demonstrates how it is applied. The Stanleys purchased a home with a swimming pool in the yard. At the time of purchase, the pool was covered with a tarp and surrounded by a brick wall on one side and fencing on the remaining sides. The Stanleys removed the tarp and allowed the pool to fill with rainwater. It essentially became a six-foot-deep pond, inhabited by frogs. The Stanleys also removed some of the fencing that divided their property from property rented by the Bennetts. The Stanleys were aware that the Bennetts had two young children.

Predictably, the Bennett children wandered over to the pool to look at the frogs. One of the children fell into the pool, and the other alerted her mother. The mother attempted to save her child, but both the mother and child drowned. The pool had no ladders and the sides were covered with algae, which made them extremely slick.

The Court determined that the Stanleys faced liability under the doctrine of attractive nuisance since: (1) they knew that the Bennett children had played near the pool in the past; (2) they knew, or should have known, that the pool created an unreasonable risk of death or serious injury to children; (3) the Bennett children were too young to appreciate the danger; (4) the benefit of keeping the pool in disrepair and the

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burden of eliminating the danger were slight when compared to the risk; and (5) the Stanleys failed to exercise reasonable care to eliminate the danger (drain the pool or cover it) or take other steps to protect the children (repair the fence).

The landowner's obligations may be limited if the risk cannot be eliminated without serious interference with legitimate use of the land or absent unreasonable expense. The determination of what action, if any, is required, however must be evaluated on a case-by-case basis. Ohio landowners (or lessees) should therefore evaluate their property to determine if any hazardous conditions exist. If so, they should take all reasonable steps to protect children from harm.

Revisions to Article 9 of the Uniform Commercial Code

By: Charles J. Postow

Article 9 of the Uniform Commercial Code ("UCC"), which relates to secured transactions, recently underwent substantial revisions. The revisions are intended to bring greater certainty to financing transactions and reduce transaction costs and the cost of credit. The objectives are achieved in two primary ways:



- the scope of personal property and transactions covered by Article 9 is expanded; and
- the rules for creation, perfection, priority, and enforcement of security interests are simplified and clarified.

Several types of personal property and transactions previously outside the scope of Article 9 have now been included. For example, revised Article 9 makes a distinction between "goods" and "software." Where software is so "embedded" in goods to become a "part of" the goods, Article 9 treats the software as "goods." An example of embedded software would be software incorporated as a part of an automobile's anti-lock braking system. On the other hand, when software maintains its independent status, it will constitute a general intangible and will not be a part of goods for Article 9 purposes.

Article 9 historically applied to "accounts," which were defined as payment obligations arising out of the sale or lease of goods or the provisions of services. Under former law, many kinds of payment rights were therefore excluded even though such payment rights served as collateral financing transactions. Revised Article 9 broadens the definition of "accounts" to include:

- payment obligations arising out of the sale, lease or license of all kinds of tangible or intangible personal property (for example, "accounts" will include license fees payable for the use of software); and
- credit card receivables.

This expanded definition makes Article 9 applicable to a greater number of transactions.

The former rules for the creation and attachment of a security interest in collateral remain basically the same. Attachment still requires a security agreement, value, and that the debtor have rights in the collateral.

Revised Article 9 does, however, make extensive changes to the "perfection by filing" rules. It significantly expands the kinds of collateral where a secured party can file a financing statement to perfect its security

interest. Previously, a secured party could perfect its security interest in instruments and investment property (including stock certificates) solely by possession. Now, Article 9 allows perfection by filing against these types of collateral, in addition to perfection by possession.

Under the new law, it is only necessary to file in one place to perfect a security interest in all types of collateral: the place of the debtor's "location," (except for fixture filings, and filings made to perfect a security interest in as-extracted collateral and timber to be cut). If a debtor is an entity created by a filing with a state - such as a corporation's Articles of Incorporation - the financing statement must be filed in the state where the debtor was created. For example, to perfect a security interest against a Maryland corporation with its principal place of business in Ohio, a secured party would have to file the financing statement in Maryland, not Ohio.

There are a significant number of additional changes to Article 9 that will impact virtually all financing transactions. A thorough review of existing loan documentation should also be undertaken to make certain all such transactions comport with the new law.

Privacy of Personal Financial Information — Is your company Required to Provide a Policy Notice?

By: Marshall K. Dosker

You have probably received a number of "Privacy Notices" from your credit card company, bank, brokerage, and even your law firm. Such notices state the manner in which the company handles your nonpublic personal information and are sent pursuant to the Gramm-Leach-Bliley Act, which requires compliance in 2001. The Act generally prohibits any financial institution, directly or through its affiliates, from sharing nonpublic personal information about customers with nonaffiliated third parties unless the institution provides such customers with notice of its privacy policies and practices. The policy statement you receive must, among other things, tell you what type of information the company collects and the categories of persons or entities to which it may be disclosed.



Companies that receive nonpublic personal information in the course of providing financial products or services primarily for personal, family, or household purposes are in most cases required to give notice of their policy when the customer relationship is established. In virtually every case, the notice must be given prior to the disclosure of the nonpublic personal information to any nonaffiliated third party.

The types of businesses that are required to give notice of their policy include, but are not limited to, the following:

- mortgage lenders;
- "payday" lenders;
- finance companies;
- mortgage brokers;
- account servicers;
- check cashers;
- wire transferors;

- travel agencies operated in connection with financial services;
- collection agencies;
- credit counselors and other financial advisors;
- tax preparation firms;
- non-federally insured credit unions; and
- investment advisors that are not required to register with the Securities and Exchange Commission.

The notice must be reasonably understandable and designed to call attention to the nature and significance of the information provided. It can be included in a regular mailing, separate mailing, posted in the business location, or on the company's web site but it must be sufficiently clear and conspicuous so as to give actual notice to the customer of the policy regarding disclosure. Posting the policy only at the business will **not** in most instances be sufficient.

In most cases, companies covered by the Act must give their notices at least once every year, but the annual requirement extends only to individuals with whom a continuing customer relationship exists.

The new law applies to many companies that may not consider themselves financial institutions. It will require many of them to provide notice to their customers of their policy on the disclosure of non-public personal information. What is clear from the new law is that companies are not prohibited from disclosing nonpublic personal information to nonaffiliated third parties. They are, however, now required to give their customers notice of their policy with regard to the disclosure of such personal information.

As a law firm, we treat *all* information received from clients as strictly confidential, including financial information. We disclose confidential information only with the express consent of the client. This is one of the essential attributes that distinguish law firms from other businesses that deal with private information. Strauss & Troy's Privacy Notice is included with this issue of *Impact*. If you have questions about whether your company is required to provide privacy notices or the content thereof, please contact Marshall Dosker for more information.

Camp Ernst 2001

This summer, the Strauss & Troy MAD (Make a Difference) Team expanded their annual summer project, sponsoring 36 children from Over-The-Rhine for a week of fun and games at Camp Ernst in Northern Kentucky. The project is made possible with help from Riverfront Kiwanis, Inner City Youth Opportunities, and of course donations and involvement of all at Strauss & Troy. The children were provided with tuition to camp, a camp photo, t-shirt, stuffed camp mascot, and a duffel bag full of personal care products, including a camera. Every year, the MAD Team looks forward to picking up the children after their week at camp, taking them to breakfast at McDonald's and hearing all about their experiences, stories, laughter and songs. Some of the children are scared to death when dropped off, and then a week later they have made great friends and cry when they have to leave. It is heartwarming to see them hugging their new friends goodbye and exchanging phone numbers and addresses. Our thanks go out to Riverfront Kiwanis and Inner City Youth Opportunities for all of their help in making this project possible.

The MAD Team, Strauss & Troy employees, and their families and friends also participated in Community Care Day on September 15, working with Cincinnati Area Senior Services, Inc. The group of 32 volunteers assembled 4,000 "Blizzard Bags" (which included non-perish-

able food) to be delivered to Meals-On-Wheels clients in case weather or other emergencies prevent normal delivery. In addition to assembling the Blizzard Bags, the volunteers also assembled Condiment Bags and collected food to be used for client emergencies by the Cincinnati Area Senior Services, Inc.

Riverfront Kiwanis

Kiwanis is a worldwide service organization for individuals desiring personal involvement in the leadership and improvement of their communities. The organization's philosophy is that as a group, we can achieve what individuals cannot do alone. Thus, the motto and cornerstone of the Kiwanis is "WE BUILD."

The Riverfront Kiwanis has over 30 years of active involvement in our community, supporting the following programs:

- Winter coats and school clothing for children
- Camp Ernst — providing a week-long camping experience for underprivileged children, in cooperation with Strauss & Troy
- Family Kitchen
- High School Scholarship Funds
- Academic Scholarships
- Active support for Over-the-Rhine charitable organizations
- Elementary School Children Clothing/Eyeglass Program (An official from each of the seven elementary schools in the Riverfront Kiwanis service area determines, by direct observation of need, whether or not various children have basic clothing needs and/or eyeglass deficiencies. The Riverfront Kiwanis has arranged to fulfill these needs.)
- Our Daily Bread
- Healing Connection Program
- Ohio Business Week Foundation for Kids
- SUMA
- St. Joseph Orphanage
- Old St. Mary's
- West End YMCA
- Emergency financial assistance on a case-by-case basis
- Cincinnati Recreation Commission sport activities in Over-the-Rhine

The Riverfront Kiwanis alone contributes over \$30,000 per year to these worthwhile endeavors. To learn more about this outstanding organization and how to support its efforts, contact Dennis Garnett at (859) 466-3614.

Strauss & Troy, L.P.A.

Policy Notice Regarding Privacy of Financial Information

Attorneys, like other professionals who advise on personal financial matters, are now required by a new federal law to inform their clients of their policies regarding privacy of client information. Attorneys have been and continue to be bound by professional standards of confidentiality that are even more stringent than those required by this new law. Therefore, we have always protected your right to privacy and we will continue to do so.

In the course of providing our clients with income tax, estate tax, and gift tax advice, transactions involving the purchase and sale of real estate, and other business transactions, we receive significant personal financial information from our clients. If you are a client of Strauss & Troy, L.P.A., you should know that all information that we receive from you is held in confidence, and is not released to people outside the firm, except as agreed to by you for the purpose of the services to be provided, or as required under an applicable law.

We retain records relating to professional services that we provide so that we are better able to assist you with your professional needs and, in some cases, to comply with professional guidelines. In order to guard your nonpublic personal information, we maintain physical, electronic, and procedural safeguards that comply with our professional standards.

We may also contract with other third parties to perform services for your benefit, such as photocopying documents or other file-related tasks. When necessary, we will only disclose the information necessary for the third party to carry out its agreed responsibilities. We require these third parties to treat your personal information, and our information regarding your matters, as confidential.

Thank you for the continuing opportunity to serve any need you have for professional legal services.

Certain states, including Kentucky, do not certify specialties of legal practice. Certain states, including Ohio, do not provide for recognition as a specialist in any area or field of law, except for patent, trademark or admiralty. IMPACT is published quarterly to provide information of general interest and not to provide legal advice concerning any specific situation. If you wish additional or more specific information, please contact one of the attorneys at Strauss & Troy.

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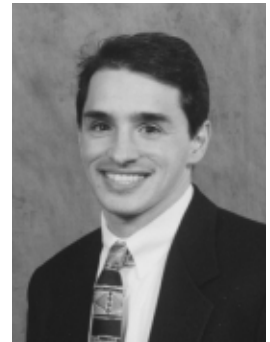
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CLIENT SPOTLIGHT

Midwest Manufacturing Solutions

Midwest Manufacturing Solutions (“MMS”) is a unique Cincinnati-based professional services firm. Unlike traditional “consulting firms” that merely provide recommendations, MMS actually works with its clients in making decisions and implementing improvements to their businesses. MMS’s ability to think and work creatively is illustrated by the title of the head of the company: Chief Remover of Obstacles (CRO), rather than Chief Executive Officer (CEO). As a result of its client-oriented creative approach, MMS resists using the term “consulting” to describe its services.

Ray Attiyah, company founder and CRO, is the driving force behind the success of MMS. Mr. Attiyah is well known throughout the Cincinnati community and has been featured in many articles in the Cincinnati Enquirer and Business Courier. He writes the column “Managing Growth” for the *Cincinnati Business Courier*, teaches management in the Graduate program at Xavier University, and is the President of APICS. With a talented team of 11 industry-seasoned associates, MMS has become well recognized in the Cincinnati manufacturing community for real world expertise with such companies as General Electric, Johnson & Johnson, Ford Motor Company, Cooper Industries, British Tire and Rubber, Batesville Casket Company, and Lexmark.



Ray Attiyah

Under its action-oriented approach, MMS measures its success by the *client’s* bottom line, not its own. MMS challenges clients to simultaneously improve their people, processes, leadership, and culture. This approach works. MMS’s clients report outstanding bottom line results in a matter of weeks, including:

- Productivity improvements of 40-60%
- Sales increases of 35%
- Inventory reductions of 70%

An MMS client stated, “*If you want an assessment or bunch of reports, hire a consultant. However, if you want amazing results fast, Ray’s team at MMS gets results fast.*” Ray Attiyah concurs: “We make decisions and stand behind them 100%. . . . [I]t’s what our clients need to achieve awesome results fast.”

Midwest Manufacturing Solutions

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NEWS OF THE FIRM

ATTORNEYS ON THE MOVE

Claudia G. Allen has been selected to receive the AV® rating in Martindale-Hubbell. The AV®* rating reflects an attorney who has reached the heights of professional excellence. He or she has usually practiced law for many years and is recognized for the highest levels of skill and integrity.



Claudia G. Allen

Embarking upon their fourth year of team-teaching, **Charles H. Melville** and **Steven F. Stuhlberg** once again are conducting a class on Law, Business & Society for Business School graduate students in the Northern Kentucky University's MBA program. This year, **Paul B. Calico** joined the faculty as the newest member of the teaching team. In previous years, the course has won critical acclaim from students and has become one of the MBA program's most popular courses.



Charles H. Melville



Steven F. Stuhlberg

Paul Calico was also a featured speaker at a recent seminar entitled "Ohio Construction Claims," sponsored by Lorman Education Services. Mr. Calico's topics were "Bid Issues" and "Alternative Dispute Resolution."



Paul B. Calico

William K. Flynn and **Steven F. Stuhlberg** recently spoke at a seminar entitled, "Federal Civil Litigation," also sponsored by Lorman Education Services. Their topic was Class Action Litigation.



William K. Flynn

Timothy B. Theissen has been selected to serve on the Smart Growth Task Force, a committee formed by the Kentucky Governor Paul Patton to address community development and design issues. Mr. Theissen also spoke at a series of seminars around the state of Kentucky on legal liability issues in planning and zoning and was active in successfully lobbying the Kentucky Legislature for a trend-setting new law requiring continuing education for planning and zoning officials. He also attended the American Planning Association annual conference in New Orleans.



Timothy B. Theissen

The Strauss & Troy Cycle Team, consisting of 17 riders - attorneys, staff, clients, family and friends of Strauss & Troy - participated in the "MS150," a 150-mile, two-day bike tour to Madison, Indiana and back to raise money for the National Multiple Sclerosis Society. The team, organized by team captain **Thomas P. Glass**, raised approximately \$10,000 for the fight against Multiple Sclerosis.



Thomas P. Glass

Tom Glass also spoke at a legal liability workshop conducted by the Archdiocese of Cincinnati, Office of Youth Ministry. The purpose of the workshop was to educate youth ministers working within the Archdiocese about legal issues of which they should be aware. Topics covered included: tort liability, activity release forms, medical release forms, insurance issues, copyright laws, and personnel issues. Mr. Glass has participated in this workshop since 1996.

*Martindale-Hubbell is the facilitator of a peer review process that rates lawyers. Ratings reflect the confidential opinions of members of the Bar and the Judiciary. Martindale-Hubbellsm ratings fall into two categories — legal ability and general ethical standards.

Alan C. Rosser Character Award

On May 22, 2001, the first annual Alan C. Rosser Character Award was presented to **Nicholas Anderson**, a graduating senior at Anderson High School. The award was established by Strauss & Troy to honor the memory of partner Alan "Chip" Rosser who died suddenly in January at the age of 54. The recipient received a \$2,000 dollar scholarship.

Alan Rosser was a longtime supporter of Anderson High School and Anderson youth athletics. Both on and off the field, he encouraged respect for self and others, good sportsmanship, integrity and fairmindedness, a focus on the goals of the team over individual glory, and making the individual effort to be the best that you can be. The Rosser Award was created to encourage others to continue to embrace these goals, and it will be presented annually to a graduating Senior of Anderson High School who has through the course of his or her athletic endeavors demonstrated the same attributes of character that Chip Rosser exemplified.

Nicholas Anderson, the 2001 Rosser Award recipient, is an honor student whose swimming accomplishments include placing 8th in the State in the 100-yard breaststroke. However, it was his selflessness in deferring to the needs of his team by swimming in an event that was not his best that made him a standout to the members of the selection committee. Nick is described as a behind-the-scenes leader whose work ethic is exemplary in everything he undertakes. He will study engineering at Case Western Reserve University.