

## PUBLIC ACT 95-0661 CLARIFIES ILLINOIS LAW ON ENFORCEMENT OF JUDGMENTS

BY BARBARA L. YONG

*“Citations are a particularly effective collection tool as they prevent the respondent from disposing of the debtor’s assets in its possession.”*

The Illinois legislature recently passed, and then overrode the Governor’s amendatory veto of Senate Bill 229, now known as Public Act 95-0661. This Act amends the Illinois Code of Civil Procedure and clarifies Illinois law relating to the enforcement of judgments. It provides benefits to both judgment creditors and debtors. In this article, we will highlight just a few of its key provisions.

***I. Financial Institutions are required to respond to “citations to discover assets.”*** The old law only referenced subpoenas, summonses, warrants and court orders. By adding “citations to discover assets” to this list, judgment creditors may also use citations to discover assets as a means of collecting assets of judgment debtors. Citations are a particularly effective collection tool as they prevent the respondent from disposing of the debtor’s assets in its possession. Upon receipt of a citation relating to one of its customers, financial institutions must place a hold on the debtor’s accounts and provide information about them, pending either a turnover order or release of the citation.

***II. Judgment creditors may recover a corporate judgment debtor’s property by filing a petition within the citation proceedings.*** Previously, in order to pierce the corporate veil or set aside a fraudulent transfer, judgment creditors would have to file a brand new lawsuit. Under the Act, judgment creditors may now file a petition with the citation proceedings to recover a corporate judgment debtor’s property where specific funds or property are being recovered.

***III. Judgment debtors can be compelled to resign club memberships which may be sold for the benefit of the judgment creditor.*** Several court decisions construing the law before this Act have held that such memberships were not subject to seizure and sale.

***IV. Courts may now appoint someone other than the sheriff to sell property in order to satisfy a judgment.*** This is a huge departure from prior law under which the sheriff was the only person authorized to sell debtor’s property. The purpose for this change is to allow sales to be conducted in a similar fashion as bankruptcy court proceedings with the intent of maximizing the value of the liquidated property.

***V. Judgment creditors may now recover their costs in addition to post-judgment interest.*** Before, costs were only assessed up to and including the date of judgment. Now, creditors can also recover their out-of-pocket costs for items such as levy bonds, replevin bonds, certified copies of court orders, recorder fees for memorandums of judgment, and other similar expenses.

***VI. Courts may authorize the sheriff to use reasonable force to enter into property to recover personal property which is the subject of a replevin order.*** This resolves the often faced problem of recovering automobiles from inside a locked garage.

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**VII. Replevin lawsuits may now be dismissed without the plaintiff having to reimburse the defendant's fees and costs.** The old law actually discouraged parties from settling replevin actions by making plaintiffs responsible for reimbursing the defendant's fees and costs if the replevin action was dismissed without proceeding to judgment and seizure of the defendant's property.

**VIII. The Wage Deduction Act was amended to clarify that the legislature, not the courts, sets the percentage of employees' gross wages subject to a wage deduction order, including the applicable exemptions.** This is the provision which was the subject of Governor Blagojevich's amendatory veto. Previously, courts held that the wage deduction exemptions set by the legislature were permissive, not mandatory, and used their discretion to increase the exemptions which reduced the percentage of gross wages being withheld. Courts will no longer be able to exercise their discretion.

Our firm's litigation attorneys are ready to assist you with all of your collection needs and would be happy to provide you with more information about the recent changes to Illinois law relating to the enforcement of judgments.

## BARBARA YONG RECOGNIZED

Golan and Christie, LLP is pleased to announce that Partner, Barbara L. Yong, has received the Turnaround Management Association Chicago/Midwest Chapter's Outstanding Service Award.

Barb was recognized for her role in helping to establish the TMA Chicago/Midwest Memorial Scholarship Foundation. The not-for-profit organization honors outstanding contributors to the turnaround management industry by awarding scholarships for students connected to the fields of corporate restructuring and turnaround management. The catalyst for launching the foundation was the untimely passing in 2006 of Janet L. Intrieri, a valued TMA member.



Since its incorporation in August 2007, the foundation has raised over \$60,000. This summer, the foundation will present a combined \$6,000 in the merit-based scholarships to two student winners at the TMA Chicago/Midwest

Chapter's Annual Charity Golf Outing, which is expected to generate an additional \$20,000 in charitable proceeds

## GOLAN & CHRISTIE SPONSORS LEGAL ETHICS SEMINAR

Golan & Christie was proud to be a sponsor of a recent full-day seminar about legal ethics. The program, hosted on May 1st at DePaul University College of Law, was the Sixth Annual Symposium put on by the DePaul Business & Commercial Law Journal. The Symposium, held in conjunction with the Commercial Law League of America, featured several highly respected panelists on a variety of important topics and was a great success.



## EMPLOYMENT LAW ALERT



### COMMON MISTAKES IN OFFER LETTERS COULD COST YOUR COMPANY SERIOUS MONEY

While an offer letter may seem like a straightforward document—it is simply a written confirmation that you've offered someone a job with your company, right?—there are a few common mistakes that could cost your company a significant amount of money.



*"An offer letter that gives the impression that a job will continue for a definite period of time (for example, by stating an annual salary) may jeopardize the employment-at-will relationship."*

*-Laura Balson*

One of these common mistakes is in the way the letter describes the new employee's starting pay. If, for example, the employee will be receiving an annual, gross salary of \$60,000, in biweekly paychecks, you should describe the salary in the amount that will be given per paycheck—in this example, \$2500 twice per month. Otherwise employees may successfully argue in a wrongful termination lawsuit that your promise to pay them \$60,000 gives them a job for the term

of at least one year, because that was the number in the offer letter. Just because they were fired prior to the end of their first year at the job, the employee will argue, doesn't change the fact that they are entitled to the entire amount.

Another common mistake is not including language that makes it clear to the employee that the position is one of "employment-at-will," meaning either party may terminate the employment relationship at any time. Though the default rule in most states is that employment is presumed to be at-will unless there is an agreement stating otherwise, if the offer letter gives the impression that the job will continue for a definite period of time (for example, by stating an annual salary), and the employee relies on that impression, a court may find that the employment is for a definite term, and not at-will.

### ILLINOIS SUPREME COURT RULES AGAINST EMPLOYER IN CHILD SUPPORT CASES

The Income Withholding for Support Act is an Illinois law which requires employers, when presented with the proper notice, to withhold money from an employee's paycheck and then deposit that amount with the State Disbursement Unit so that it can be paid out for child support.

In a recent case, *In re Marriage of Miller*, the Illinois Supreme Court ruled that an employer who fails to follow the requirements of the Act by not turning over the income within the required seven days, can be subjected to hefty fines—in that case, a \$1,172,100.00 penalty was assessed against the employer. The penalty was challenged by the employer as unconstitutional, but the Court was not persuaded and upheld the penalty.

It is likely that other types of income withholding—like wage garnishments—may receive the same treatments. Employers are cautioned to be careful in their treatment of employees who are subject to the income withholding, because the Act specifically prohibits an employer from disciplining, discharging, refusing to hire, or in any way penalizing a person because of the duty to withhold income. Additionally, employers must be aware of the limitation on the maximum amount that may be withheld from an employee's paycheck, under the federal Consumer Credit Protection Act. If you have questions about how to handle a garnishment, citation or withholding order of any type, please contact us.

### NEW STUDY REVEALS AN INCREASE IN WORKPLACE LITIGATION

A recent report on trends in workplace litigation reveals that class action and collective action employee lawsuits are on the rise. The study of rulings and decisions in cases against employers in all 50 states found that the most significant growth occurred in state courts in California, Florida, Illinois, New Jersey, New York, Pennsylvania, and Texas. A few noticeable changes from past years included a dramatic increase in class actions brought against 401(k) plan sponsors for breach of fiduciary duties. Another trend is that wage and hour claims are no longer brought by only the lowest paid segment of the company. In fact, last year saw a series of class actions on behalf of workers in the financial services industry where employees are generally highly paid. The report concludes that these trends are likely to continue in 2008.



*"Wage and hour claims are no longer brought by only the lowest paid segment of the company. In fact, last year saw a series of class actions on behalf of workers in the financial services industry where employees are generally highly paid."*

*-Margaret Gisich*

### TO LEARN MORE...

If you would like additional information, please contact:

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# OUR FOCUS IS YOU

Putting our clients first is not just a slogan for Golan & Christie. Everything we do stems from your needs, goals and objectives.

From the moment we first meet, we are driven by one thing: your ultimate success. And we go the extra mile to achieve it.

We devote as much time as necessary to get to know you. Only then can we make a thorough assessment of your situation and develop solutions that are the most appropriate for you. As our team goes to work for you, we continue to invest time in listening to, observing and advising you.

In the end, we measure our success by your success.

Prior editions of Golan & Christie's newsletters are available at <http://www.golanchristie.com/news.html>



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## OUR PRACTICE

Our practice covers many aspects of law and business, with an emphasis on the areas listed below:

- Business Law & Governance
- Commercial & Corporate Litigation
- Commercial Real Estate
- Employment Law
- Estate Planning & Taxation
- Finance
- Reorganization & Bankruptcy

## IN OUR NEXT ISSUE...

- **Mechanics Liens in a time of Economic Downturn—What You Need to Know**
- **Employment Alert: Most common mistakes companies make in their payroll deductions.**

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