

# ALR 6th

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### From the editor

Welcome to the latest volume of A.L.R. This issue of A.L.R. contains, among many others, an annotation that collects cases dealing with the validity, construction, and application of statutes prohibiting boating while intoxicated, boating while under the influence, and the like ([47 A.L.R.6th 107](#)), as well as an annotation exploring the construction and application of limited liability company acts where issues relating to personal liability of individual members and managers of the limited liability company to third parties are involved ([47 A.L.R.6th 1](#)). Slated for release in 48 A.L.R.6th is a companion limited liability act annotation collecting case law where issues relating to derivative actions and actions between members of a limited liability company are involved.

*Douglas S. Jurenko, Editor, and Jason B. Binimow, J.D.*

## Highlights

### BOATING WHILE INTOXICATED

#### Validity, Construction, and Application of Statutes Prohibiting Boating While Intoxicated, Boating While Under the Influence, or the Like

The operation of a boat or watercraft while intoxicated or under the influence of a controlled substance is a criminal offense under many state statutes. While similar in many respects to a prosecution for driving while intoxicated or driving while under the influence, there are also significant differences. This annotation collects and discusses all of the cases which have considered the validity, construction and applications of statutes prohibiting boating while intoxicated, boating while under the influence, or the like, and includes cases determining issues related to the collateral effects of a conviction for BWI or BUI, such as the suspension or revocation of a convicted defendant's license to drive. [47 A.L.R.6th 107](#)

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### LIMITED LIABILITY COMPANIES

#### Construction and Application of Limited Liability Company Acts—Issues Relating to Personal Liability of Individual Members and Managers of Limited Liability Company as to Third Parties

A limited liability company (LLC) is a hybrid business entity that offers its members limited liability as if they were shareholders of a corporation, but treats the entity and its members as a partnership for tax purposes. All 50 states and the District of Columbia have enacted LLC legislation. Many federal and state courts have construed and applied state LLC acts regarding issues related to the personal liability of individual LLC members as to third parties. This annotation collects and discusses all of the cases which have addressed construction and application of state LLC acts with regard to issues relating to the personal liability of individual LLC members as to third parties.

Note the related annotation of Construction and Application of Limited Liability Company Acts—Issues Relating to Formation of Limited Liability Company and Addition or Disassociation of Members Thereto, [43 A.L.R.6th 611](#), and Construction and Application of Limited Liability Company Acts—Issues Relating to Liability of Limited Liability Company for Acts of Its Members, Managers, Officers, and Agents, [46 A.L.R.6th 1](#). [47 A.L.R.6th 1](#)

## PRIVILEGED COMMUNICATIONS

### Construction and Application of Fiduciary Duty Exception to Attorney-Client Privilege

The fiduciary exception to the attorney-client privilege is based on the idea that a communication between an attorney and a client is not privileged as to those to whom the client owes a fiduciary duty. Generally, the fiduciary duty exception has two components: the existence of a fiduciary relationship between the client and the party seeking discovery of privileged communications, and a showing of good cause for overcoming the privilege. Courts have applied this exception in a number of different types of actions and examined whether the exception is applicable in particular cases.

This annotation collects and analyzes cases applying the fiduciary exception to attorney-client privilege in discovery disputes. [47 A.L.R.6th 255](#)

## UNIFORM COMMERCIAL CODE

### Creation and Perfection of Security Interests in Insurance Proceeds under Article 9 of Uniform Commercial Code

Article 9 of the Uniform Commercial Code (UCC) enables a creditor to obtain a security interest in the personal property or fixtures of a debtor, including goods, documents, instruments, payment intangibles, chattel paper or accounts. Under UCC Article 9, upon disposition of the perfected collateral the security interest generally continues in any identifiable proceeds, such as insurance proceeds, even if the security agreement or financing statement does not explicitly mention proceeds. However, not all insurance proceeds are securable interests under UCC Article 9. This annotation will collect and discuss cases that have considered the creation and perfection of security interests in insurance proceeds under Article 9 of the Uniform Commercial Code. [47 A.L.R.6th 347](#)

# Coming Soon

Listed below are a few of the topics scheduled to be published in [48 A.L.R.6th](#) in October 2009. Some of the annotations listed may be rescheduled.



## CONSUMER PROTECTION

### Practices Forbidden by State Deceptive Trade Practice and Consumer Protection Acts—Pyramid or Ponzi or Referral Sales Schemes

States have enacted deceptive trade practice and consumer protection acts prohibiting pyramid, Ponzi or referral sales schemes. This annotation will collect and summarize the cases in which the courts considered whether pyramid, Ponzi, or referral sales schemes were violations of particular state deceptive trade practice or consumer protection statutes. [48 A.L.R.6th](#)

## LIMITED LIABILITY COMPANIES

### Construction and Application of Limited Liability Company Acts—Issues Relating to Derivative Actions and Actions Between Members of Limited Liability Company

A limited liability company (LLC) is a hybrid business entity that offers its members limited liability as if they were shareholders of a corporation, but treats the entity and its members as a partnership for tax purposes. All

50 states and the District of Columbia have enacted LLC legislation. Many federal and state courts have construed and applied state LLC acts regarding issues related to derivative actions brought on behalf of an LLC by members, as well as actions between members of an LLC. This annotation will

collect and discuss all of the cases which have addressed construction and application of state LLC acts with regard to issues relating to derivative actions and actions between members of an LLC. [48 A.L.R.6th](#)

## UNIFORM COMMERCIAL CODE

### What Constitutes “Future Goods” Within Scope of UCC Article 2

Section 2-105(1) of the Uniform Commercial Code provides: “Goods that are not both existing and identified are ‘future’ goods.” Courts have applied this definition of “future” goods in a variety of circumstances. This annotation will collect all cases that have determined whether goods were “future” goods under § 2-105(1) or a state enactment thereof. [48 A.L.R.6th](#)

## WORKERS' COMPENSATION

### Workers' Compensation: Value of Employer-Provided Room, Board, or Clothing as Factor in Determining Basis for or Calculation of Amount of Compensation Under State Workers' Compensation Statute

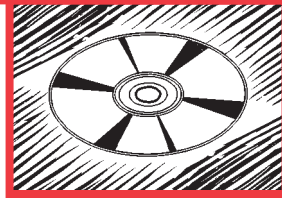
Awards for disability compensation are usually figured as a percentage of the injured worker's average daily,

weekly, or monthly wage. The average earnings of workers engaged in the same or a similar employment is sometimes used to determine an injured worker's lost earnings or earning capacity. How the average wage or earnings are calculated depends on the law of the jurisdiction and the facts. It has been held that "income" is not synonymous with "earnings" or "wages," for purposes of calculating workers' compensation claimant's average weekly wage (AWW), but rather that "income" is a much broader term. On the other hand, the statutory definition of AWW, for workers' compensation purposes, may not be limited by the federal definition of taxable income. Thus, it is necessary in some cases to give consideration to such items as board and lodging furnished to the employee, and the cost of materials used by the employee, and allowances for expenses, as well as to various other items and factors. If the statutory formula for determining a workers' compensation claimant's average weekly earnings cannot be applied

to a particular case, then the determination of the AWW may be left to a court's discretion. Deductions for business expenses incurred or supplies furnished at the employee's expense are ordinarily made in computing the employee's average earnings. Expense money is taken into consideration in the computation of an employee's average earnings only where the payments exceed the actual expenses they are intended to cover and thus represent a gain to the employee. The issue arises as to the value of employer-provided room, board, or clothing as a factor in determining the basis for or calculation of the amount of compensation to which a claimant is entitled under a state workers' compensation statutory scheme. This annotation will collect and discuss all of the cases discussing whether, under the applicable state workers' compensation statute, the value of employer-furnished room, board, or clothing should be included in determining the basis for, or calculation of, the amount of compensation due an injured worker. **48 A.L.R.6th**

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The following is a complete list arranged alphabetically by topic, of annotations contained in the current volume **47 A.L.R.6th** or scheduled for publication in **48 A.L.R.6th**. Some of the annotations listed may be rescheduled.



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