

LIABILITY and the HONEYBEE STRAIGHT CREEK VALLEY FARM

by Christine Tailer



First, a little bit about the farm ...

63 acres of which ten are tillable



Two Miles from Anywhere ...



Farm with 1950's Technology

















Hay Field



Combine

Corn and Bean Heads



Hops





$\frac{3}{4}$ Acre Garden

Winter Wheat





Sunflowers!

We Do it All ...

- Without any chemical fertilizers
- Without any pesticides

Because We Are Beekeepers!

We Also Enjoy Living Off The Grid



At It's Best!



Then ... a little bit about us ...



Why we began to practice SUSTAINABLE BEEKEEPING

Good Part-time Farm Pursuit!

- requires only a few trips to the hive each year
- the importance of understanding the bees
- the importance of the use of few if any drugs or chemicals on the farm and the use of natural ways to deal with pests and weeds



The Importance of Understanding Bee Behavior



Really the key to beekeeper liability

The Bees' Life Cycle

- **Larvae**
 - drone ... 24 days
 - worker ... 21 days
 - queen ... 16 days
- **Workers**
 - various jobs within the hive depending on the age of the bee
 - all are female ... 60,000!!
 - live only a few months
- **Drones**
 - a drain on the colony or a wealth of genetic material? ... only 500!!
 - live for one glorious season
 - do not sting or gather nectar or pollen
- **The Queen** – lives the longest, up to three years, and her daughters, the workers, know when to replace her

Bee Line



Safe beside the hive



Beekeeper's Runway

(Notice forward tilt of hives ...)

Foragers will not Sting



Goldenrod

Smoke ... and they prepare for a forest fire ...



Going Deep into the Hive



Dress for Success!

Bee Calm



Wind Rock Removal



Remove Covers



Take off Super Filled w/50 lbs. Honey



Rob the Bees



5 lbs ... 50 lbs

Some Bees Do Not Want to Let Go ...





Uncap the Honey



The Cappings are
the Sweetest



Load the Extractor



Four Frame
Hand Crank
Extractor



Crank!

And Enjoy!



It Could Not **Bee** More Simple!

Really!

The Importance of Hive Placement

... as it relates to **liability** ...

- Not facing each other, so out of the way of that bee line flight path
- Not facing neighbors or school yard
- Place hives several feet apart
- Easy access from behind
- Room to observe from the side

Squish as few bees as possible

so they do not send off that distress pheromone



IF BEES ARE DISTRESSED?

- Do not flail around, movement excites bees even more
- Briskly walk ... or even run ... 200' from hive

Invisible wall at 200'

...This one really works!!!

SWARMING ... Feral Colonies

Genetic diversity ... Disruption of parasites



BUT MOST IMPORTANTLY ... A SWARMING COLONY WILL NOT STING AS THEY HAVE NO HIVE TO PROTECT!!

Now that we understand BeeHavior ...

- **Animal Liability** - depends on whether the animal in question is domestic or wild
 - If bees are **domestic** then the beekeeper must not keep bees in a negligent fashion
 - Domestic animal keeper must do what a reasonably prudent person in same or similar situation would do ... cows, pigs, chickens etc.
 - If bees are **wild**, and kept by the keeper, then there is strict liability if the bee causes injury to another
 - Wild bears as pets, pythons, alligators, etc...
 - Well ... in Ohio it seems that bees are neither wild nor domestic, but a simple negligence standard still applies

Imagine my Neighbor is Stung

- Bees only sting when defending the hive and my hives are far from my neighbor's property ... Not My Bee!!!!
- How can my neighbor prove it was my bee ... bees travel three miles from their hives, and what of the feral colonies in the woods?
Thus bees are somewhat wild ... they cannot be contained to one's property ... (hybrid domestic/wild)
- Neighbor's claim fails based on failure to meet burden of proof, greater weight or preponderance of the of the evidence standard...

Negligence applied to domestic/wild creature

- **Negligence?**

- What would the reasonably prudent beekeeper do?
- Depends on the status of the person on your property

Business Invitee - you gain benefit from the person's presence, plumber ...

Owe a high standard of care = warn of dangerous condition, but bee hive is quite obvious!

= duty to reasonably discover danger

Social Guest - warn of dangers you know of, and you know you have bees!

Trespasser - no liability

- unless attractive nuisance ... is a bee hive going to attract folk?

- unless ... if you know of a repeated trespasser and do nothing to prevent injury

Children- Are considered not to know any better under the age of seven

- Thus, you will owe for an injured child under the age of seven

- Between seven and twelve, presumption that you owe, but can argue the issue

- Over the age of twelve, the child should know better

Beekeeper's Obvious Solution



Place yellow caution tape around the hives when company comes to visit

Defense? Assumption of the Risk



We all know that bees sting!

We all recognize the white suit!

But Remember that Child Under the Age of Seven ... We Put Up Caution Tape!



Ohio Statutes

- Apiculture is Agriculture **ORC 519.01**
- **ORC 909**, governs beekeeping and does provide for free inspection and a “help line” for pest issues, but beekeeper must be totally legal (no moonshining) and do expect inspections
- **ORC 3715.023** governs sales and labels for cottage food production and beekeeper, basically label honey w/address so folk can sue you

ORC 519.01 – Township Zoning

Agriculture defined as including farming; ranching; algaculture meaning the farming of algae; aquaculture; **apiculture**; horticulture; viticulture; animal husbandry, including, but not limited to, the care and raising of livestock, equine, and fur-bearing animals; poultry husbandry and the production of poultry and poultry products; dairy production; the production of field crops, tobacco, fruits, vegetables, nursery stock, ornamental shrubs, ornamental trees, flowers, sod, or mushrooms; timber; pasturage; any combination of the foregoing; and the processing, drying, storage, and marketing of agricultural products when those activities are conducted in conjunction with, but are secondary to, such husbandry or production.

ORC 909.01 – Definitions

(A) **"Person"** includes corporations, companies, societies, associations, partnerships, any individual or combination of individuals, or any institution, park, or other public agency administered by the state or by any district, county, municipal corporation, or other governmental subdivision thereof. When construing or enforcing such sections, the act, omission, or failure of any officer, agent, servant, or other individual acting for or employed by any person as above defined within the scope of his employment or office is deemed to be the act, omission, or failure of such person, as well as that of the officer, agent, servant, or other employee.

(B) **"Bees"** means any stage of any species of the genus *Apis*.

(C) **"Bee diseases"** means any infectious or contagious disease that is pathogenic or parasitic and affects the eggs, or the larval, pupal, or adult stages, of bees.

(D) **"Apiary"** means any place where one or more colonies or nuclei of bees are kept

(E) **"Queen rearing apiaries"** means any apiary in which queen bees are reared for sale or gift.

(F) **"Hive"** means any modern frame hive, box hive, box, barrel, log gum, skep, or any other natural or artificial receptacle, or any part thereof, that may be used as a domicile for bees.

(G) **"Equipment"** means any used hives or parts thereof, used frames, used honey houses, used tools, used machines, or used devices employed in the handling or manipulation of bees, honey, or beeswax, or any used container for honey or beeswax that may be used in any apiary.

(H) **"Serious bee diseases"** means any bee disease the director of agriculture determines to be a threat to the beekeeping industry within the state.

(I) **"Africanized honey bees"** means any bees identified by the United States department of agriculture by approved identification methods to be classified as *Apis mellifera scutellata*.

(J) **"Swarm"** means a population of bees that is not permanently established.

(K) **"Colony"** means the hive and its equipment, including bees, combs, and brood.

ORC 909.02 - Registration

Any person owning or possessing bees **shall** on or before the first day of June of each year, or thereafter within ten days after coming into ownership or possession of bees, or upon moving bees into this state from outside the state, **file with the director of agriculture an application for registration setting forth the exact location of his apiaries** and the number of colonies of bees in each apiary, together with such other information as is required by the director, and accompanied by a registration fee of five dollars for each separate apiary owned or possessed by him at time of registration. Any person who submits his application after the dates specified by this section, or after the dates specified in rules adopted by the director, shall be subject to a ten-dollar late filing fee in addition to the five-dollar registration fee. Upon acceptance of the application, the director shall issue to such person a certificate of registration. All certificates issued in accordance with this section expire on the thirty-first day of May next following date of issuance or renewal, and shall be renewed according to the standard renewal procedure of sections 4745.01 to 4745.03 of the Revised Code. **No person shall maintain an apiary located on premises other than that of his residence** unless such apiary is identifiable by an apiary identification number assigned to such person by the director. Such identification number shall be posted in a conspicuous location in the apiary. **The moving, raising, and production of bees, beeswax, honey, and honey products shall be deemed an agricultural pursuit.**

ORC 909.03 – Control of Disease/Africanized Bees

The director of agriculture may make and enforce such rules and orders as in his judgment are necessary to control, eradicate, or prevent the introduction, spread, or dissemination of any bee diseases or Africanized honey bees. No person shall fail to comply with the rules adopted under this section. In the control or eradication of serious bee diseases, the **director or his authorized representative shall diagnose the disease and recommend approved control options for it to the beekeeper.** If a control is available to the beekeeper for the disease diagnosed but no attempt is made to implement a control within an appropriate time frame as determined by rule, the director may destroy by burning or otherwise any diseased bees, hives, honey, Africanized honey bees, or equipment that he considers necessary for such control or eradication, without remuneration to the owner. **Such diseased bees, hives, honey, Africanized honey bees, and equipment are a public nuisance.**

ORC 909.04 – Quarantine Orders

Under sections 909.01 to 909.18 of the Revised Code, the director of agriculture may establish and maintain **quarantine orders prohibiting the shipment into or within the state, or any subdivision thereof, of any bees, queen bees, used hives or any part thereof, used equipment, or any material capable of transmitting any bee diseases, or Africanized honey** bees for such periods and under such conditions as he considers necessary to control, eradicate, or prevent the introduction, spread, or dissemination of any bee diseases or Africanized honey bees, giving such notice thereof as is prescribed by him. **During the existence of such order, no person shall remove or ship from such area any such material** except by special permission or order of the director; provided that before the director promulgates the order of quarantine as provided in this section, and after due notice to interested persons, he shall give a public hearing under such rules as he prescribes, at which hearing any interested person may appear and be heard, either in person or by attorney.

ORC 909.05 - Inspections

To enforce sections 909.01 to 909.18 of the Revised Code, the director of agriculture or his authorized representatives, during daylight hours, shall **have access to and egress from any apiary or to any premises, buildings, or any other place, public or private, in which he has reason to believe that bees, including Africanized honey bees, honey, wax, used hives, or used equipment is kept.** During the inspection, the director or his representative may inspect bee colonies to determine their condition and health, take samples for disease diagnosis or race determination, decide if live colonies exist for apiary registration purposes, and control or eradicate serious bee diseases and Africanized honey bees. If the director or his representative is denied access to any premises where access is sought for the purposes of this section, **he may apply to any court of competent jurisdiction for a search warrant** authorizing access to the premises for those purposes. The court, upon receiving the application, may issue the search warrant for the purposes requested.

Bee Legal!!!!

ORC 909.06 – State Apiarist

The director of agriculture shall appoint a competent entomologist as state apiarist and such number of deputy state apiarists as are necessary to carry out sections 909.01 to 909.18, inclusive, of the Revised Code. Said state apiarist and deputy state apiarists shall be **vested with the powers of police officers** in the enforcement of such sections, and shall be furnished with official badges or other insignia of authority which shall be carried while on duty.

ORC 909.07- Funding

The board of county commissioners may appropriate such funds as it deems sufficient for the inspection of apiaries in its county. It may appoint a deputy apiarist with the consent and concurrence of the director of agriculture, said deputy to serve during the pleasure of said board except as specified in this section. Such deputy shall be paid such salary as the county commissioners determine for each day, or for each half day of inspection work actually done, together with such expenses as are necessarily incurred in the doing of the inspection work. Before the board approves said salary and expenses for payment, such deputy shall submit the same to the director for his approval. Such deputy shall work under the direction of the director and shall be responsible to him for the enforcement of sections 909.01 to 909.18, inclusive, of the Revised Code. The director may terminate the appointment of any deputy upon submitting to the board a statement that such deputy has shown himself to be incompetent, inefficient, or untrustworthy in the discharge of his duties. Such deputy shall furnish to the director such reports as are required and upon blanks furnished by him. A duplicate of such reports shall be presented to the board each time that a statement of salary and expense is presented for payment.

909.08 – Inspection of Queen Rearing

Each person within the state engaged in the rearing of queen bees for sale or gift, before the first day of April of each year, **shall file with the director of agriculture a request for the inspection of his apiaries where queen bees are reared.** The director shall require all queen rearing apiaries to be inspected at least once each year. If the inspection results in the diagnosis of any serious bee disease or indicates the presence of Africanized honey bees, the owner thereof shall not ship, sell, or give away any queen bees until he has controlled or eradicated the disease or bees to the satisfaction of the director. When such diseases or bees have been controlled or eradicated in the queen rearing apiary, or if no serious bee disease is diagnosed or Africanized honey bees are found, the director shall issue a certificate, signed by the state apiarist, a copy of which shall be attached to each package or shipment of queen bees mailed or shipped. The certificate shall be valid for, but not to exceed, one year. The use of tags or other devices bearing an invalid or altered certificate and the misuse of any valid certificate is prohibited.

909.09 – Permit to sell or even give...

No person shall sell, offer for sale, give, offer to give, barter, or offer to barter any bees, honeycombs, or used beekeeping equipment without a permit from the director of agriculture. The permit, or a copy of it, shall accompany any such transfer of ownership. The director may refuse to issue the permit until he finds by inspection that any Africanized honey bees are eradicated from and any serious bee diseases are controlled or eradicated from the bees, honeycombs, or used beekeeping equipment.

909.10 – Taking Bees or Equipment into Ohio

-)A) No person shall ship or move bee colonies or any used beekeeping equipment into this state from any other state or country without an inspection certificate** issued by an authorized inspector from the state or country wherein shipment or movement originated. The certificate shall identify all pathogens and parasites diagnosed and any controls that were implemented. In the absence of inspection facilities in another state or country, the director of agriculture may issue a permit authorizing the shipment or movement of the bee colonies or used beekeeping equipment into this state, provided that upon entry the bees or equipment is inspected by the department of agriculture. The cost of the inspection shall be paid upon completion in an amount determined by rule of the director. The inspection fees shall be paid to the director and deposited by him with the treasurer of state to the credit of the general revenue fund. If any serious bee diseases are diagnosed, appropriate controls and eradication measures immediately shall be implemented by the person shipping or owning the bee colonies or used beekeeping equipment. If the person shipping or owning the bee colonies or equipment does not implement any controls or eradication measures within forty-eight hours from the inspection, the bee colonies or equipment shall be removed from this state at the cost of the person shipping or owning them.
- (B) Any person selling, shipping, or moving into this state any queen bees or packaged bees shall submit to the director an inspection report issued by an authorized inspector from the state or country wherein shipment or movement originated.** One such report shall be submitted annually thirty days prior to the initial sale, shipment, or movement of queen bees or packaged bees of that year. The report shall identify any pathogens and parasites diagnosed and any controls that were implemented. If any serious bee diseases have not been controlled or if inspection reports are not provided as required under this section, such shipments shall be prohibited from entering this state.
- (C) The director may deny entry of the bee colonies or used equipment if he determines they are a threat to the bee population of this state.**
- (D) No person shall ship or move into this state any Africanized honey bees.**

909.11 – Additional Measures

- (A) The removal of any bees, honeycombs, honey, or used beekeeping equipment from any apiary in the state wherein a serious bee disease is known to exist is prohibited until such disease is controlled or eradicated.**
The removal of any bees, honeycombs, honey, or used beekeeping equipment may be made from any such apiary, under a special permit signed by the state apiarist, when properly safeguarded to prevent dissemination of such disease.
- (B) If any swarm or apiary, for which no person claims ownership and that is not registered as required in section 909.02 of the Revised Code, is found to harbor a serious bee disease or Africanized honey bees, then the bees and equipment, if applicable, shall be eradicated.

909.12 – Easy Access to Frames

No person shall keep or maintain bees in any hive if all frames and honeycombs cannot be readily removed therefrom for inspection or keep or maintain bees in any hive situated where adequate and efficient inspection is difficult, impracticable, or impossible. All cross-comb hives or domiciles for bees, from which the frames and honeycombs cannot be readily removed, are hereby **declared to be a public nuisance**. If any owner is found using such cross-comb hives or domiciles, the director of agriculture shall notify said owner in writing to cease using them. If, after the expiration of one year from receipt of said notice, the owner has failed to cease using said cross-comb hives or domiciles for housing bees, the director may **seize and destroy them without remuneration**.

909.13 – Revocation of Certificate or Permit

The director of agriculture ... may **revoke** any **certificate or permit** issued under sections [909.01](#) to [909.18](#), inclusive, of the Revised Code, for cause, including any violation of such sections or nonconformity with any rule or order ... There shall be no revocation of a certificate or permit until the certificate or permit holder first is given an **opportunity for a hearing** ... An **appeal** may be taken from the action of the director in revocation of a certificate or permit to the court of common pleas ...

909.131-Effect of Child Support Default

On receipt of a notice pursuant to section 3123.43 of the Revised Code, the director of agriculture shall comply with sections 3123.41 to 3123.50 of the Revised Code and any applicable rules adopted under section 3123.63 of the Revised Code with respect to a certificate issued pursuant to this chapter.

909.14 – Annual Report

The **director** of agriculture may publish an annual report and such other information concerning the inspection of bees, or bee diseases, as he deems necessary to the carrying out of sections 909.01 to 909.18, inclusive, of the Revised Code. He shall, from time to time, publish all rules or orders promulgated under such sections.

ORC 909.15 – Moneys Credited to General Revenue Fund

All moneys from registration fees and from fines imposed and recovered under sections 909.01 to 909.18 of the Revised Code, shall be paid to the director of agriculture, who shall deposit such moneys in the state treasury to the credit of the general revenue fund.

ORC 909.16 - Appeal

Any person in interest or **affected by any order** of the director of agriculture, or state apiarists, **may appeal** therefrom **to the director** within five days of the service of such order upon him setting forth in writing specifically and in full detail the order on which a hearing is desired, and every reason why such order is deemed unreasonable. On receipt of such appeal, the director shall with reasonable promptness **order a hearing thereon**, and consider and determine the matters in question. Notice of the time and place of hearing shall be given to the petitioner and to such other persons as the director may direct. **Such appeal shall suspend the operation of the order appealed from except as to the orders of the director promulgating a quarantine** as provided in section 909.04 of the Revised Code. All hearings of the director shall be **open to the public, and his decisions shall be final**. **The appellant may be represented by an attorney.**

ORC 909.17 - Prosecution

The **director of agriculture or his representatives shall prosecute all violations** of sections 909.01 to 909.18, inclusive, of the Revised Code, before any court of competent jurisdiction in the county in which the violation occurs or person accused thereof resides. The complainant shall not be required to give security for costs. The prosecuting attorney of each county, or the attorney general, shall conduct such prosecutions.

909.18 - Prohibition

No person shall violate sections 909.01 to 909.18, inclusive, of the Revised Code, or any rule or order of the director of agriculture promulgated under sections in accordance with sections 119.01 to 119.13, inclusive, of the Revised Code.

909.99 - Penalty

(A) (1) Whoever violates sections 909.03 and 909.10 of the Revised Code is guilty of a **misdemeanor of the third degree on a first offense; on each subsequent offense, the person is guilty of a misdemeanor of the second degree.**

Registration ... Inspection ... Quarantine ... Permits ...

(2) Any person who violates division (D) of section 909.10 of the Revised Code also shall not be remunerated for the eradication of his Africanized honey bees.

(B) Whoever violates any section of Chapter 909. of the Revised Code for which no penalty otherwise is provided is guilty of a **misdemeanor of the fourth degree on a first offense; on each subsequent offense, the person is guilty of a misdemeanor of the third degree.**

Moving diseased ... easy access ...

Ohio Encourages Beekeepers??

- Become a Beekeeper and Subject to criminal prosecution!
- But reasoning behind the laws reflects the critical importance of the honeybee to life as we know it
- No cases of criminal prosecution that I could find!!!!

If Only I Lived in Wild Wonderful **West Virginia!**

- **West Virginia** has adopted a beekeeper immunity law to encourage beekeeping.
- No liability to a beekeeper for personal injury or property damage as a result of beekeeping!
- But they do pay a price to register their hives.
- Still ... **WOW!!!!**

2010 **West Virginia** Immunity Law

- First state in the nation to pass a law giving beekeepers immunity from liability for ordinary negligence
- Strong support by the leadership of both the House and Senate
- State Senate President, Earl Ray Tomblin, whose father is a beekeeper.
- House Speaker Richard Thompson was raised by a grandfather who was a beekeeper.
- the honeybee is the state insect!

.

But Not Quite So Easy ...

- West Virginia the beekeepers immunity granted only if beekeepers register their hives and follow “**best management practices**” established by the West Virginia Department of Agriculture
 - that includes posting a **warning sign** in every apiary
 - establishing a **six-foot barrier** from their property line
 - **and limiting how many hives** can be housed at a location based on the size of the lot

West Virginia Beekeepers have accordingly been able to obtain liability insurance and reduce their insurance premiums.

Ohio Beekeepers Have Insurance Issues

- Beekeeper is **Not covered under home owner's policy for bee stings**, but if keeper sells honey at home door there is coverage for alleged consumption injury
- **Not covered under farm policy for bee stings!** But farmer can get a special endorsement for farmers' market sales of honey
- **Not covered under auto policy!** Exclusion if carry property for a business pursuit (selling?)
 - If beekeeper is in an accident and admits to carrying a jar of honey to market - oops!
- **Draft a special Business policy? \$\$\$\$**

Ohio

- One beekeeper liability case (1925) where beekeeper was held liable when his bees attacked and killed a horse.
- **But I just tried to find it to no avail!**
- I could find no cases on Casemaker where beekeeper was held liable for civil damages in personal injury suit!
- **Case of Beekeeper suing neighboring farmer for injurious spray drift**

William Allinder, dba Sunnyside Bee Farm, fka B & C Apiaries, Plaintiff-Appellant

v.

The State of Ohio (Ohio Department of Agriculture), et al., Defendants-Appellees.

No. 82AP-841 (REGULAR CALENDAR).

83-LW-1591 (10th)

Court of Appeals of Ohio, Tenth District, Franklin.

- R.C. 909.03. If the inspector discovers AFB in an apiary, the hives are burned.
- The finding of AFB may be appealed to the director of the Department of Agriculture within five days of the receipt of the condemnation order, but notice of this right is not communicated to the beekeeper and is almost never used. The director's decision is final. R.C. 909.16.
- Reversed on the State's failure to raise the affirmative defense of the beekeeper's consent

MICHIGAN BANK-MIDSOUTH Formerly Litchfield State Savings Bank, Appellee,

v.

James L. STROHL, Jr., et al., Appellants.

No. WMS-85-13.

86-LW-2753 (6th)

Court of Appeals of Ohio, Sixth District, Williams

September 30, 1986

- Foreclosure case involving beekeeping equipment

MICHIGAN BANK-MIDSOUTH Formerly Litchfield State Savings Bank, Appellee,

v.

James L. STROHL, Jr., et al., Appellants.

No. WMS-85-13.

86-LW-2753 (6th)

Court of Appeals of Ohio, Sixth District, Williams

September 30, 1986

- Foreclosure case involving honey left in combs

Why So Little Civil Case Law?

- We all know that bees sting ...
- And we are all wise enough not to walk up to the front door of a hive.

And Thankfully No Prosecutions!

- Cost?
- Knowledge?
- PR?
- Jails filled to the brim already?

Honey Sales

- **3715.023. Labels for cottage food production operation, processor, or beekeeper**
- (A) A cottage food production operation and a maple syrup or sorghum processor and beekeeper ... shall label each of their food products and include the following information on the label of each of their food products:
 - (1) The **name and address** of the business of the cottage food production operation, processor, or beekeeper;
 - (2) The name of the food **product**;
 - (3) The **ingredients** of the food product, in descending order of predominance by weight;
 - (4) The **net weight and volume** of the food product;
 - (5) In the case of a cottage food production operation, the following statement in ten-point type: "**This product is home produced.**"



So float like a
butterfly...

“Think” like a
bee!

And have no fear ...



Of Liability!



Sweet Rewards!



The End ...