

PETE FAUST ELECTED MANAGING SHAREHOLDER AND PRESIDENT OF OCHDL

Pete Faust has been elected as the Managing Shareholder and President of O'Neil Cannon

Faust replaces Dean Laing, who was the firm's Managing Shareholder and President for six years. Laing will remain a member of the firm's Board of Directors, along with Faust. Laing, one of the top litigators in the state, will continue his litigation practice.

"Dean has been an exceptional leader of the firm and set an extremely high standard for all who follow him," Faust said. "His commitment to the firm and his work ethic are unparalleled. We are very grateful that he has agreed to remain on the Board of Directors."

Faust is a corporate attorney who works primarily in mergers and acquisitions and has been the head of the firm's transactional practice.

BRITANY MORRISON PUBLISHED IN STATE BAR'S INSIDETRACK

Attorney Brittany Morrison authored an article entitled "Telecommuting: Tax Implications for Employers and Employees," which appeared in the State Bar of Wisconsin's newsletter, *InsideTrack*.

In the article, Morrison addresses a few important tax considerations for employers and employees working remotely. You can read the full article [here](#).

For more information on this topic, contact Brittany Morrison at 414-276-5000 or Britany.Morrison@wilaw.com.

SEASON OF GIVING

The spirit of the holiday season is upon us once again and the attorneys and staff at O'Neil, Cannon, Hollman, DeJong and Laing wanted to do something special for our community. For our annual holiday donation drive, we collected items and monetary donations to be given to

the **Milwaukee Rescue Mission**. Milwaukee Rescue Mission is a nonprofit organization that operates homeless shelters in Milwaukee providing food, shelter, clothing, and a range of community services to many needy people in our area.



From all of us at O’Neil, Cannon, Hollman, DeJong and Laing:

“Best wishes for a wonderful holiday and a very Happy New Year!”

EUROPEAN DATA PRIVACY WATCHDOGS TAKE NEW STEPS

In the past week, European data protection authorities have found substantial European Union General Data Protection Regulation (“GDPR”) violations and issued corresponding fines against high-profile companies. These decisions are informative for companies doing business in Europe as they indicate clear future enforcement priorities by European regulators.

On December 10, 2020, the French Data Protection Authority (“CNIL”) issued fines against Google (€100M; \$120M) and Amazon (€35M; ~\$43M) for improper use of cookies on their websites. Specifically, the CNIL found that the tech giants automatically dropped tracking cookies when users visited their French (.fr) websites. Under the GDPR, these tracking cookies cannot be used without prior consent by the user. Since at least October 2019, European law has been clear that websites must obtain prior consent before utilizing any non-essential cookies.

These fines follow a similar CNIL fine against Google for \$57M for failing to adhere to the GDPR's transparency obligations.

Meanwhile, on December 15, 2020, Ireland's Data Protection Commission ("DPC") slapped Twitter with a fine of €450,000 (~\$547,000) for failing to properly declare and document a data breach. The DPC is Europe's leading privacy enforcement agency for many large tech companies, including Facebook, WhatsApp, Google, Apple, and LinkedIn, among others. The DPC fine marked the first cross-border GDPR fine issued by the Irish watchdog. Though many have expressed concerns that the DPC has been slow in reacting to privacy violations by non-EU companies, this cross-border decision is somewhat of a landmark decision for the DPC. In addition to the Twitter case, the DPC has a backlog of over 20 cases against large tech firms, many of which are U.S.-based entities.

In 2020, both the CNIL and the DPC have recently issued guidance on cookie usage and the notice, consent, and transparency requirements of the GDPR. The Amazon and Google fines, together with the CNIL and DPC guiding opinions, provide insight into their enforcement priorities. The guiding opinions make it clear that the CNIL and the DPC are specifically targeting companies that are improperly utilizing non-essential cookies; furthermore, the extent of the fines indicate that the regulatory agencies view these matters as particularly egregious violations.

Moreover, the DPC's long-awaited first cross-border decision may be seen as a warning that non-EU companies may no longer find safe harbor in Ireland's lethargic enforcement efforts. Should these decisions act as a harbinger of future enforcement efforts, non-EU-based companies will need to quickly ensure compliance with GDPR regulations concerning non-essential cookies. As these decisions indicate, improper cookie usage could be costly for any company doing business in Europe.

If you or your company have questions or concerns about your cookie usage or compliance with international data privacy laws, please contact us.

TAX AND WEALTH ADVISOR ALERT: ESTATE PLANNING CONSIDERATIONS FOR SECOND MARRIAGES

It is becoming increasingly common for people to get divorced and then remarried. In these situations, one or both spouses entering into a new marriage usually has children from a prior relationship. Anyone who has children from a prior relationship and remarries should review

their estate plan and make any necessary updates to ensure their assets are distributed according to their wishes.

Under Wisconsin law, the assets of a deceased spouse who dies intestate will automatically pass to the surviving spouse. When there is a second marriage and children from a prior relationship, however, the assets of a deceased spouse will be divided between the surviving spouse and the deceased spouse's children. In these situations, complications frequently arise when the main asset of the deceased spouse's estate cannot easily be divided, such as a house. And even if assets can be easily divided, the surviving spouse and children may disagree about who should receive what.

Complications may also arise when people fail to update the beneficiary designations, transfer-on-death designations, or payable-on-death designations on their non-probate assets (click [here](#) to read about the difference between probate and non-probate assets). For example, if a person designates his or her new spouse as the beneficiary of a bank account, then the new spouse will inherit the entire account upon that person's death. Unless the surviving spouse names the deceased spouse's children as the primary beneficiaries of the account, the surviving spouse's children would likely stand to inherit the bank account rather than the deceased spouse's children.

Finally, disputes may arise in the event of incapacity. In those situations, a person's adult children and new spouse may disagree over who should be able to make financial or medical decisions and what those decisions should be.

There are many other issues that may arise and factors to consider, but the main takeaway is that it is very important to review and update your estate plan as a result of a major life event like a divorce and subsequent marriage. Failing to do so could frustrate your estate planning intentions and lead your loved ones to engage in litigation.

The attorneys at O'Neil Cannon have experience with creating estate plans for "blended" families and with updating old estate plans to correspond with new circumstances. If you would like to discuss your estate planning options further, please contact attorney [Kelly M. Spott](#).

IN MEMORIAM: THOMAS A. MERKLE 1944-2020



It is with great sorrow we announce the passing of our colleague Attorney Tom Merkle, who served as a lawyer for more than forty-five years at O'Neil Cannon Tom was one of the founders of the firm and was instrumental to its growth and success.

He served as an Officer and a Director of the firm for many years. Tom was a friend, advisor, and confidant to his clients. He was a friend, mentor, and tremendous partner to all the lawyers and staff at the firm.

Tom was not only a talented attorney, he was highly respected by his peers. In 2007 he was appointed by the Wisconsin Supreme Court to serve on the Office of Lawyer Regulation's District Two Committee, and was selected as one of the Best Lawyers in America® for many years.

Tom will be fondly remembered and missed by all of us at OCHDL. Our thoughts and prayers go out to his family and friends.

21 FIRM ATTORNEYS RECOGNIZED BY SUPER LAWYERS

Each year, *Super Lawyers* surveys the State of Wisconsin's 15,000 attorneys and judges, seeking the State's top attorneys. In November 2020, *Super Lawyers* published its lists for 2020, which include the Top 10 Attorneys in Wisconsin, Top 50 Attorneys in Wisconsin, Top 25 Attorneys in Milwaukee, Super Lawyers (consisting of the top 5% of attorneys in Wisconsin), and Rising Stars (consisting of attorneys who are 40 years old or younger or who have been in practice for 10 years or less).

Twenty-one of our attorneys were recognized by *Super Lawyers*, which has referred to the firm as "the Milwaukee mid-sized powerhouse." Those attorneys are the following:

- Dean P. Laing:
 - Top 10 Attorneys in Wisconsin
 - Top 50 Attorneys in Wisconsin
 - Top 25 Attorneys in Milwaukee
 - Super Lawyer

- Seth E. Dizard:
 - Top 50 Attorneys in Wisconsin
 - Top 25 Attorneys in Milwaukee
 - Super Lawyer
- Douglas P. Dehler:
 - Super Lawyer
- James G. DeJong:
 - Super Lawyer
- Peter J. Faust:
 - Super Lawyer
- John G. Gehringer:
 - Super Lawyer
- Joseph E. Gumina:
 - Super Lawyer
- Gregory W. Lyons:
 - Super Lawyer
- Patrick G. McBride:
 - Super Lawyer
- Joseph D. Newbold:
 - Super Lawyer
- Chad J. Richter:
 - Super Lawyer
- John R. Schreiber:
 - Super Lawyer
- Jason R. Scoby:
 - Super Lawyer
- Steven J. Slawinski:
 - Super Lawyer
- JB Koenings:
 - Rising Stars
- Trevor C. Lippman:
 - Rising Stars
- Erica N. Reib:
 - Rising Stars
- Christa D. Wittenberg:
 - Rising Stars

Super Lawyers is a national rating service that rates attorneys in all 50 states. The selection process utilized by *Super Lawyers* is multi-phased and includes independent research, peer nominations, and peer evaluations. One court recently had this to say about *Super Lawyers*:

“[T]he selection procedures employed by [*Super Lawyers*] are very sophisticated, comprehensive and complex.

It is abundantly clear . . . that [*Super Lawyers* does] not permit a lawyer to buy one’s way onto the list, nor is there any requirement for the purchase of any product for inclusion in the lists or any quid pro quo of any kind or nature associated with the evaluation and listing of an attorney or in the subsequent advertising of one’s inclusion in the lists.”

We are proud to be one of the few firms in Wisconsin that had over 50% of its attorneys receive recognition by *Super Lawyers*.

O’NEIL, CANNON, HOLLMAN, DEJONG AND LAING S.C. RANKED IN 2021 “BEST LAW FIRMS”

O’Neil Cannon has been ranked in the *2021 U.S. News - Best Lawyers*® “Best Law Firms” list in 16 practice areas:

- Bankruptcy and Creditor Debtor Rights / Insolvency and Reorganization Law
- Business Organizations (including LLCs and Partnerships)
- Commercial Litigation
- Construction Law
- Corporate Law
- Family Law
- Litigation - Bankruptcy
- Litigation - Insurance
- Litigation - Labor and Employment
- Mergers and Acquisitions Law
- Personal Injury Litigation - Plaintiffs
- Product Liability Litigation - Defendants
- Real Estate Law
- Securities / Capital Markets Law
- Tax Law
- Trusts and Estates Law

Firms included in the 2021 “Best Law Firms” list are recognized for professional excellence

with persistently impressive ratings from clients and peers. Achieving a tiered ranking signals a unique combination of quality law practice and breadth of legal expertise.

TAX AND WEALTH ADVISOR ALERT: WHAT PROPERTY IS SUBJECT TO PROBATE?

During the estate planning process, it is important to consider what types of assets make up your estate. Specifically, you should understand the difference between your “probate” and “non-probate” assets. As you might imagine, your probate assets are the ones that must go through probate, a time-consuming and costly process which we previously discussed [here](#).

Contrary to popular belief, a Last Will and Testament will not, on its own, help your estate avoid probate. Whether or not your estate is subject to probate depends on whether your estate consists of probate assets.

Probate assets are those that are owned solely by the decedent, without any beneficiary designations, transfer-on-death designations, payable-on-death designations, or joint ownership with rights of survivorship. Assets titled solely in the name of the decedent must go through probate—a court-supervised process—to be transferred or distributed to your loved ones. The probate process is necessary for these types of assets because only a court can legally transfer title after a person’s death.

Non-probate assets are those with beneficiary designations, transfer-on-death designations, or payable-on-death designations. They also include assets that are titled in the name of a trust or titled as joint tenants with rights of survivorship. Unlike probate assets, non-probate assets will be transferred directly to your beneficiaries upon your death without any court supervision.

Many people seek an estate plan to avoid or minimize the probate process. Probate avoidance strategies can be personalized to your unique circumstances. If you would like more information on estate planning options to avoid probate, please contact attorney [Kelly M. Spott](#).

FEDERAL TRADE COMMISSION AND ENFORCEMENT OF PRIVACY LAW

As we have mentioned [previously](#), there is no overarching federal data privacy law in the United States. By contrast, the European Union's General Data Protection Regulation (GDPR) regulates data privacy, including consumer data, in all sectors. Although there is no overarching federal data privacy law in the United States, there are a few sector-specific laws. In health care, for example, the Health Insurance Portability and Accountability Act (HIPAA) and the Health Information Technology for Economic and Clinical Health Act (HITECH) govern many aspects of privacy. Also, the Telecommunications Act and the Controlling the Assault of Non-Solicited Pornography and Marketing Act (CAN-SPAM) touch on privacy issues in marketing. Still, there is no federal law specifically regulating the use of consumer data.

Despite the lack of consumer privacy statutes in the United States, the Federal Trade Commission (FTC) has been active for years in protecting American consumers against certain unfair and deceptive practices involving data privacy. The Federal Trade Commission Act (FTC Act) includes an extremely brief section that serves as perhaps the most important provision in U.S. privacy law. Section 5 of the FTC Act states simply: "unfair or deceptive acts or practices in or affecting commerce . . . are . . . declared unlawful." This single line, which does not specifically mention privacy, has been used by the FTC and Congress to make the FTC the de facto privacy enforcement agency of the federal government.

The FTC defines "Unfair Trade Practices" as any practice that results in a substantial injury, that lacks offsetting benefits, and cannot be easily avoided by consumers. In the privacy context, the FTC often looks at practices that unreasonably leave consumers' data vulnerable to hacking or theft. Should a company collect the personal data of an individual in connection with a product or services and make inadequate efforts to protect that data, the FTC may seek enforcement for violation of Section 5 of the FTC Act. Conversely, "Deceptive Trade Practices" involve material statements or omissions that are likely to mislead consumers who are otherwise acting reasonably. Deceptive practices can include false representations or false promises. Importantly, the FTC has taken the position that failure to adhere to the steps, standards, and promises contained in a privacy notice is a deceptive trade practice. Thus, for example, should a company state in its privacy notice that it will not transfer a consumer's data to a third party, any subsequent transfer of data to third parties is likely to be considered a deceptive trade practice.

The financial penalties for unfair or deceptive trade practices can be enormous. These financial penalties can be imposed through a consent decree or through fines imposed by the FTC and approved by the courts. In many instances, the FTC will seek a consent decree with the company through which the company agrees, without admitting guilt, to pay certain

finer, stop the alleged practices, or implement new or improved privacy policies and practices. Alternatively, if the company refuses to enter a consent decree, the FTC can seek judgment through an administrative law judge. Should the company refuse to adhere to the FTC ruling, it may be fined up to \$43,280 per violation and be liable for any damages caused by the alleged acts. Importantly, each instance of the alleged privacy violation constitutes a unique violation for the purposes of such penalties, leading to potentially substantial fines.

Over the past several years, the FTC has been increasingly active in enforcing unfair and deceptive trade practices that concern consumer data privacy. In 2019 alone, the FTC brought 130 spyware and spam cases as well as 80 general privacy lawsuits. The biggest privacy case of 2019 was *In the Matter of Facebook*, in which the FTC and the social media giant agreed to a consent decree requiring Facebook to pay a five billion dollar fine and institute a broad and privacy-related corporate restructuring. This year, the FTC has commenced 102 actions related to privacy, including cases against Zoom Video Communications, Inc., Williams Sonoma, Inc., and the Western Union Company.

The ability of the FTC to impose substantial penalties on companies who willingly or unwillingly deviate from the practices described in their privacy notices makes it extremely important to routinely review and update your company's privacy notice to ensure that it accurately depicts your company's privacy practices.