

ATTORNEY KRAWCZYK EXPERT GUEST SPEAKER ON WISN 1130 AM RADIO

Attorney Claude Krawczyk was the guest speaker on the “Business Solutions” program hosted by Diane Chamness” on Saturday May 21, 2011 on WISN 1130 AM radio. Claude discussed basic intellectual property issues to include trademark and copyright registration, patents and trade secrets. In case you missed it live, [click here](#) to listen to the full broadcast.

ATTORNEY CAPREZ REAPPOINTED AS CO-CHAIR OF MILWAUKEE BAR ASSOCIATION HEALTH LAW SECTION

Attorney Timothy Caprez has recently been reappointed to serve a fourth consecutive term as Co-Chair of the Milwaukee Bar Association (“MBA”) Health Law Section. Under his direction, the MBA Health Law Section has presented numerous seminars focused on educating attorneys, executives and medical professionals on continuing developments and emergent issues within the complex legal landscape of the health care industry.

The topics on which the MBA Health Law Section has presented such seminars during the course of Attorney Caprez’s service as Co-Chair include:

- implications of recently-enacted health care reform laws;
- physician supervision issues;
- statutory, regulatory and credentialing requirements of physician assistants, nurse practitioners and clinical nurse specialists;
- hot topics for hospital in-house counsel;
- physician and facility lease arrangements;
- Stark and state law and regulations prohibiting self-referrals;
- medical staff credentialing and privileging;
- management of disruptive physicians;
- medical staff document analyses;
- Recovery Audit Contractors (“RACs”);
- HIPAA and HITECH Act obligations on physician and facilities;
- impacts of the 2009 regulations promulgated under the Patient Safety and Quality Improvement Act of 2005;
- conflict and coordination of cultural and medicinal practices; and,
- implications of reporting requirements and physician apologies related to medical errors.

Such issues are among the many types of matters in which the O'Neil Cannon health law practice provides counsel and representation to entities and individuals in nearly every sector of the health care industry, including provider health systems and networks, hospitals, clinics, long-term care and skilled nursing facilities, physician practice groups, medical suppliers, third-party insurers and individual health care professionals.

ELECTRONIC DATA AND ON-LINE INFORMATION IS OF INCREASING IMPORTANCE DURING ESTATE PLANNING

It has been estimated that over 90% of all business information today is created electronically. Use of social networking websites, such as Facebook, on-line photography accounts like Flickr, e-mail passwords and word processing files, is increasingly more common.

Various media commentators have addressed the need for individuals to consider their electronic data and on-line postings in conjunction with their estate planning. For example, the New York Times Magazine published a substantial [article](#) relating to this topic in its January 9, 2011 edition. Yet, because the rise of digital information is a relatively new phenomenon, many people have not yet fully considered or developed their plans for handling their electronic data and on-line profiles after death, or taken steps to minimize potential disputes about such items that could arise after death.

ATTORNEY DIZARD APPOINTED RECEIVER FOR TRI-STAR TOOL AND MACHINE INC.

The Waukesha County Circuit Court appointed Attorney Seth Dizard as receiver of Tri-Star Tool and Machine Inc. Dizard will oversee the business and sell the 20,000 square foot facility located in the Sussex Corporate Center. Read [article here](#).

WISCONSIN TORT REFORM STRENGTHENS HEALTH CARE PROVIDER PEER REVIEW PROTECTIONS

The Wisconsin Health Care Quality Improvement Act (“WHCQIA”), part of Wisconsin’s recently enacted tort reform bill, has revised Wis. Stat. § 146.38 to broaden peer review protections for health care providers. Section 146.38, which provides for the confidentiality of information generated or obtained during peer review or evaluation, has been expanded by WHCQIA to apply confidentiality protections to a wider range of providers, communications and proceedings.

Under WHCQIA, Section 146.38 now expressly provides that various related entities participating in those peer review processes will be afforded confidentiality protections. These statutory protections now expressly encompass peer review-related communications involving the many types of persons and entities defined as “health care providers” elsewhere in Wisconsin Statutes (Wis. Stat. § 146.81), but also authorized peer review disclosures of those providers’ employers or the parent, subsidiary or affiliate organizations of those providers or their employers.

WHCQIA has also added a defined term of “incident or occurrence report” to Section 146.38 to clarify that written and oral statements and reports related to an incident, practice or situation at issue in a review or evaluation are expressly covered by the statute’s peer review protections. (It is also worth noting that newly created Wis. Stat. § 904.16 provides similar confidentiality protections with respect to reports that providers are required to submit to certain regulatory agencies).

WHCQIA has not only broadened the scope of peer review protections with respect to the types individuals and entities and communications covered, but also the kinds of proceedings to which those protections apply. Whereas prior to WHCQIA’s enactment, Section 146.38 only provided peer review protections barring the introduction of covered communications and information as evidence in personal injury actions, the statute now prohibits the use of such information in any civil or criminal action.

A complete copy of WHCQIA can be found [here](#).

SETH DIZARD SELLS MEADOWBROOK COUNTRY CLUB

On Friday, April 8th, Attorney Dizard, as the court appointed receiver of Meadowbrook Country Club, received court approval to sell the 83 year old, 150 acre private country club to a group of local investors for \$1.425 million. The sale was essentially the culmination of the receivership of Meadowbrook Country Club which was initially filed in November of 2010 in the Racine County Circuit Court.

Read the full article [here](#).

IRS CREATES SAFE-HARBOR FOR THE DEDUCTION OF M&A SUCCESS BASED FEES

The Internal Revenue Service has created a safe-harbor election under Revenue Procedure 2011-29 to allow taxpayers to allocate seventy percent (70%) of the success-based fees paid in business acquisitions or reorganization as a deduction against current ordinary income. If the election is made, the remaining thirty percent (30%) must be capitalized. This election can be made for success-based fees incurred in years ending on or after April 8, 2011. This Revenue Procedure clears up the uncertainty that has existed in how to allocate these fees.

COURT RULES THAT DEBTOR'S INHERITED IRA QUALIFIED FOR BANKRUPTCY EXEMPTION

In *Chilton v. Moser*, a Texas Federal District Court overturned a Bankruptcy Court and ruled that an inherited IRA owned by a debtor is an exempt asset and protected under the Bankruptcy Code. This is an important decision. As more and more wealth is accumulated in 401(k)'s and rolled over into IRA's, these IRA's are often the most significant assets heirs inherit from decedents. To have these inherited IRA assets protected from the Bankruptcy process, is an enormous benefit for heirs who may be in financial trouble. One cautionary note, although this court decision is persuasive for Bankruptcy Courts in Wisconsin, it is not binding. Nevertheless, the decision should provide some comfort to heirs owning inherited IRA's who may be subject to creditor concerns.

ATTORNEY JASON SCOBY QUOTED IN WISCONSIN LAW JOURNAL

Jason Scoby was recently quoted in the *Wisconsin Law Journal* in an article about the proposed Bucyrus-Caterpillar merger. The article, titled “Bucyrus Clears Hurdle in Merger Lawsuits,” describes the Jan. 19 decision by Judge Charles Clevert Jr. of the Eastern District Court of Wisconsin in which he denied plaintiff shareholders’ motion for a preliminary injunction seeking to prevent the shareholder vote to approve the merger. The excerpt containing Jason’s quote reads:

- Attorney Jason Scoby, chairman of the Business, Banking and Corporate Law Section of the Milwaukee Bar Association, pointed out that under relevant case law, the plaintiffs needed to satisfy three requirements: irreparable harm, inadequate traditional legal remedies and a likelihood of success on the merits.
- Scoby, of O’Neil, Cannon, Hollman, DeJong and Laing SC, Milwaukee, said the court clearly explained why the plaintiffs failed to satisfy any of the three requirements.
- “The court could’ve denied the plaintiffs’ motion based on the fact that they couldn’t satisfy the first requirement, that they faced irreparable harm if the injunction was not granted,” he said. “However, the court took care to also hold that the plaintiffs failed to satisfy the other two requirements.”
- In arriving at its decision, the court alluded to the Business Judgment Rule, Scoby said. That rule provides that a court will rarely substitute its own judgment for that of the corporation’s board when the board engaged in sufficient due diligence prior to arriving at its decision.

Read the full article [here](#). The case is *City of Sterling Heights Police and Fire Retirement System v. Bucyrus International, Inc., et. al.*, Case No. 10-CV-1106.

Jason advises individuals and closely held businesses on a variety of corporate and business-related issues, including mergers and acquisitions, commercial transactions, corporate issues, franchising, contract negotiation and preparation, and business entity selection and formation.

O’Neil Cannon, founded in Milwaukee in 1973, is a full-service legal practice that primarily focuses on providing business law and civil litigation services to closely-held businesses and their owners. The firm represents corporations, institutions and partnerships at all stages of the business life cycle, helping them start, grow and transition from one generation to the next. We also assist business owners with their personal legal needs including tax and estate planning, family law and litigation—including personal injury litigation.

O'NEIL CANNON WELCOMES ATTORNEY NEWBOLD TO EXPAND LITIGATION GROUP

Attorney [Joseph D. Newbold](#) has joined the litigation practice at the downtown Milwaukee law firm of O'Neil Cannon. He will bring with him extensive experience in complex commercial and intellectual property litigation and has significant experience in trial and appellate matters in both the state and federal courts.

Prior to joining the firm, Mr. Newbold was an associate in the Chicago law firm of Freeborn and Peters LLP. While at Freeborn and Peters, Mr. Newbold worked extensively on a wide variety of matters, including representing industry leading patent holders before the Court of Appeals for the U.S. Federal Circuit and individuals standing up against large real estate developers before the Illinois Supreme Court. Mr. Newbold is a former clerk to United States District Judge Joe Billy McDade, United States Magistrate Judge Donald Wilkerson, and former United States Magistrate Judge Gerald Cohn.

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