WISCONSIN SUPREME COURT REAPPOINTS ATTORNEY MERKLE

Attorney Tom Merkle has been reappointed by the Wisconsin Supreme Court to the District 2 Committee of the Office of Lawyer Regulation. He will serve a three-year term from January 1, 2010 through December 31, 2012. The Committee consists of twenty-five attorney and 17 public members, and is responsible for investigating and recommending disciplinary actions for complaints against lawyers in the greater Milwaukee area.

Tom is one of the initial members of the Firm. He counsels his clients with general corporate and business law matters, including transactions such as acquisitions, sales, contracts, and financing. He also litigates cases involving shareholder disputes as well as family law cases involving closely-held businesses, partnerships, and professional associations.

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

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THE NEW ERA OF M&A – DECEMBER 8, 2009

Listen to expert Clare Zempel about the current economic outlook.

Learn from various professionals about what they do to make sure a deal crosses the finish line. Learn about the pitfalls and opportunities in distressed company acquisitions.

Conference Topics Include:

- Economic Outlook
- Deal Momentum: How to Get it, How to Maintain it – OCHD's attorney Peter J. Faust is one of three panelists who will discuss how to ensure a deal crosses the finish line.
- Deal Mart
- Distressed and Bankrupt Company Acquisitions

Register Here

IN YOUR BIZ: PROFIT FROM PLANNING – DECEMBER 3, 2009

Business owners, Mr. and Mrs. Jones, return ready to sell. Tune in as they learn what they need to do to ensure they get top dollar from their business. Attorney Jim DeJong is one of three advisers that will address the planning the owners need to do to:

- Maximize the value of the transaction;
- Create a sustainable business beyond the current owners;
- Develop transferable business relationships; and
- Employ effective tax and accounting strategies.

SIXTEEN OCHD ATTORNEYS AWARDED WITH SUPER LAWYERS DESIGNATION

Sixteen attorneys from O'Neil Cannon have been selected for inclusion on the Wisconsin *Super Lawyers* 2009 list.

Super Lawyers is a peer-nominated award that recognizes the top 5% of outstanding attorneys across the state of Wisconsin. The Super Lawyers are selected using a rigorous, multiphase rating process. Peer nominations and evaluations are combined with third party research, and each candidate is evaluated based on 12 indicators of peer recognition and professional achievement.

Super Lawyers:

- James G. DeJong
- Peter J. Faust
- John G. Gehringer
- Grant C. Killoran
- Dean P. Laing*
- Gregory W. Lyons
- Patrick G. McBride
- Steven J. Slawinski

Rising Stars:

- Timothy C. Caprez
- Seth E. Dizard
- Gregory S. Mager
- Chad J. Richter
- John R. Schreiber
- Robert J. Tess

**Top 50 Super Lawyers Recipient*

BUSINESS JOURNAL M&A ADVERTISING UNDERWAY

Be The Wolf

O'Neil Cannon offers an unexpected departure in a forest full of "me too" legal advertising. OCHD's reputation for superior Mergers and Acquisitions counsel is well known within the legal and financial community, but less so amongst business owners throughout Wisconsin. With the assistance of the marketing firm JacksonSpencer, an unusually bold step was taken to attract attention within the business community via the most recent issue of the Milwaukee Business Journal.

Mike Farley, President of JacksonSpencer stated, "Over the years, OCHD attorneys have been involved in many very sophisticated deals that have taken place… why shouldn't their marketing match their expertise? We wanted to move beyond a shot of lawyers in front of a library of law books. That type of marketing is supposed to mean you're trustworthy… we believe OCHD is already on everyone's A-list."

Jim DeJong, the Firm's president and member of its M&A practice group added, "What JacksonSpencer has given us is a very strong voice… and we'd like to think that business executives will consider us more carefully when complex business transactions are on the line."

The image of a wolf's menacing glare has tremendous stopping power and the headline, "What do you see?" forces the reader to choose between being predator or prey. Farley commented, "All too often, business owners feel that they're on the wrong side of the deal. In the case of this ad… the 'wrong side' could be very dangerous, indeed."
Body copy reads: "Our experience in negotiating the deal is matched by our reputation for

improving the deal. If you're unsure where you fall in the M&A food chain, you'd be wise to run with a stronger pack."

O'Neil Cannon was ranked as Milwaukee's 12th largest law firm by The Book of Lists and has been known for their strong corporate and litigation work since its founding in 1973.

BUSINESS BANKRUPTCY OPTIONS

BizTimes – Published July 24, 2009

The three most common avenues available to corporate entities seeking relief from creditors are Chapters 7 and 11 of the U.S. Bankruptcy Code, and Chapter 128 of the Wisconsin State Statutes.

In a Chapter 7 proceeding, which can be filed voluntarily by an insolvent entity, or involuntarily by an insolvent company's creditors, a trustee is immediately appointed by the court to liquidate the company's assets, on a piecemeal basis. It is not possible for a company in a Chapter 7 proceeding to remain open, or reorganize. As soon as a bankruptcy is filed, all creditors are enjoined and restrained from trying to collect their debts.

In a Chapter 11 proceeding, a company is typically able to remain in control of its affairs, and maintain day-to-day operations in the ordinary course, under supervision of the bankruptcy court, and its creditors. A company may reorganize its debts in a Chapter 11, subject to court approval, and the opportunity for creditors to scrutinize and object to the company's proposed plan for reorganization. A sale of the company, as a going concern, is also possible.

A Chapter 128 proceeding, also known as receivership, or an assignment for the benefit of creditors, is also available to Wisconsin-based companies. It is similar to a Chapter 11 proceeding, however, it takes place in the circuit court for the county in which the company has its place of business, rather than in federal court. A court-appointed receiver, usually selected by the company or the company's lender, may operate the business in the ordinary course while the receiver markets the company's assets for sale, as a going concern.

A receivership can also be started voluntarily, or involuntarily by a company's creditors. Although the filing of a receivership also restrains and enjoins creditors, generally, secured creditors (typically banks) who withhold their consent cannot be bound by a receiver's actions.

Creditors are paid, according to statutory priority, from the proceeds generated by the sale of the company’s assets, to the extent such proceeds are enough to pay secured creditors, in full. Or, in the event of a reorganization, creditors are paid, again according to priority, from the company’s ongoing revenue.

ATTORNEY SCOBY JOINS O’NEIL CANNON

Attorney Jason Scoby, a recent graduate of Marquette University Law School, *cum laude*, has joined the Corporate Practice Group of the Milwaukee law firm O’Neil Cannon He advises clients on a wide range of corporate and business-related issues, including commercial transactions governed by the Uniform Commercial Code, mergers and acquisitions, new business formation, and franchising.

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MANAGING DATA IN A LITIGIOUS WORLD

Almost 99% of today’s information created by businesses is generated and stored electronically. The ability to easily and conveniently store large amounts of data has created a hidden liability that did not exist in the age of when companies maintained its information primarily in paper format. This hidden liability is twofold. First, companies create more information then they know what to do with. Second, companies sometimes delete or destroy data and information that they actually do need.

For the unwary, these hidden liabilities may become exposed when your company is faced with a lawsuit.

In today’s litigation, the age of electronic data has generated a paradigm shift away from traditional paper documents to digital information. This shift has changed the discovery process in litigation by changing what attorneys are looking for; how they are looking; and where they are looking for relevant information. Companies can expect in today’s litigation that the way it stores and preserves electronic information will be a central topic during the discovery process that will involve not only your record custodians, but also your information technology department. How well a company manages and preserves its electronic information may be an outcome determinative factor for it in litigation.

Today, companies that find themselves involved in a lawsuit oftentimes are faced with attacks through the discovery process as to how they typically store and delete electronic information. The purpose of this inquiry is to set the expectation as to what electronic information, such as e-mails, the company should or should not reasonable have at its disposable for discovery purposes. Companies that do not have a well-drafted and followed record retention plan that addresses electronic information and which incorporates a comprehensive litigation hold policy may find itself at a significant disadvantage in trying to defend what might otherwise be a winnable case. That is why it is more important than ever for all companies, both large and small, to effectively manage their electronic information. This means that companies must be litigation ready by taking affirmative actions that effectively manages and retains electronic information. It is simply too late to start thinking about the manner and method of retention and destruction of electronic data after you have been served with a lawsuit.

The best tools to avoid these hidden liabilities is a record retention policy that addresses electronic information as well as a litigation hold policy that is designed to preserve electronic data once litigation is reasonably anticipated. A record retention policy should be designed so that your company does not destroy information that it is obligated to maintain and at the same time the policy should be designed to destroy or delete information that the company no longer needs and/or is no longer mandated to maintain. Most companies have some sort of document retention policy. These retention policies were originally implemented to manage the volume and space occupied by paper documents. Companies have been less diligent, however, in applying their retention policies to the electronic information that they store on their servers and individual computer hard drives. This lack of diligence in managing electronic data has created a treasure trove for plaintiffs' lawyers looking for the proverbial "smoking gun," such as that e-mail that explains exactly what motivated the company's decision to terminate that troublesome employee.

A litigation hold policy has long been an important concept in litigation. In simple terms, it means that once you are sued, you have to stop destroying documents. It is an easy concept to understand when applied to paper documents, but it becomes a much more complicated task when dealing with electronic information. Electronic evidence can easily disappear, be altered or destroyed if not properly preserved. For example, some companies' computer systems provide for automatic deletion of e-mails and documents, so stopping that process takes an affirmative effort on behalf of management. When implementing a legal hold, a company needs to address the hold requirement from a team effort. Business units, IT, records management and custodial personnel, and either in-house or outside counsel need to be involved and work together in the process of implementing the hold.

How your company routinely stores or destroys electronic data has become an increasingly important subject during a lawsuit. As more lawyers become sophisticated in this topic, companies can expect, as routine, that there electronic records management policies and practices will be warily scrutinized. Consequently, it will be too late to start thinking about electronic data, the method and manner of retention as well as the deletion of such data after you have been served with a lawsuit. The failure to have a properly drafted record retention policy as well as a litigation hold policy may result in serious and adverse consequences for your company and may compromise your company's ability to defend itself in a lawsuit. For example, failure to have these policies in place can result in court-imposed sanctions, adverse jury instructions and significant monetary awards. Thinking ahead and addressing the hidden liabilities created by your electronic information can save your company time and money, and, more importantly, potentially prevent your company from having to incur an unnecessary judgment as the result of electronic information being inadvertently deleted.

Register for Managing Data in a Litigious World Webinar on July 22

THE LAW FIRM OF OCHD WELCOMES ATTORNEY TIMOTHY CAPREZ

O'Neil Cannon recently added Attorney Timothy Caprez as part of the law firm's expansion of its litigation and corporate law practices. Mr. Caprez brings to OCHD significant experience in counseling and representing clients with respect to compliance and dispute resolution efforts in heavily-regulated industries and occupations, with a particular emphasis in complex healthcare and labor and employment issues. Licensed in Wisconsin and Illinois, Mr. Caprez advises and litigates on behalf of entities and individuals in relation to a wide variety of corporate governance, transactional and employment and personnel management matters.

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ATTORNEY CANNON AMONG MILWAUKEE’S FIVE STAR WEALTH MANAGERS

Tom Cannon of O’Neil Cannon is among the 7 percent of the wealth managers in the Milwaukee area, to be chosen as a FIVE STAR: Best in Client Satisfaction Wealth Manager. Cresendo Business Services, an independent third party, presents this award to assist consumers in selecting a wealth manager who provides exceptional client satisfaction. Wealth managers were evaluated based upon nine criteria, reviewed by regulatory agencies and a blue-ribbon panel which was comprised of knowledgeable individuals from within the financial services industry.

Attorney Cannon and other members of OCHD represented the majority of directors of the De Rance Foundation, the world’s largest Catholic charity from 1984-1999. In 1992, Cannon helped establish the Archdiocese of Milwaukee Supporting Fund with an initial gift of $70 million. This entity continues to be a major philanthropic presence in Milwaukee today.

OCHD is a full-service legal practice with offices in Milwaukee and Port Washington. Founded in 1973, the firm focuses its practice on corporate law, tax, estate and succession planning, real estate and construction and civil litigation.