

PROTECTING YOUR ASSETS: AUTOMOBILE LIABILITY INSURANCE MAY NOT BE ENOUGH

“Don’t worry, I have plenty of automobile insurance.” Such a belief is shared by many individuals, including those who have just been injured in a serious automobile accident as a result of the negligence of another, and also by those who have just caused one. In either situation, insurance coverages and the amount of such coverages are of paramount importance. Insurance is a complicated subject and, therefore, it is not surprising that many people do not completely understand what coverages they have, or do not have. Insufficient protection, regardless of who caused the accident, is commonplace.

When an individual consults an attorney due to injuries that were caused by another driver, one thing an attorney does early on is evaluate the amount of insurance available to compensate the injured party. All too often with serious injury cases, there is inadequate insurance and, consequently, the injured party does not receive fair and reasonable compensation. Generally, Wisconsin does not require drivers to have automobile insurance. Even when they do have insurance, however, Wisconsin law allows insurance carriers to sell drivers as little as \$25,000 per person and \$50,000 per accident of automobile liability coverage. If the party causing your injuries has only \$25,000 in insurance limits, but your injury claim is worth \$425,000, for example, you may then be forced to try to recover the additional \$400,000 from the wrongdoer’s personal non-exempt assets. A lot of people do not have any or many non-exempt assets and, as a result, injured parties are often times insufficiently compensated for their injuries.

What can you do to protect yourself and your family from an underinsured wrongdoer? One easy answer is to purchase “underinsured motorists” coverage (often referred to as “UIM” coverage). UIM coverage is purchased under your own policy and acts as supplemental coverage to the other driver’s liability limits. For example, if the wrongdoer has limits of \$25,000, you have a claim worth \$425,000, and you have \$500,000 of UIM coverage, you would receive \$25,000 from the wrongdoer’s carrier and the remaining \$400,000 from your own carrier.

Why is it that so many people don’t have, or don’t have enough, UIM coverage, especially when the extra premium for UIM coverage is nominal compared to the protection it provides? Nobody effectively informed them that this coverage was available and/or its purpose was not adequately explained are the likely answers. Prior to 1995, neither insurance companies nor agents were required to inform insureds that UIM coverage was available. The Wisconsin legislature recognized this problem and the resulting shortfall to individuals injured by underinsured motorists, and insurers have since been required to provide written notice to insureds informing them of the availability of UIM coverage as well as a brief description of

the coverage. The 1995 law was helpful, but interpreting this law resulted in much confusion and debate. The Wisconsin Office of the Commissioner of Insurance, recognizing the importance of UIM coverage and policyholder knowledge of its availability, took action earlier this year by amending its administrative rules and creating others. While insurance companies have notice obligations that have now been clarified, policyholders should take steps to make sure they understand this important coverage.

Although “uninsured motorists” coverage (often referred to as “UM” coverage) is better understood and is found in every Wisconsin automobile liability policy as required by Wisconsin law, that law only requires that limits of \$25,000 per person and \$50,000 per accident be included in each policy. The previous example demonstrates that higher UM limits will also provide enhanced protection when you are injured by a wrongdoer who has no automobile liability insurance. Again, the premium for increasing your UM coverage is minimal.

On the other hand, if you cause an automobile accident, severely injuring someone, and your liability coverage is insufficient to pay the injured party’s damages, your non-exempt assets can be stripped away from you to pay the deficiency. To protect your assets and future earnings, sufficient liability insurance is necessary. Umbrella (or excess) policies minimize your personal exposure by providing supplemental coverage to your underlying policy limits. A large limits umbrella policy that supplements your automobile and homeowners’ liability policies may be well worth the additional premium cost.

Significantly, an umbrella policy purchased by you may also be utilized as a source of compensation to you; that is, when an uninsured or underinsured driver causes damages to you which exceed that wrongdoer’s insurance limits and also exceed the UM and UIM limits of your own automobile policy. However, you must specifically purchase UM and UIM coverages to be included as part of your umbrella. A common mistake is to assume that your umbrella policy includes UM and UIM coverages, just because your automobile policy has these coverages. Although not all insurance carriers offer UM or UIM coverage as part of an umbrella, those that do provide it do so at a relatively low premium cost.

Loss prevention measures are the ideal way to minimize injuries and liabilities, but accidents happen and preparing for the consequences must be done proactively. Regardless of who causes the injuries, individuals have the control to increase their recovery potential and minimize their exposure through the purchase of proper and sufficient insurance.

FOURTEEN OCHD ATTORNEYS AWARDED SUPER LAWYERS DESIGNATION

MILWAUKEE, WIS (November 16, 2007) – Fourteen attorneys from O’Neil Cannon have been selected as Wisconsin Super Lawyers for 2007.

Super Lawyers is a peer-nominated award recognizing the top 5% outstanding attorneys across the state of Wisconsin. The attorneys included in the Super Lawyer listing are: * Jim DeJong * Angela Campion * Tom Cannon * Paul Dirkse * Seth Dizard * Pete Faust * Herb Humke III * Dean Laing * Greg Lyons * Gregory Mager * Patrick Mc Bride * Randy Nash. Additionally, Dean Laing was selected as one of the Top 50 Super Lawyers in the state.

Angela Campion, Paul Dirkse, Seth Dizard, Herb Humke III, and Gregory Mager were selected as Super Lawyers Rising Stars.

O’Neil, Cannon, Hollman, DeJong, S.C. is a full-service legal practice focusing on business law, estate planning, and major complex litigation with offices in Milwaukee, Port Washington, and Sheboygan. The firm was established in 1973 and is now listed as one of the Milwaukee-area’s largest law firms.

OCHD SUCCESSFULLY DEFENDS BUILDER AGAINST CONSTRUCTION DEFECT LAWSUIT

Milwaukee, Wis. (October 5, 2007) – A recent Ozaukee County jury trial resulted in a decision in favor of a client of O’Neil Cannon. The case involved a dispute between a homeowner and the builder of the home in which the homeowner sued the builder for alleged construction defects.

Attorney Steve Slawinski successfully defended the builder. The jury found in favor of the builder, resulting in no recovery for the homeowner. The trial court then granted the builder’s motion to have the homeowner pay the builder’s attorney fees, according to the terms of the contract between the two parties.

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CARL BUESING ELECTED TREASURER OF THE WISCONSIN ASSOCIATION OF COUNTY CORPORATION COUNSEL

Sheboygan, Wisconsin (October 9, 2007) – Carl K. Buesing, a municipal and litigation attorney with the Sheboygan office of O’Neil Cannon, was recently elected Treasurer of the Wisconsin Association of County Corporation Counsel at the group’s Fall meeting in Wisconsin Dells.

The Wisconsin Association of County Corporation Counsel is a specialized bar association comprised of attorneys who represent Wisconsin counties and county boards. Under a unique arrangement with Sheboygan County, the O’Neil law firm handles all civil matters for the county, from shoreland zoning prosecutions to airport hangar lease drafting to open meeting advice. Carl Buesing has been assigned by the firm and Sheboygan County as the lead attorney for these matters and has acted as the designated Sheboygan County Corporation Counsel since 2001.

Carl has had an eclectic legal practice starting out as the district attorney of a small northern Wisconsin county where he prosecuted three homicides in his first year of office. From that early experience, he has built a litigation practice involving subjects as varied as will contests to construction contract disputes.

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OCHD ATTORNEYS TO PRESENT “LEGAL ENTITIES AND INTELLECTUAL PROPERTY” AT UW MILWAUKEE

Milwaukee, Wisconsin (October 9, 2007) – Attorneys Angela Champion and Chad Richter will present, “Legal Entities and Intellectual Property” at Fast Trac New Venture programs held at the UW Milwaukee Small Business Development Center on October 9 and October 18, 2007. The session will cover key legal considerations for standard business entities (sole proprietorship, general partnership, corporation, limited partnership, LLP, and LLC), how to

protect intellectual property (patents, trademarks, copyrights, licenses), using an intellectual property attorney, and tips for entrepreneurs to protect proprietary interests.

The Fast Trac New Venture Program is a program sponsored by the School of Continuing Education at the University of Wisconsin, Milwaukee. The program is designed to help participants explore entrepreneurship, develop a business concept, and write a business plan.

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CRYSTAL FIEBER TO PRESENT "IMMIGRATION AND YOU"

Sheboygan, Wisconsin (October 9, 2007) – On October 9 and 10, 2007, Attorney Crystal Fieber will discuss "Immigration and You" at Money Smart Week Wisconsin seminars. The October 9th session will be held at Plymouth High School at 6:00 pm, and the October 10th session will be held at Sheboygan South High School at 6:00 pm. Both sessions cover the common and expensive pitfalls to avoid when immigrating through a family member.

Crystal Fieber is an attorney with the law firm of O'Neil Cannon Crystal counsels individuals, businesses, and municipalities in a variety of areas: including, estate planning, zoning and land use, immigration, and the prosecution and defense of civil claims. She also assists municipalities and individuals with ordinance drafting and prosecution as well as eviction and foreclosure proceedings. In addition, she speaks Spanish, and utilizes this skill to assist individuals and businesses with immigration-related issues.

Money Smart Week Wisconsin is a public awareness initiative aimed at building financial knowledge to help Wisconsin residents deal with money more quickly, confidently, and shrewdly. The initiative is a creation of the Governor's council on Financial Literacy created by Wisconsin Governor Jim Doyle. For more information, visit www.moneysmartwi.org.

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DEAN LAING FEATURED IN FREEMAN PUBLICATIONS

Milwaukee, Wisconsin (September 14, 2007) - Dean Laing, a litigation attorney at the law firm of O'Neil Cannon was recently featured in articles appearing in the *Waukesha Freeman* and the *Oconomowoc Enterprise*.

The articles chronicled the story of Dean's family and how growing up with two brothers with cerebral palsy impacted Dean's career choice, spurring him towards an impressive career in both corporate and personal injury litigation. The article, entitled "A Brotherly Bond," appeared in the *Oconomowoc Enterprise* on September 6, 2007 and in the *Waukesha Freeman* on September 12, 2007. The complete article can be viewed by clicking [here](#). Dean is the Practice Group Leader for the Firm's litigation practice. He has been with the firm his entire legal career, since graduating *cum laude* from Marquette University Law School in 1983. Dean has been repeatedly recognized as one of Milwaukee's and Wisconsin's top trial attorneys, and exhibits a tremendous passion for the law and his clients. He has litigated some of the largest cases in Wisconsin, including representing Mitsubishi Heavy Industries America in the Miller Park dispute, and obtaining many million dollar settlements and verdicts for his clients.

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CHAD RICHTER TO PRESENT "THE BASICS OF FRANCHISING"

Milwaukee, Wisconsin (September 7, 2007) - On October 5, 2007, Attorney Chad J. Richter will discuss "The Basics of Franchising" at a franchise seminar presented by the UWM Small Business Development Center.

The seminar will focus on entrepreneurship through franchising. Other speakers include a franchise consultant and a current franchise owner.

Chad Richter is an attorney with the law firm of O'Neil Cannon Chad assists clients with a

variety of corporate and business law matters such as the formation and organization of various types of business entities under operating, shareholder, and subscription agreements, including the preparation of financial and disclosure documentation. Chad has focused his practice on the structuring of business relationships under franchise, licensing, and distribution arrangements, and has worked with numerous franchise and dealership models, representing both franchisors/grantors and franchisees/dealers.

The UWM - Small Business Development Center (SBDC) is a department of the University of Wisconsin - Milwaukee that works with new entrepreneurs to turn ideas into viable business concepts, and with established entrepreneurs to improve business performance.. For more information, visit www.uwm.edu.

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MAKE SURE YOU ASK FOR WHAT YOU WANT - INSPECTIONS, TESTING, OR BOTH

One of the smartest things a potential homebuyer can do in connection with the purchase of a new home is to have an inspection of the property conducted by a licensed home inspector prior to closing. Such inspections tend to be money well spent as they provide the potential homebuyer with a more detailed picture of the condition of the house and the various components and mechanicals that may be otherwise unknown to the untrained eye.

While the commonly used WB-11 Residential Offer to Purchase provides for a home inspection contingency, some buyers are surprised to learn that the standard language contained in this form offer places certain limitations on what the seller is permitting the buyer to do by agreeing to an inspection contingency. As such, a buyer needs to make sure that they ask for what they want.

The WB-11 Residential Offer to Purchase defines "inspection" as an "observation of the property, which does not include testing of the property other than testing for leaking carbon monoxide or testing for leaking LP gas or natural gas used as a fuel source." A typical home inspection will address the condition of the foundation, basement, structural components, roof, attic and visible insulation, as well as the walls, ceilings, windows, doors, and floors. It will also cover the heating system, air conditioning system, plumbing, and the electrical systems. However, testing, other than testing for leaking carbon monoxide or LP gas or

natural gas, is not authorized in the WB-11 Residential Offer to Purchase.

The WB-11 Residential Offer to Purchase defines “test” as the “taking of samples of materials such as soils, water, air or building materials from the Property and the laboratory or other analysis of these materials.” While buyers may look at the definition and decide that a “test” would be an unnecessary expense, the fact is that some very important information about the property may not be discovered unless certain testing is performed. For example, depending on the age, condition and history of the house, there may be mold, lead based paint or possibly asbestos present. However, testing for the presence of such hazards is not permissible in the standard WB-11 Residential Offer to Purchaser.

Additionally, another potential hazard that homebuyer should consider is a radon test. Radon is naturally occurring, colorless, odorless gas and has been connected to health problems due to concentrated exposure. Because every region in the state has been found to have some elevated levels of radon and since you cannot predict radon levels based on state, local, and neighborhood radon measurements, it has been recommended that every homebuyer (and every homeowner) should have a radon test performed. Again, however, based on the standard WB-11 Residential Offer to Purchase language, a Buyer would not be permitted to have a radon test completed unless specific language is added to the offer which would permit such testing.

By ensuring that your offer to purchase properly addresses your home inspection and testing needs, you can move forward with your home purchase with peace of mind.

WISCONSIN COURT OF APPEALS RULES IN FAVOR OF OCHD’S CLIENT

On July 3, 2007 the Wisconsin Court of Appeals issued a decision in favor of OCHD’s client, Mitsubishi Heavy Industries America, Inc., in an appeal of a case arising out of the construction of Miller Park, home of the Milwaukee Brewers. That case involved the issue of which of Mitsubishi’s insurers, Federal Insurance Company or Travelers Property Casualty Company of America, had the obligation to pay the attorney and expert fees incurred by Mitsubishi in defending the 2002 lawsuit filed against it by the Southeast Wisconsin Professional Baseball Park District.

In the lawsuit filed by the Baseball Park District against Mitsubishi, the Baseball Park District sought \$50 million in damages from Mitsubishi for Mitsubishi’s alleged negligent design and erection of the stadium’s retractable roof. Mitsubishi denied that the roof contained any

defects caused by its design or erection, and filed a counterclaim against the Baseball Park District seeking additional costs incurred by Mitsubishi in erecting the roof due to material changes made by others to the roof's design after Mitsubishi bid the job. The case ultimately settled in 2005, with Mitsubishi paying nothing on the Baseball Park District's claims and receiving \$18 million on its counterclaim.

Following that settlement, Federal Insurance Company requested that the trial court order Travelers Property Casualty Company of America to reimburse it approximately \$28 million which Federal paid to Mitsubishi and two other insureds for attorney and expert fees incurred by them in litigation the underlying lawsuit. The trial court ruled in Federal's favor.

In rejecting Travelers' appeal of the trial court's ruling, the Court of Appeals held that Travelers, as the primary insurer on the project, and not Federal, as the excess insurer on the project, should have paid the attorney and expert fees of Mitsubishi and the two other insureds, and that Travelers was not entitled to a reduction of its obligation in that regard. In its decision, the Court of Appeals held that:

- "The trial court, on three occasions over nearly thirteen months, ruled repeatedly that Travelers had a duty to defend Mitsubishi... . Each time, Travelers refused to undertake the defense."
- "In the context of Travelers' repeated refusal to undertake any defense, the trial court repeated this finding on several subsequent occasions, and ultimately found that Travelers breached its duty to defend as to all three insureds. Still, Travelers did not undertake the defense of any party."
- "We perceive no good policy reason to reward Travelers ... for its repeated refusal to defend — even after being repeatedly told it had a contractual duty to do so — by reducing the amount the trial court has determined it owed. Such reduction would reward a primary carrier for a wrongful refusal to defend and create something akin to a litigation expense game of 'chicken' — with offsets going to the obligated primary insurer who breached its duty. Travelers is not entitled either by contract or equitable principles to reduce its obligations because an excess carrier, Federal, performed a duty that belonged to Travelers but which Travelers refused to honor."

Mitsubishi will receive approximately \$3.5 million as a result of the Court of Appeals' decision.