

# O'NEIL CANNON SERVES AS LEGAL ADVISOR TO I3 PRODUCT DEVELOPMENT IN ITS SALE TO HELIOS TECHNOLOGIES

O'Neil Cannon advised i3 Product Development (i3) in its recent sale to Helios Technologies (NYSE: HLIO). i3, a custom engineering services firm with over 55 engineers, specializes in electronics, mechanical, industrial, embedded, and software engineering. Its solutions are used across many sectors, including medical, off-highway, recreational and commercial marine, power sports, health and wellness, agriculture, consumer goods, industrial, sports, and fitness. i3 has business locations in both Sun Prairie and Middleton, Wisconsin.

Helios Technologies is a global leader in highly engineered motion control and electronic controls technology for diverse end markets, including construction, material handling, agriculture, energy, recreational vehicles, marine, and health and wellness.

Josef Matosevic, Helios' President and Chief Executive Officer, stated, "The acquisition of i3 Product Development will turbocharge our efforts to be the most innovative company focused on the intersection of the hydraulics and electronics markets. This flywheel acquisition fits into our technology roadmap strategy like a glove and will continue to make us incredibly tough for our competition to follow."

The O'Neil Cannon deal team was led by Attorney Chad Richter with assistance provided by O'Neil Cannon attorneys Britany Morrison, Nick Chmurski, Erica Reib, Sam Nelson, and Michael Kennedy.

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## TAX AND WEALTH ADVISOR ALERT: POWERS OF APPOINTMENT - A TOOL TO ADD FLEXIBILITY INTO AN ESTATE PLAN

A power of appointment is a legal instrument that grants an individual (the "appointee") the authority to decide how a particular asset or assets will be distributed upon the death of the individual who created the power (the "donor"). The appointee can exercise this power during their lifetime or in their will, and they can direct the asset to be given to any person or entity they choose.

When selecting the type of power of appointment to include in an estate plan, the donor

generally has two options: 1) a general power of appointment, or 2) a limited power of appointment.

A general power of appointment allows the appointee to direct the asset to an entity or individual of their choosing without restriction. In contrast, a limited power of appointment restricts the appointee's choices to a specific group of people or entities.

Powers of appointment can be useful in estate planning for several reasons. First, they provide flexibility in the distribution of assets. The donor can create a power of appointment that allows the appointee to redirect the asset if the original beneficiary is unable to receive it for any reason, such as if they pass away before the donor or if they disclaim their inheritance.

Second, powers of appointment can be used to address changes in circumstances that occur after the estate plan is created. For example, if the donor's family circumstances change, they can create a power of appointment that allows the appointee to redirect the asset to a different family member or to a charitable organization.

Third, powers of appointment can be used to minimize taxes. By creating a power of appointment, the donor can direct the asset to be distributed in a way that minimizes the tax burden on their estate and the estate of the ultimate beneficiary.

In conclusion, powers of appointment can be a useful tool in estate planning. They provide flexibility, allow for changes in circumstances, and can minimize taxes. However, it is important to work with a qualified estate planning attorney to ensure that powers of appointment are created and implemented correctly to achieve the intended goals.

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## **ATTORNEY SETH DIZARD TO RECEIVE 2023 JUDGE DALE E. IHLENFELDT BANKRUPTCY AWARD**

The Eastern District of Wisconsin Bar Association announced that attorney Seth Dizard has been selected as the recipient of the 2023 Judge Dale E. Ihlenfeldt Bankruptcy Award. This honor will be presented to Dizard during the EDWBA's annual meeting May 25 at Saint Kate – The Arts Hotel.

The Judge Dale E. Ihlenfeldt Bankruptcy Award recognizes individuals who have demonstrated outstanding work in the practice of bankruptcy and insolvency law in the

Eastern District of Wisconsin.

To learn more about how Dizard and O'Neil Cannon can assist you or your business, please visit our [Banking, Receivership and Creditors' Rights](#) page or contact us at 414-276-5000.

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## ESTATE PLANNING ATTORNEY ERIC PETERSON JOINS O'NEIL CANNON

Attorney Eric Peterson, a 2016 graduate of Marquette University Law School, has joined O'Neil Cannon. He is a member of the firm's Estate and Succession Planning Practice Group, where he will assist clients in all matters relating to estate planning, succession planning, and trust administration. Eric's experience provides him a deep understanding of the intricacies in preserving and distributing assets for individuals and families. With a personalized approach, Eric is dedicated to helping clients navigate the complexities of estate planning and crafting comprehensive strategies that align with their goals and wishes. We are very pleased to welcome Eric to O'Neil Cannon.

O'Neil Cannon, founded in Milwaukee in 1973, is a full-service law firm that focuses on meeting the many needs of businesses and their owners. Our experienced attorneys work with businesses and their owners at all stages of the business life cycle, helping them start, grow, and transition their businesses. We also assist business owners with their personal legal needs, including tax and estate planning and family law. For more information about the services we provide, please visit our [website](#) or contact your O'Neil Cannon attorney.

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## THE WILAW QUARTERLY NEWSLETTER

### Newsletter Article Highlights:

- Employee Retention Credit: Maximizing COVID Relief by Supplementing PPP
- The Death of Lisa Marie Presley Leads to Brewing Trust Dispute
- Spousal Lifetime Access Trusts, A Powerful Estate Planning Tool for Complex Estates

### Firm News:

- Christa Wittenberg Elected to the Firm's Board of Directors
- O'Neil Cannon Serves as Legal Advisor to Diamond Vogel, Inc. in Acquisition of

- Subsidiary of The Sherwin-Williams Company
- O'Neil Cannon Ranked in 2023 "Best Law Firms"

Click the image below to read more.



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## **EMPLOYEE RETENTION CREDIT (ERC): MAXIMIZING COVID RELIEF BY SUPPLEMENTING PPP**

The Paycheck Protection Program has been commonly heralded as the foremost source of financial relief for businesses during COVID-19. However, the Employee Retention Credit or "ERC," is a lesser-known replacement or supplement for PPP that has remained largely unleveraged by employers. Enacted in March of 2020 under the CARES Act, the ERC provides qualifying employers with tax relief and potential refundable tax credits for all or a portion of the 2020 and 2021 tax years, up to \$26,000 per full time employee in the best-case scenarios. Although originally created under the CARES Act, the ERC has been the subject of numerous amendments, modifications and IRS interpretations, all of which have muddied the waters for employers seeking to responsibly and accurately file for the credit. With this complex backdrop, this article will describe the general requirements and procedure for claiming the credit in addition to answering frequently asked questions regarding the same. However, any employer seeking to file for the ERC should first coordinate with its advisors, particularly its accountants and attorneys, to ensure accuracy, navigate potential pitfalls, and to avoid liabilities in applying for and claiming the credit.

### **How to Qualify - Eligible Employers**

The threshold question for any business seeking to claim ERC is whether the business constitutes an "eligible employer," a requirement that can be met in one of three ways. Eligible employers must fall into one of the following categories:

1. The business was fully or partially suspended due to a government order during 2020, 2021, or some period therein ("Full or Partial Suspension");
2. The business experienced a significant decline in gross receipts during a 2020 or 2021 quarter ("Sales Testing"); or
3. The business was a "recovery startup."

For clarity, both for-profit as well as non-profit organizations may take advantage of the ERC

provided that the entity constitutes an eligible employer.

**Full or Partial Suspension:** For a business to constitute an eligible employer via Full or Partial Suspension, the Federal government, or a state or local government having jurisdiction over the business, must have promulgated orders or other mandatory proclamations or decrees that suspend more than a nominal portion of the business's operations. Under Full or Partial Suspension, a business will constitute an eligible employer for those periods of time that the applicable governmental orders caused the business to be fully or partial suspended.

**Sales Testing:** For a business to constitute an eligible employer via Sales Testing, the business must have experienced a significant decline in gross receipts for each calendar quarter in which the business is claiming the ERC.

- For 2020, a business will be deemed to experience a significant decline in gross receipts beginning as of the first 2020 calendar quarter in which the business's gross receipts measure less than 50% of gross receipts for the same calendar quarter in 2019, and this Sales Testing period will continue to run until the first calendar quarter after the business's gross receipts measure more than 80% of gross receipts for the same calendar quarter in 2019.
- For 2021, a business will be deemed to experience a significant decline in gross receipts for each calendar quarter in which the business's gross receipts measure less than 80% of gross receipts for (i) the same calendar quarter in 2019 or (ii) the immediately preceding calendar quarter in 2019. Additionally, for businesses not in existence in 2019, a business may opt to use 2020 calendar quarters as the comparative quarters for Sales Testing.

**Recovery Startups:** For a business to constitute an eligible employer as a recovery startup, the business must have begun operations after February 15, 2020, and have less than \$1,000,000 in revenue for the applicable calendar year(s).

### **Extent of Employee Retention Credit - Qualified Wages**

For those businesses that constitute an eligible employer, the ERC is (i) limited to a percentage of "qualified wages" paid to employees during the applicable calendar quarter, and (ii) first credited against "applicable employment taxes," with the remainder refunded to the taxpayer, all with different rules applicable in different calendar quarters.

- **2020 Q1 - Q4:**
  - For eligible employers with no more than 100 full time employees, qualified wages mean all wages paid to any W-2, full time employee, during the Full or Partial Suspension or Sales Testing Period.
  - ERC is limited to \$5,000 per employee, equivalent to 50% of the qualified wages paid to each employee during the applicable Full or Partial Suspension or Sales Testing period up to \$10,000 in qualified wages per employee for the entire 2020

calendar year.

- **2021 Q1 - Q3:**

- For eligible employers with no more than 500 full time employees, qualified wages mean all wages paid to any W-2, full time employee, during the Full or Partial Suspension or Sales Testing Period.
- ERC is limited to \$7,000 per employee per fiscal quarter, equal to \$21,000 across the first three quarters of 2021, equivalent to 70% of the qualified wages paid to each employee during the applicable Full or Partial Suspension or Sales Testing period up to \$10,000 in qualified wages per employee per fiscal quarter.

- **2021 Q3 - Q4:**

- The same rules as 2021 Q1 - Q3 apply, but recovery startup businesses may claim ERC not to exceed \$50,000 for quarters 2021 Q3 and 2021 Q4, provided that the recovery startup does not qualify for or claim ERC under Full or Partial Suspension or Sales Testing.
- Additionally, for 2021 Q4, ERC is only available for businesses that constitute post recovery startups and is no longer available for businesses via Full or Partial Suspension or Sales Testing.

## **Coordination with Other Programs - PPP and ERC**

ERC may be limited for otherwise eligible employers when the business took part in other COVID relief or tax credit programs. Although an eligible employer may claim ERC even if the business received PPP loan forgiveness, the employer's qualified wages taken into account for ERC purposes must be reduced by any qualified wages constituting "payroll costs" in connection with PPP loan forgiveness. Additionally (among several other limitations), to avoid double-dipping on wage-based tax credits, wages taken into account for various other tax credits, including the following, may not also be utilized in claiming ERC: (i) R&D tax credit; (ii) Indian Employment Credit; (iii) Active-Duty Members Credit; (iv) Work Opportunity Tax Credit; and (v) Empowerment Zone Employment Credit.

## **Claiming the Employee Retention Credit - Procedure and Applicable Deadlines:**

Today, the method by which an eligible employer claims the ERC is by amending its Form 941 quarterly federal tax returns (via Form 941-X). Additionally, businesses will generally have to amend their income tax returns in connection with claiming the ERC as any deductions taken for qualified wages will have to be reduced to the extent of the ERC received. The credit is available for as long as a business is able to amend its original form 941s. For an eligible employer's 941s filed in connection with the 2020 fiscal year, the business will generally have until April 15, 2024, to file a 941-X, three years after the general deemed filing date for such 941s. For an eligible employers 941s filed in connection with the 2021 fiscal year, the business will generally have until April 15, 2025, to file a 941-X, three years after the general deemed filing date for such 941s. However, due to the lead time associated with filing for, being approved for and receiving any applicable refund in connection with the ERC, as well as the general requirement that the business's applicable

income tax returns be amended, businesses desiring to claim the ERC should consider taking steps to claim the credit sooner rather than later, allowing for significant lead time.

### **Disclaimer - Seek Legal and Accounting Advice**

Given the legal and accounting complexity associated with the Employee Retention Credit, any individual or business seeking to claim the credit must reach out and coordinate with their attorneys and accountants to determine the extent to which they qualify for ERC, if at all. This article is for informational purposes only and should not be relied on as either legal or accounting advice.

For questions or further information relating to the Employee Retention Credit please contact Attorney Samuel D. Nelson or Attorney Chad J. Richter.

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## **O'NEIL CANNON SERVES AS LEGAL ADVISOR TO DIAMOND VOGEL, INC. IN ACQUISITION OF SUBSIDIARY OF THE SHERWIN-WILLIAMS COMPANY**

O'Neil Cannon advised Diamond Vogel, Inc. in its recent acquisition of N92 Menomonee Falls, LLC, a subsidiary of The Sherwin-Williams Company. The acquired business, founded in 1951 as Raabe Paint Company, is based in Menomonee Falls, Wisconsin. It employs approximately 100 employees and manufactures color-match touch up paint, custom aerosol, and other specialty coatings.

According to Jeff Powell, Diamond Vogel's President and CEO, the acquisition allows Diamond Vogel to accelerate its aerosol growth strategy. In addition, the Menomonee Falls team's expertise in aerosol manufacturing adds depth and breadth to Diamond Vogel's already existing aerosol manufacturing capabilities. Diamond Vogel, Inc., based in Orange City, Iowa, is a manufacturer of high-quality paint and coatings. Diamond Vogel also has manufacturing operations in Sheboygan Falls, Wisconsin because of its previous acquisition of Faase Paint Company's aerosol manufacturing business.

The O'Neil Cannon deal team was led by Attorney Jim DeJong with assistance provided by O'Neil Cannon attorneys Britany Morrison, JB Koenings, Joseph Gumina, Nick Chmurski, and Sam Nelson.

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# TAX AND WEALTH ADVISOR ALERT: SELECTING A FIDUCIARY - ONE OF THE MOST IMPORTANT DECISIONS IN AN ESTATE PLAN

When creating an estate plan, one of the most critical decisions you will make is selecting a personal representative and trustee, also known as “fiduciaries.” A fiduciary is a person or institution entrusted with the responsibility of managing assets and carrying out the terms of your estate plan. Choosing the right fiduciary is essential, as they will play a significant role in ensuring your assets are managed and distributed according to your wishes. This blog post explores the various options available for selecting a personal representative and trustee in your estate plan.

## **Family Member**

Many people choose a family member to act as their personal representative and trustee. This option has several advantages, including the fact that a family member is likely to have a personal connection to you and your family, and they may be better able to understand your wishes. However, it is important to consider the potential drawbacks of selecting a family member as your fiduciary. Family members may lack the necessary expertise to manage complex assets or make difficult decisions, and they may also be emotionally invested in the outcome of the estate plan, which can lead to conflicts of interest.

## **Corporate Fiduciary**

Another option is to select a corporate fiduciary as your personal representative and trustee. Corporate fiduciaries have experience managing assets and carrying out the terms of estate plans, which can be an advantage in complex situations. Additionally, corporate fiduciaries have the resources to handle complex financial matters and the ability to remain impartial when carrying out your wishes. However, a corporate fiduciary may have limited knowledge of your personal wishes, the needs of your family, and may lack a personal relationship with your family.

## **Lawyers or Accountants**

A lawyer can also act as your personal representative and trustee in your estate plan. Lawyers have a deep understanding of the legal and financial aspects of estate planning and can provide valuable guidance and support throughout the process. Furthermore, lawyers are trained to remain impartial and objective, ensuring that your wishes are carried out according to your intentions. However, a lawyer may have limited knowledge of your

personal wishes or the needs of your family, and may lack a personal relationship with your family. An accountant can also act as your personal representative and trustee in your estate plan. Accountants have experience in managing financial matters, preparing tax returns, and financial record keeping, and can provide valuable guidance and support in estate planning matters.

Selecting a personal representative or trustee is one of the most important decisions you can make in your estate plan. It is important to consider all options so that you select the best fiduciary to carry out your wishes in your estate plan.

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## **TAX AND WEALTH ADVISOR ALERT: CHARITABLE REMAINDER TRUSTS, A DYNAMIC ESTATE PLANNING TOOL TO REDUCE TAXES AND DO GOOD**

Charitable Remainder Trusts (CRTs) are a powerful tool for those looking to support their favorite causes while also securing a steady income stream for themselves or their loved ones. These trusts are essentially a way to give cash or other property to an irrevocable trust, with the donor receiving an income stream for a set term of years or for life, while the remaining assets go to the named charity at the end of the trust term.

One of the biggest benefits of CRTs is the immediate income tax charitable deduction that donors receive when they fund the trust. This deduction is based on the present value of the assets that will eventually go to the charity and can be a significant reduction in the donor's overall tax burden.

Another great feature of CRTs is that they can be structured to defer the payment stream, making them an effective income stream during retirement. Additionally, donors can couple a CRT with a [Donor-Advised Fund \(DAF\)](#) to have even more control over how their charitable dollars are invested and distributed.

For donors with highly appreciated assets, CRTs are an excellent way to defer capital gains taxes. When appreciated property is contributed to a CRT, the capital gains tax is deferred until the time that it is distributed out to the income beneficiary, allowing the donor to diversify their position in a tax-effective manner.

Funds or property contributed to a CRT may be removed from the donor's estate for estate

tax purposes which may reduce estate taxes in some cases. However, there may be gift tax consequences if the donor names a non-spouse non-charitable beneficiary to receive the income from the CRT.

It's important to note that with a CRT, the individual recipient of the distributions from the CRT during the term of the CRT must pay tax on such distributions, and it is categorized into four tiers: (1) income and dividends; (2) capital gains; (3) tax-exempt income; and (4) return of principal.

In summary, CRTs coupled with a DAF can be a great option for donors seeking a current or future income stream. It is recommended that clients work with a qualified estate planning attorney to confirm that a CRT will provide the expected results from a tax and administration perspective.

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## **TAX AND WEALTH ADVISOR ALERT: DONOR-ADVISED FUNDS, A GREAT WAY TO DO CHARITABLE GIVING**

Donor-advised funds, or DAFs, are a popular way for individuals to support charitable organizations they care about while also receiving potential tax benefits. A DAF is essentially a charitable investment account that allows individuals to make a tax-deductible donation and then invest those account funds for tax-free growth. The individual can then recommend grants to virtually any IRS-qualified public charity.

Creating a DAF is simple and straightforward. First, an individual must establish a "giving account" with a public charity. Many financial institutions and community foundations may also be the sponsoring organizations of these accounts. Second, the individual must make a donation of cash, securities, or other assets to the giving account. This donation is generally eligible for an immediate tax deduction. Finally, the funds in the giving account can then be invested for tax-free growth.

One of the benefits of a DAF is that it allows individuals to see their donation grow over time. Most sponsoring organizations offer a variety of investment options for the charitable dollars in the giving account. This means that individuals can choose an investment strategy that aligns with their goals and risk tolerance.

Another benefit of a DAF is that individuals can support virtually any IRS-qualified public charity with grant recommendations from the account. This includes local homeless shelters,

alma maters, religious institutions, and more. The public charity sponsoring the account will conduct due diligence to ensure that the funds are used for charitable purposes.

In conclusion, DAFs are a great way to support charities you care about while also receiving tax benefits. They are easy to set up, offer tax-free growth, and give you the flexibility to support virtually any IRS-qualified public charity at a pace that is comfortable for you. If you are looking for a way to make a meaningful impact on the causes you care about, a DAF may be an excellent option for you.