CHRISTA WITTENBERG ELECTED TO THE FIRM'S BOARD OF DIRECTORS

O'Neil Cannon is pleased to announce that Attorney Christa Wittenberg was recently elected to serve on the firm's Board of Directors, beginning on July 1. Christa has been with the firm since 2014 as a member of the Litigation Practice Group, where she assists businesses and individuals with pursuing and defending a variety of complex civil litigation matters. Christa is the Chairperson for the Communications Committee at the State Bar of Wisconsin and is a member of the Boards of Directors of LOTUS Legal Clinic, the Association for Women Lawyers, and the Eastern District of Wisconsin Bar Association. She looks forward to applying her leadership skills and her passion for service to ensure that O'Neil Cannon maintains its status as a premier law firm and continues to serve its clients effectively and efficiently.

Christa will be filling the seat of Attorney Dean Laing, who will be stepping down from the firm's Board of Directors after 33 years in that position. Dean is also the immediate past President and Managing Shareholder of the firm, having served in those roles from 2015-2020. He will continue with the firm as a shareholder. The firm is extremely grateful for Dean's strong leadership over the years.

TAX AND WEALTH ADVISOR ALERT: QUALIFIED PERSONAL RESIDENCE TRUSTS – A PLANNING TECHNIQUE TO SAVE THE FAMILY HOME FROM ESTATE TAXES

A Qualified Personal Residence Trust (QPRT) allows a homeowner to transfer their personal residence to a trust for a specified period of time, after which the residence is transferred back to the homeowner or to a designated beneficiary. QPRTs are often used as a tax-saving strategy for homeowners who want to reduce the value of their estate for estate tax purposes.

One of the main benefits of a QPRT is the ability to remove the value of a personal residence from the homeowner's estate. By transferring the residence to a trust for a specified period of time, the homeowner is able to reduce the value of their estate and, as a result, reduce the amount of estate taxes that will be due upon their death.

Another benefit of a QPRT is the ability to maintain the use of the residence during the term

of the trust. The homeowner can continue to live in the residence and pay a reduced rent to the trust for the use of the residence. This allows the homeowner to continue to enjoy the residence while also reducing the value of their estate. QPRTs are subject to certain rules and limitations, such as a requirement that the term of the trust cannot exceed the life expectancy of the homeowner and that the fair market rent must be paid to the trust for the use of the residence.

Overall, a QPRT can be a useful tool for homeowners looking to reduce the value of their estate for estate tax purposes while also maintaining the use of their personal residence.

TAX AND WEALTH ADVISOR ALERT: IRREVOCABLE LIFE INSURANCE TRUST, A TECHNIQUE TO ELIMINATE ESTATE TAXES ON LIFE INSURANCE PROCEEDS AND TO PROVIDE LIQUIDITY TO AN ESTATE PLAN

An Irrevocable Life Insurance Trust (ILIT) is a special kind of trust that is designed to own life insurance. The key characteristic of an ILIT is that it is irrevocable, meaning that it cannot be changed or dissolved once it is created. This characteristic is important because it allows the trust assets to be removed from the estate of the person who creates it, which can help to reduce estate taxes.

An ILIT requires at least one trustee to manage the trust and a beneficiary to receive the proceeds of the life insurance policy. The person who creates the trust, known as the grantor, will typically transfer a life insurance policy into the trust and pay the premiums on the policy. The beneficiary of the trust is typically the family of the grantor.

One of the main benefits of an ILIT is that the proceeds from the life insurance policy are not subject to estate taxes. This can help to reduce the overall tax burden on one’s estate and ensure that more of the assets are passed on to one’s intended beneficiaries.

Another benefit of an ILIT is that it can provide a source of liquidity for one’s estate. The proceeds from the life insurance policy can be used to pay any outstanding debts, taxes, or other expenses that may arise after the grantor’s death.

In order for an ILIT to be effective, it is important that the grantor does not retain any incidents of ownership over the life insurance policy. This includes foregoing the rights to

change the beneficiary, borrow against the policy, or cancel the policy. If the grantor retains any of these rights, the life insurance policy will be considered part of the grantor's estate and subject to estate taxes.

In summary, an ILIT is a type of trust that is used to hold a life insurance policy and can help to reduce estate taxes by removing the policy from the grantor's estate. It requires a trustee to manage the trust and a beneficiary to receive the proceeds of the life insurance policy, and it can provide a source of liquidity for the estate. It is important to keep in mind that the grantor should not retain any incidents of ownership over the life insurance policy for the ILIT to be effective.

THE RECENT DEATH OF LISA MARIE PRESLEY LEADS TO BREWING TRUST DISPUTE

Inheritance Disputes are Common Even Among the Wealthy

An inheritance dispute appears to be brewing following the recent death of Elvis Presley's only child, Lisa Marie. According to various news outlets, Lisa Marie appointed her mother, Priscilla Presley, and her then manager, Barry Siegel, as co-trustees of her trust in 1993. Following Lisa Marie's death on January 12, 2023, Priscilla discovered an amendment to the trust purportedly signed in 2016 that replaced both Priscilla and Barry Siegel as co-trustees.

According to Priscilla, there are various reasons the 2016 amendment may be invalid. One of these reasons is because the purported trust amendment was not delivered to Priscilla during Lisa Marie's lifetime as required under the terms of the original trust. Priscilla also raised concerns over the authenticity of the document and the signatures on the document itself.

Ultimately, a California court will be tasked with sorting through these issues that may pit a grandmother against her grandchildren.

Disputing an Amendment to a Trust in Wisconsin

The Wisconsin Trust Code recognizes the right for the settlor of a revocable trust to amend that trust. The capacity necessary to amend a trust is the same as the capacity required to make a will. The Wisconsin Trust Code holds that the terms of a trust prevail over any provision of the Wisconsin Trust Code unless certain exceptions exist.

It is not clear on the face of the Wisconsin Trust Code how a Wisconsin court would treat the specific claim Priscilla Presley appears to be making – that the amendment is not valid

because it was not delivered to her as required by the terms of the trust. The Wisconsin Trust Code states that a settlor "may revoke or amend a revocable trust" by "substantial compliance with the method provided in the terms of the trust." Here, a Wisconsin court would have to review the terms of the Presley trust and determine whether the other components of the amendment without delivery to Priscilla amounted to "substantial compliance."

If a trust does not provide a method to revoke or amend a trust, Wisconsin recognizes one may be able to revoke or amend a trust by referencing the trust or the trust property as part of a will or codicil or by "[a]ny other method manifesting clear and convincing evidence of the settlor's intent."

Challenging or seeking to uphold a trust amendment can be complicated and fact intensive. These issues also oftentimes deal with dynamic family relationships. If you are a trustee and a beneficiary is seeking to challenge a trust amendment or a beneficiary who has questions involving a trust amendment, it may be best to reach out to an attorney with experience handling matters under the Wisconsin Trust Code.

Trevor C. Lippman is a shareholder at the law firm of O'Neil Cannon. Trevor assists clients with all matters related to inheritance disputes, including questions surrounding the creation and administration of trusts and wills. Since graduating from University of Wisconsin Law School in 2013, Trevor has assisted hundreds of clients navigate the difficult waters involved in elderly financial abuse allegations and inheritance litigation. Trevor prides himself on protecting the rightful legacies of those who have passed on and seeks to understand each client's unique concerns. To schedule an initial consultation with Trevor, call 414.276.5000 or email Trevor directly at trevor.lippman@wilaw.com.

SPOUSAL LIFETIME ACCESS TRUSTS, A POWERFUL ESTATE PLANNING TOOL FOR COMPLEX ESTATES

The Spousal Lifetime Access Trust (SLAT) is a type of irrevocable trust that allows married couples to transfer assets to their spouse and other family members while removing those assets from their combined estates. This type of trust can help high net worth individuals take advantage of the federal lifetime gift and estate tax exclusion, which is currently $12.92 million per person in 2023, or $25.84 million per married couple, while still retaining limited access to the assets, if needed.

A SLAT is created by one spouse (the “donor” spouse) gifting property to an irrevocable trust for the benefit of the other spouse (the “non-donor” spouse). The non-donor spouse is the primary beneficiary of the trust and can request distributions from the trustee, if needed, during their lifetime. However, most advisors recommend that the non-donor spouse not request distributions from the SLAT unless it is absolutely necessary to maintain their accustomed standard of living.

The donor’s transfer of assets to the SLAT is considered a taxable gift, but gift tax may not be owed if the donor utilizes their Federal gift and estate tax exclusion. The assets and any future appreciation is removed from the donor’s taxable estate and the trust is excluded from the non-donor’s taxable estate as well.

A SLAT can offer many benefits such as:

- Allows married couples to reduce the size of their estate while retaining limited access to the assets.
- Allows the donor to indirectly benefit from the property gifted to the trust, as long as the non-donor spouse is living and remains married to the donor.
- The non-donor spouse can request distributions from the trustee of the trust to maintain their accustomed standard of living.
- Appreciation of the assets outside the donor’s estate for the benefit of their descendants.

SLATs are a sophisticated estate planning tool and should be created with the assistance of a qualified attorney. They can provide significant benefits to married couples looking to transfer wealth to the next generation while still retaining access to the assets.

THE WILAW QUARTERLY NEWSLETTER

Newsletter Article Highlights:

- IRS Postpones $600 Payment Processor 1099-K Reporting Requirement
- How Do Wisconsin’s New LLC Laws Impact My Company?
- Legal Planning for your College Student
- Religious Accommodation in Employment Will Have Its Day at the High Court

Firm News:

- Super Lawyers Recognizes 25 O’Neil Cannon Attorneys
- Grant Killoran Joins the Board of Directors of Milwaukee Film, Inc.
- Attorney Seth Dizard Recently Featured in Super Lawyers

- O’Neil Cannon Ranked in 2023 “Best Law Firms”

Click the image below to read more.

EMPLOYMENT LAWSCENE ALERT: RELIGIOUS ACCOMMODATION IN EMPLOYMENT WILL HAVE ITS DAY AT THE HIGH COURT

In recent years, the U.S. Supreme Court has made major employment law headlines with its *Bostock* decision (holding sexual orientation and gender identity are protected classes under Title VII) and *Epic Systems* decision (holding class-action waivers are enforceable against employees), among others. It looks like 2023 will be no different. In addition to taking up the rights of employers to sue unions for damages incurred during strikes and asking the Solicitor General to weigh in on what actions can be the basis for a discrimination suit under Title VII, the Supreme Court is also poised to reshape the landscape of religious accommodations.

Under Title VII, employers are prohibited from discriminating against individuals because of their religion in hiring, firing, and other terms and conditions of employment. In addition, employers must reasonably accommodate the religious practices of an employee or a potential employee, unless doing so would pose an “undue hardship” to the employer. Such accommodations may include flexible scheduling, voluntary substitutes or swaps, job reassignments, lateral transfers, changes to dress and grooming codes, and protection of workplace religious expression. Currently, under the 1977 Supreme Court decision *Trans World Airlines, Inv. v. Hardison*, an “undue burden” is defined as “more than *de minimis* cost” or a minor burden. This definition stands in fairly stark contrast to the Americans with Disability Act definition of “undue burden,” which is “significant difficulty or expense.”

Because employers have had fairly significant leeway when it comes to religious

accommodation, this area of law has not seen significant litigation, as religious discrimination claims account for only 3.4% of all EEOC charges in fiscal year 2021. However, the tides may be turning, particularly if *Hardison* is overruled. In January, the Supreme Court agreed to hear oral arguments in a case that could be poised to change the "undue burden standard" for religious accommodation. In *Groff v. DeJoy*, a Christian letter carrier objected to delivering packages for Amazon on Sundays and asked for an accommodation that he never be required to work on Sundays due to his religious beliefs. The U.S. Postal Service rejected this request, stating that granting it would be an undue burden because it would cause tension among other employees who would be required to work on Sundays. The U.S. Postal Service did offer to let the employee switch shifts with other employees, if any of them were willing to do so. The District Court and the Court of Appeals for the Third Circuit ruled in favor of the U.S. Postal Service, citing *Hardison* and the minimal burden the employer needed to show to reject the request for accommodation. Although conventional wisdom would typically indicate that the conservative super-majority on the high court is likely to rule in favor of the corporation, given this Supreme Court's openness to arguments of religious discrimination in other contexts and both Justice Alito's and Justice Gorsuch's prior criticism of *Hardison*, the current definition of what is a "de minimis" burden in religious accommodation cases is likely to change in favor of the employee. Whether that change brings the religious accommodation definition of "undue burden" closer to the ADA's definition or creates some newly defined test remains to be seen.

Employers should stay tuned for the outcome of *Groff* and should, in the meantime, carefully consider any requests for religious accommodation with an eye toward a potentially increased burden on the employer to show that the requested accommodation creates an undue burden. As always, O'Neil Cannon is here for you. We encourage you to reach out with any questions, concerns, or legal issues you may have.

TAX AND WEALTH ADVISOR ALERT: IRS POSTPONES $600 PAYMENT PROCESSOR 1099-K REPORTING REQUIREMENT

In a year-end gift of sorts to tax professionals, payment processing companies, and individuals pursuing eBay and other small-transaction side hustles, the IRS has delayed a new transaction reporting requirement that some believed would cause confusion among taxpayers and tax preparers alike.

Many More Payments Were to Be Reported to the IRS

The new reporting requirement would have required companies such as Venmo, PayPal, eBay, and Etsy that process business-related payments to provide each individual who received more than a total of $600 in reportable transaction payments from the company in 2022 with a form 1099-K and to report those payments to the IRS. Formerly the 1099-K reporting requirement was not triggered unless an individual received more than $20,000 in reportable payments in more than 200 transactions in a calendar or tax year.

So, for example, if an eBay seller earned more than $600 from eBay auctions in 2022, eBay would have been required to report that total to the IRS and to send the seller a form 1099-K reflecting those payments. This would be the case for any payment processor that made payments to individuals or businesses for business-related transactions (StubHub, Etsy, Airbnb, Venmo, Zelle, Square, and the like). In each case, if any one individual or company was paid more than $600 for business-related transactions in 2022, the payment processor would have been required to report the total amount paid to the IRS, and the recipient of the payments would receive a form 1099-K reflecting that total.

Concerns About Errors and Confusion

There was widespread concern that given the lower reporting threshold of $600 per year, many individual taxpayers would receive erroneous 1099-Ks that mistakenly included non-reportable transactions. A Venmo payment for splitting dinner checks with a friend is one example. Only properly reportable transactions, such as payments for business-related products or services, should trigger a 1099-K, and the risk of error with the lower threshold was significant. Of course, those erroneous amounts would also have been reported to the IRS, creating headaches for taxpayers, tax preparers, and the IRS.

The IRS Has Delayed the New Reporting Requirement

In late December 2022, the IRS issued a notice delaying the implementation of the $600 threshold for the 1099-K reporting requirement until 2023, meaning taxpayers should not be receiving 1099-Ks from payment processors such as eBay and PayPal unless the old $20,000/200-transaction threshold was reached during the year.

This does not mean taxpayers are not required to declare all their 2022 income, of course. It simply means that if a taxpayer’s transactions for the year were under the $20,000/200-transaction threshold, payments won’t be reported to the IRS by the payment processors and the taxpayers won’t receive a form 1099-K for amounts they’ve received.

Be Prepared for 2023

Note that the IRS is not abandoning the new $600 reporting requirement; it's simply giving payment processors, tax professionals, and taxpayers another year to ensure they are prepared to implement it. This means that if you're a taxpayer and you receive payments from online transactions such as eBay, Etsy, StubHub, or Airbnb, or if you have clients pay you via Venmo or Paypal, it's essential for you to keep track of the money you receive via these payment processing services. You should also make sure you pay close attention to non-business payments you receive from friends and family when you split a dinner check or share a weekend cabin rental.

Keep track of expenses you incur related to the reportable payments you receive – for example, if you buy and resell concert tickets, the cost of the original ticket you purchased is an expense related to the money you receive from selling the ticket. Doing so will usually reduce your reportable income. And the more you keep good records, the easier it will be to ensure that any 1099-K forms you receive for 2023 payments are accurate and properly reflect the money you've been paid for goods or services you provided.

Note That Things May Change

The new $600 threshold for 1099-K reporting provoked a predictable backlash from the payment processing industry. Some members have formed an advocacy group called the Coalition for 1099-K Fairness to draw attention to the new requirement and encourage the IRS to, at a minimum, delay its implementation. With the IRS's decision in late 2022 to postpone enforcement of the new rule for a year, at least one of this group's requests has been met (though the IRS did not specifically reference the Coalition when it issued its notice).

According to a survey conducted on behalf of the Coalition, millions of what they call "casual sellers" make less than $5,000 per year selling used or pre-owned goods online. For most of these people, the Coalition argues that selling things online is not their primary source of income; think "side-gig." One industry concern is that if millions of people start receiving 1099-K forms for casual transactions, many may stop selling online to avoid the hassle of keeping records of revenues and expenses as though they are operating a full-fledged business.

On the other side is the idea that even "casual sellers" should include their income from smaller-scale transactions on their tax returns. And the thought is that if taxpayers are aware that the revenue they receive from these casual sales is being reported to the IRS, they will be more inclined to include it (or the portion that is properly reportable as income) on their tax returns.

That said, there is no dispute that the new $600 reporting threshold is a drastic change from the old $20,000/200-transaction threshold, and that complying with the new 1099-K reporting requirement will be significantly more burdensome for payment processors of all types. While the $600 threshold may be changed in response to industry and taxpayer pressure, there is no guarantee this will happen, so payment processors and taxpayers should continue to act as though the threshold will remain where it is for 2023.

For questions or further information relating to form 1099-K reporting, please contact Attorney Britany E. Morrison.

GRANT KILLORAN JOINS THE BOARD OF DIRECTORS OF MILWAUKEE FILM, INC.

Grant Killoran of O'Neil Cannon was recently elected to serve on the Board of Directors of Milwaukee Film, Inc.

Milwaukee Film is a nonprofit arts organization dedicated to entertaining, educating, and engaging the community through cinematic experiences, with a vision to make Milwaukee a center for film culture. It operates the Oriental Theatre, a historic cinema palace committed to high-quality and accessible film and education programming. Since 2009, its annual Milwaukee Film Festival has brought together film fans and filmmakers to celebrate the power of cinema. Its education programs and cultures and communities platform provide avenues toward making the Greater Milwaukee community a more empathic and equitable place for everyone to live.

Grant is a shareholder with O'Neil Cannon and past chair of the firm's Litigation Practice Group. He has diverse business dispute resolution and trial experience, focusing on complex business and health care disputes.

HOW DO WISCONSIN'S NEW LLC LAWS IMPACT MY COMPANY?

In April of 2022, Wisconsin passed new business entity laws, greatly impacting limited liability companies and their members, and largely overhauling and replacing Chapter 183 of the Wisconsin Statutes, which governs LLCs. This article will help you identify the key changes under the new LLC laws, as well as point you towards the next steps in preparing for this overhaul—including decisions to be made before year-end. For purposes of this article, we'll refer to the new Chapter 183, the Wisconsin Uniform Limited Liability Company Law (WULLCL), as the "New LLC Laws," and refer to the pre-WULLCL Chapter 183 as the "Old LLC Laws."

The first significant deviation from the Old LLC Laws impacts your LLC's operating agreement—the agreement governing the relationship between the members or owners of an LLC. Under the New LLC Laws, the meaning of an "operating agreement" has been expanded to include not only your formal, written agreements (if you have one), but also any verbal agreements, implied understandings, and any combination thereof. It has always been important for the members of an LLC to have a written operating agreement to clearly set forth the understandings governing their relationship. However, that importance is magnified under the New LLC Laws now that you must ensure that ancillary agreements, whether verbal or implied, do not rule the day on a particular issue or disagreement between members.

The New LLC Laws have also brought changes to the reach of certain fiduciary duties that members or managers may owe one another. Under the Old LLC Laws, members and managers of an LLC could waive some of these duties, including those duties of good care and loyalty, as well as the obligation of good faith and fair dealing. However, under the New LLC Laws, these duties are now mandated against members and managers by default unless otherwise provided for in your operating agreement (subject to restraints on how far fiduciary duties can be limited). With that said, if your LLC has an operating agreement currently in place that provides for the waiver of these duties, that waiver will be valid and honored under the New LLC Laws.

Another impactful departure from the Old LLC Laws relates to a member's authority to act on behalf of your LLC simply by virtue of their status as a member (commonly referred to as "apparent authority"). Under the New LLC Laws, the members of your LLC are not automatically granted the authority to act on behalf of the company merely because they are members. Instead, this authority needs to be established, most often either by documentation in your LLC's operating agreement, or by filing a Statement of Authority with the Wisconsin Department of Financial Institutions ("WDFI"). Whichever the method, those documents need to set forth who or what positions in your LLC possess the authority to act on behalf of the company as an agent.

The New LLC Laws may also broaden the rights of certain members to access information regarding your LLC, purely as a result of their membership status, and with no regard for

their role in management. Where the Old LLC Laws were silent as to a dissociated member's right to access an LLC's information, the New LLC Laws make clear that dissociated members possess the same rights to access, inspect and copy information regarding an LLC and its activities as an active member possesses, albeit these rights must be exercised through a representative. This means that under the New LLC Laws, a dissociated member may have the right to access certain sensitive information regarding your LLC, including its financial statements, subject to certain statutory restrictions or restrictions set forth in your operating agreement.

Depending on your circumstances, it may also be worth considering some of the more technical updates brought on by the New LLC Laws, particularly with respect to your LLC's Articles of Organization—your company's charter. For one, under the Old LLC Laws, the management designation had to be set forth in your LLC's Articles. However, under the New LLC Laws, if you want your LLC to be managed by a manager or group of managers specifically rather than the members generally, then your LLC's operating agreement must provide for this designation, but its Articles can remain silent as to the same. With that said, your LLC's Articles, in addition to your operating agreement, may still provide for a management designation if your members so choose. Additionally, under the New LLC Laws, your LLC's Articles must provide for both a street address and an email address for your LLC's registered agent.

Given all these updates, the WDFI has provided LLCs with the opportunity to opt in to the New LLC Laws early or opt out in favor of the Old LLC Laws. If you want your LLC to opt in to the New LLC Laws, you can either file a Statement of Applicability no later than December 31, 2022, or, alternatively, do nothing between now and the end of the year and your LLC will automatically be governed by the New LLC Laws beginning January 1, 2023. However, if you want your LLC to opt out of the New LLC Laws and continue to be governed by the Old LLC Laws, **you must file a Statement of Nonapplicability no later than December 31, 2022**. Additionally, this opt-out filing should be paired with member or manager approval, likely in the form of a consent resolution approving the filing.

If you have any doubts or concerns about your LLC being governed under the New LLC Laws, it may be worth filing a Statement of Nonapplicability before the end of the year, even if only precautionary. If you ever decide to be governed by the New LLC Laws in the future, you can simply file a Statement of Applicability and opt in, but once opted in—whether by default on January 1, 2023, or by an opt-in filing—your LLC cannot revert back to governance under the Old LLC Laws.

As always, O'Neil Cannon is here for you. We encourage you to reach out with any questions, concerns, or legal issues you may have.