FOUR OCHDL ATTORNEYS NAMED 2022 "LAWYER OF THE YEAR" IN THE MILWAUKEE AREA BY BEST LAWYERS®

Attorneys Seth Dizard (Bankruptcy and Creditor Debtor Rights / Insolvency and Reorganization), Pete Faust (Mergers and Acquisitions), Greg Lyons (Litigation – Insurance), and Steve Slawinski (Construction) have been named by Best Lawyers® as the 2022 **"**Lawyer of the Year" in Milwaukee for their area of practice.

Only one lawyer in each practice area and designated metropolitan area is honored as the "Lawyer of the Year." Lawyers are selected based on the assessments of other leading lawyers in the same category.

This designation reflects the high level of respect lawyers have earned for their abilities, professionalism, and integrity.

---

19 OCHDL LAWYERS SELECTED AS 2022 BEST LAWYERS®; ANOTHER 5 NAMED BEST LAWYERS: ONES TO WATCH

We are pleased to announce 19 of our lawyers have been included in the 2022 Edition of *The Best Lawyers in America,* and an additional five have been selected as 2022 *Best Lawyers: Ones to Watch*.

The following are the O'Neil, Cannon, Hollman, DeJong and Laing lawyers named to the 2022 lists:

Best Lawyers in America

- Douglas P. Dehler – Litigation – Insurance
- James G. DeJong – Corporate Law, Mergers and Acquisitions Law, and Securities / Capital Markets Law
- Seth E. Dizard – Bankruptcy and Creditor Debtor Rights / Insolvency and Reorganization Law and Litigation – Bankruptcy
- Peter J. Faust – Corporate Law and Mergers and Acquisitions Law

- John G. Gehringer – Commercial Litigation, Construction Law, Corporate Law, and Real Estate Law
- Joseph E. Gumina – Employment Law – Management and Litigation – Labor and Employment
- Dennis W. Hollman – Corporate Law and Trusts and Estates
- Grant C. Killoran – Commercial Litigation and Litigation – Health Care
- JB Koenings – Corporate Law
- Dean P. Laing – Commercial Litigation, Personal Injury Litigation – Plaintiffs, and Product Liability Litigation – Defendants
- Gregory W. Lyons – Commercial Litigation and Litigation – Insurance
- Patrick G. McBride – Commercial Litigation
- Joseph D. Newbold – Commercial Litigation
- Chad J. Richter – Business Organizations (including LLCs and Partnerships) and Corporate Law
- John R. Schreiber – Bankruptcy and Creditor Debtor Rights / Insolvency and Reorganization Law and Litigation – Bankruptcy
- Jason R. Scoby – Corporate Law
- Steven J. Slawinski – Construction Law

Best Lawyers: Ones to Watch

- Trevor C. Lippman – Litigation – Trusts and Estates
- Erica N. Reib – Labor and Employment Law – Management and Litigation – Labor and Employment
- Kelly M. Spott – Trusts and Estates
- Christa D. Wittenberg – Commercial Litigation

About Best Lawyers

Best Lawyers has published their list for over three decades, earning the respect of the profession, the media, and the public as the most reliable, unbiased source of legal referrals.

Best Lawyers: Ones to Watch recognizes associates and other lawyers who are earlier in their careers for their outstanding professional excellence in private practice in the United States.

Lawyers on *The Best Lawyers in America* and *Best Lawyers: Ones to Watch* lists are divided by geographic region and practice areas. They are reviewed by their peers on the basis of

professional expertise, and they undergo an authentication process to make sure they are in current practice and in good standing.

HEALTH CARE LAW ADVISOR ALERT: NEW FEDERAL REGULATIONS TAKE AIM AT HEALTH CARE PROVIDER BILLING

Health care providers should be aware of new regulations the U.S. Department of Health and Human Services (HHS) and other agencies issued in July that relate to medical billing practices.

Part I of the long-awaited regulations to implement the federal No Surprises Act was published on July 13, 2021. The regulations are applicable for plan or policy years beginning on or after January 1, 2022. HHS, along with the Department of the Treasury and Department of Labor, issued rules that implement the statutory provisions in the No Surprises Act. This federal law, enacted in 2020, was discussed in an earlier blog article. The new regulations mirror the statutory provisions and provide guidance on interpreting and applying the No Surprises Act. In particular, the new regulations clarify the methodology for calculating the qualifying payment amount (QPA)—a calculation that will often be used to evaluate the amount health plans pay providers for treatment that falls under the No Surprises Act, including out-of-network emergency care. The regulations also outline requirements for certain health care providers to post and provide consumers with a notice related to balance billing restrictions, and the criteria for providers to obtain the consent necessary to balance bill for non-emergency out-of-network services.

The new regulations do not yet address the independent dispute resolution (IDR) process applicable when health plans and providers do not agree on the amount to be paid for out-of-network care that falls under the Act. This IDR process is an important aspect of the No Surprises Act, and the continued uncertainty may make it difficult for health care providers to plan for the coming year. Regulations on this topic are expected to be issued soon.

The federal government is accepting public comments through September 7, 2021, and may modify the regulations based on those comments.

The attorneys who contribute to the Health Care Law Advisor are available to assist health care providers with a variety of legal matters. Please contact us if you need assistance navigating the new regulations.

THE WILAW QUARTERLY NEWSLETTER

Newsletter Article Highlights:

- A Recent Supreme Court Decision Narrows the Scope of Trespasser Immunity
- Wisconsin Landlord Subjected to Tenancy in Jail
- Estate Planning Considerations for Second Marriages
- What Does President Biden's Executive Order on Non-Competes Mean for Wisconsin Employers?
- Did the United States Supreme Court Just Suggest a Change to the Established Public Health Constitutional Framework?

Firm News:

- Attorney Greg Lyons Named Fellow with the American Bar Foundation
- Attorney Grant Killoran Published in the *Wisconsin Lawyer*

Click the image below to read more.



EMPLOYMENT LAWSCENE ALERT: WHAT DOES PRESIDENT BIDEN'S EXECUTIVE ORDER ON NON-COMPETES MEAN FOR WISCONSIN EMPLOYERS?

On Friday, July 9, 2021, President Biden signed an Executive Order that, among other things, instructed the Federal Trade Commission ("FTC") to ban or limit non-compete agreements

and other clauses or agreements that "unfairly limit worker mobility." This is not a federal ban on non-compete agreements and does not change any current law. It is important to note, however, that the FTC and the U.S. Department of Justice Antitrust Division, through civil and criminal enforcement actions, have already been looking at no-poach agreements between employers and other competitive restrictions through the lens of antitrust and consumer protection laws and have begun to indict those employers who have entered into anti-competitive agreements that adversely affect America's labor market. To comply with President Biden's Executive Order, the FTC will likely go through a notice and comment period and eventually issue regulations governing the enforceability of restrictive covenants. Although a full federal ban on restrictive covenants is unlikely and any FTC rule would be subject to legal challenges, there may be limitations for certain workers (e.g., those in lower wage positions) or those in certain industries (e.g., retail, hospitality). Therefore, employers will need to stay informed on the progress of these regulations.

This is also a good reminder for Wisconsin employers to review their employee restrictive covenants, including non-disclosure, non-solicitation, and non-compete agreements. Regardless of any potential updates to federal law, Wisconsin has its own state statute regulating restrictive covenants – Wis. Stat. § 103.465. Wisconsin's statute imposes certain requirements for a restrictive covenant to be valid, including reasonable time and geographic limitations. Given the new focus on non-competes by the federal government, it is worthwhile for employers to have their restrictive covenants reviewed to evaluate enforceability and ensure that they're being appropriately used to protect those legitimate business interests recognized by law. As always, O'Neil Cannon is here for you. We encourage you to reach out to our labor and employment law team with any questions, concerns, or legal issues you may have, including those regarding restrictive covenants and related issues.

ATTORNEY GRANT KILLORAN PUBLISHED IN THE WISCONSIN LAWYER

Grant Killoran authored an article in the June, 2021 edition of the *Wisconsin Lawyer* magazine, entitled "The Legal Treatment of Vaccine Injury Claim." Their article analyzes how claims for vaccine injury, including claims related to the newly-developed COVID-19 vaccines, are handled under existing law, including the statutory processes applicable to such claims.

Read the full article here.

ATTORNEY GRANT KILLORAN FEATURED IN THE ABA JOURNAL

Grant Killoran is featured in the June/July edition of the *ABA Journal* along with the other nominees for the American Bar Association's Board of Governors. Grant is the nominee for the District 9 seat on the ABA Board of Governors, which includes the states of Wisconsin, Minnesota, and Missouri. The election for the ABA Board of Governors will take place at the ABA's Annual Meeting in Chicago in August, 2021.

You can read the full article here.

TAX AND WEALTH ADVISOR ALERT: REMINDER–DEADLINE FOR Q2 ESTIMATED TAX PAYMENTS IS JUNE 15

The U.S. Internal Revenue Service has issued a reminder to taxpayers who pay estimated taxes that they have until June 15 to pay their estimated tax payment for the second quarter of tax year 2021 without incurring a penalty.

Estimated tax is the method used to pay tax on income that isn't subject to withholding, including income from self-employment, interest, dividends, rent, gains from the sale of assets, prizes, and awards. Taxpayers may also have to pay estimated tax if the amount of income tax withheld from a salary, pension, or from other income isn't sufficient to cover their entire tax liability.

Additional information regarding who needs to make Federal and Wisconsin estimated tax payments and how to make such payments can be found here.

For questions or further information relating to estimated tax payments, please contact Attorney Britany E. Morrison.

ATTORNEY STEVE SLAWINSKI TO PRESENT AT THE UPCOMING STATE BAR OF WISCONSIN ANNUAL MEETING AND CONFERENCE

Attorney Steve Slawinski will be presenting at the State Bar of Wisconsin Annual Meeting and Conference on Thursday, June 10. The session will focus on establishing, proving up, and collecting damages incurred by prime and subcontractors in an array of scenarios, including unforeseen site conditions, changes in scope of work, delays resulting from utility conflicts, and more.

The 2021 Annual Meeting and Conference lineup includes outstanding educational sessions, with topics that cover every practice area and experience level. If you would like to register for this virtual event click here.

A RECENT SUPREME COURT DECISION NARROWS THE SCOPE OF TRESPASSER IMMUNITY

A recent decision delivered by the Wisconsin Supreme Court has demonstrated that even a simple bar fight can have a drastic impact on Wisconsin's legal precedent. Such decision occurred in the case of *Stroede v. Society Insurance and Railroad Station, LLC*, where the court ruled that the off-duty employee who escorted a drunk patron out of a bar does not have immunity from the negligence lawsuit that followed when the patron fell down a flight of stairs and suffered injuries. *Stroede* sheds light upon the scope of immunity granted to "possessor[s] of real property" under Wis. Stat. § 895.529 against legal claims brought by injured trespassers.

The main facts of the case are as follows: David Stroede was drinking at a bar in Saukville, Wisconsin in 2014. Stroede became severely intoxicated and punched another bar patron. Initially, Stroede was removed from the bar by one of its on-duty employees. Jacob Tetting, an off-duty employee, was also in the bar that night having dinner with his family and witnessed Stroede attempt to re-enter the bar shortly after he was removed. Tetting grabbed Stroede by the shoulders and began to walk him out of the bar yet again. While escorting Stroede out, Tetting released Stroede near the bar's stairwell and Stroede tumbled down the stairs suffering serious injuries. Stroede, thereafter, filed suit against Tetting, the

bar, and the bar's insurer.

Tetting argued that he was entitled to immunity under Wis. Stat. § 895.529, which states that "a lawful occupant of real property" has no duty of care to trespassers and because Mr. Stroede was a trespasser at the bar after he was initially removed for starting a fight, Tetting owed him no duty of care. However, the Court's decision hung on the determination of whether Tetting was an "other lawful occupant"[1] of the bar under the immunity statute. Ultimately, the Court found that because Tetting was simply a bar patron at the time Stroede was injured and he was not acting as an on-duty employee, he was not entitled to immunity.

Based on this ruling, off-duty employees are not entitled to immunity should they happen to injure a party trespassing at their place of employment. The application of *Stroede* is likely to be especially important in the future for employees of bars and restaurants. Thus, should a similar incident occur while you are enjoying a meal or a pint at your place of employment, let the on-duty employees handle the incident.

---

[1] Specifically, under Wis. Stat. § 895.529(1)-(2), an "owner, lessee, tenant, or other lawful occupant of real property" does not owe a duty of care to a trespasser of real property.