ATTORNEY STEVE SLAWINSKI FEATURED IN MERIT SHOP CONTRACTOR

Recently, the *Merit Shop Contractor* magazine featured an article by Attorney Steve Slawinski entitled "Dispute Resolution: Mediation and Arbitration in Today's Construction World." In this article, Attorney Slawinski describes and explains mediation and arbitration, detailing the differences between the two and ultimately how they work.

Read the full article here.

STEVE SLAWINSKI PUBLISHED IN STATE BAR'S CONSTRUCTION BLOG

With the ongoing economic impact of the COVID-19 pandemic, construction lien rights have become more vital than ever to businesses in the construction industry. To help navigate through this topic, Attorney Steve Slawinski recently authored an article entitled "101: Wisconsin's Construction Lien Law," which appeared in the *State Bar of Wisconsin Construction Blog*. In the article he provides a refresher course on the basics of construction liens on privately owned construction projects in Wisconsin.

Read the full article here.

For more information on this topic contact Steve Slawinski at 414-276-5000 or steve.slawinski@wilaw.com.

TAX AND WEALTH ADVISOR ALERT: PLANNING FOR SUCCESSION WITH A BUSINESS SUCCESSION PLAN (PART II)

(Part II) Objectives of the Succession Plan

In our last article we discussed why a well-constructed succession plan is necessary. In this article, we review the essential objectives the plan needs to address.

The objectives of succession planning and the methods used to accomplish these objectives are varied, but include the following:

1. **MAXIMIZE THE VALUE OF THE BUSINESS.** During the owner's tenure at the company, the owner must develop a strong management team involving those family members who are active in the business as well as key employees. This will maximize value and help ensure that upon his or her retirement or demise, the passage of the business to the next generation will be smooth and successful.
2. **MINIMIZE TAXATION AND EXPENSES.** The succession plan should attempt to minimize the amount of income and estate taxes in connection with the transfer of the company ownership to the next generation during the owner's life or upon death. A few items in 2020 to consider in connection with accomplishing this objective are: (a) the use of annualized gifts of up to $15,000 per person, or using lifetime gift exclusion of $11,580,000 per person, (b) the full utilization by both the owner and spouse of each of their Unified Credit of $11,580,000 upon their death, (c) planning for the step up in basis of the business interest upon the death of the owner or his or her spouse, (d) establishing estate planning documents that allow for the transfer of ownership of assets without the costs and delays inherent in probate proceedings, and (e) the use of life insurance to act as a funding vehicle to fulfill some or all of the estate tax liquidity needs of the owner so that the business will not be faced with the dilemma of a transfer at death to the next generation accompanied by an estate tax bill that could cause serious financial problems to the business or the next generation of owners.
3. **TREAT THE CHILDREN EQUITABLY AND PRESERVE FAMILY HARMONY.** Most family business owners want their children who are active in the business to end up with full or at least controlling ownership of the business. This objective can be accomplished while still treating those children who are not active in the business in an equitable fashion by arranging for them to receive non-business assets, life insurance, or minority or non-voting interests in the business coupled with some buy-out arrangement in a fair and equitable Buy-Sell Agreement.

It is important to involve children and other affected parties in the planning process so that they understand the owner's overall objectives, including how equitable treatment is being achieved. Often, the owner and the owner's spouse will be involved in the initial process and planning, and after a summary of the initial plan reflecting the desires of the owner is agreed upon, the children, both active and inactive, and possibly key employees, are brought into the planning process.

As a result of this process, the owner will clearly establish his or her plan as to who will succeed to ownership and control of the business, when ownership and control will transfer, and how it will be accomplished. By early planning, the owner will have many more options available so that the owner's desires for both the welfare of the business as well as of his or her family can best be achieved.

ATTORNEY BRITANY MORRISON GIVES INFORMATIONAL PPP WEBINAR

Recognizing the need to help clarify some of the potential questions posed from the new law, Attorney Britany Morrison recently presented an informational webinar entitled, "PPP Rules Under the New Flexibility Act and Loan Forgiveness FAQS." In the webinar they discuss the new rules under the Paycheck Protection Program Flexibility Act of 2020, loan forgiveness frequently asked questions, and the "unknowns" of loan forgiveness.

O'Neil, Cannon, Hollman, DeJong and Laing remains open and will continue to monitor Paycheck Protection Program changes. For questions or further information relating to the Paycheck Protection Program, please contact Attorney Britany Morrison.

EMPLOYMENT LAWSCENE ALERT: SUPREME COURT RULES THAT TITLE VII PROHIBITION ON SEX DISCRIMINATION PROTECTS GAY AND TRANSGENDER EMPLOYEES

Today, June 15, 2020, the United States Supreme Court issued a landmark ruling holding that an employer who fires an individual based on his or her sexual orientation or transgender status violates Title VII's prohibition against discrimination "because of . . . sex." In a 6-3 decision, the majority found that "[s]ex plays a necessary and undisguisable role" in a decision to terminate an individual for being homosexual or transgender, which is "exactly what Title VII forbids." Although the Court recognized that "homosexuality and transgender status are distinct concepts from sex . . . discrimination based on homosexuality or transgender status necessarily entails discrimination based on sex; the first cannot happen without the second."

Title VII requires the Court to apply a but-for test, under which an employer violates the law if the employment decision is based in part on sex. Therefore, the Court concluded that if you change *only* the individual's sex and it results in a different outcome, that is a violation of Title VII. So, the fact that a man who is attracted to men is treated differently from a woman who is attracted to men means that sex is the but-for cause of the decision. Justice Gorsuch, who wrote the majority opinion, analogized this to an employer firing female employees who were Yankees fans but not male employees who were Yankees fans. Sex does not have to be the sole or even the primary cause of the adverse action. There may be two or more reasons for the termination, but if a different outcome would have been reached if the individual's sex was changed, sex is the but-for cause of the decision. Therefore, because "homosexuality and transgender status are inextricably bound up with sex," a decision based on homosexuality or transgender status takes sex into account in a way that is impermissible under Title VII. Additionally, the Supreme Court did not find it persuasive that homosexual men and homosexual women would be treated the same. Instead, the Court stated that the focus of Title VII is on the individual and how the individual is treated.

The Court found that this decision is in line with prior precedent finding that the following instances violated Title VII where, if the plaintiff had been a different sex, they would have been treated differently: a policy where women with young children were not hired when men with young children were; a policy where women were required to make larger pension fund contributions than men because of longer overall life expectancies; and an instance where a male employee was sexually harassed by male coworkers. In each of these situations, the Court found that there was a violation of Title VII because the result would have been different if the individual was a different sex.

Finally, the Court dismissed arguments that this interpretation was not what Congress intended. First, the Court reasoned that the term "sex" was broad and that, where there are no statutory exceptions to a broad rule, it is not the Court's role to write in such exceptions. Additionally, the Court stated that, while this *result* may not have been what the drafters of Title VII anticipated in 1964, the *meaning* of sex has not changed, and the Court is bound to the plain meaning of the words contained in the statute.

The Supreme Court's decision does not change business-as-usual for Wisconsin employers. In 2017, the Seventh Circuit ruled that sex discrimination under Title VII includes discrimination based on sexual orientation. In addition, the Wisconsin Fair Employment Act prohibits discrimination on the basis of both sex and sexual orientation, and since at least 2015, the EEOC has taken the policy stance that sexual orientation and transgender status were protected categories under Title VII. The U.S. Supreme Court's ruling serves as a reminder for employers to stay vigilant about enforcing their anti-discrimination and anti-harassment policies and practices for all individuals.

ATTORNEYS ERICA REIB, JOE NEWBOLD, AND

GRANT KILLORAN FEATURED IN WISCONSIN LAWYER

An article by Attorneys Grant Killoran, Joe Newbold, and Erica Reib entitled "The New Wave of Litigation: An Early Report on COVID-19 Claims" is featured as the cover story in the June edition of the State Bar of Wisconsin publication *Wisconsin Lawyer*. In their article they analyze the claims being filed relating to the ongoing COVID-19 pandemic in the United States.

Read the full article here.

TAX AND WEALTH ADVISOR ALERT: REMINDER – IRS ESTIMATED TAX PAYMENTS DEADLINE POSTPONED TO JULY 15 – HOW THIS AFFECTS YOU

The Internal Revenue Service reminds taxpayers that estimated tax payments for tax year 2020, originally due April 15 and June 15, are now due July 15 due to the COVID-19 outbreak. Therefore, any individual or corporation that has a quarterly estimated tax payment due has until July 15 to make that payment without penalty. This relief applies to federal income tax returns and tax payments (including tax on self-employment income) otherwise due April 15, 2020. This relief does not apply to state tax payments, deposits, or payments of any other type of federal tax.

Who needs to make estimated tax payments?

Individuals, including sole proprietors, partners, and S corporation shareholders, generally have to make estimated tax payments if they expect to owe tax of $1,000 or more when their return is filed. Similarly, investors, retirees, and others often need to make these payments. That is because a substantial portion of their income is not subject to withholding. Other income generally not subject to withholding includes interest, dividends, capital gains, alimony, and rental income.

Corporations generally have to make estimated tax payments if they expect to owe tax of $500 or more when their return is filed. Special rules apply to some groups of taxpayers, such as farmers, fishermen, casualty and disaster victims, those who recently became disabled, recent retirees, and those who receive income unevenly during the year.

Who does not need to make estimated tax payments?

Taxpayers that receive salaries and wages can avoid having to pay estimated tax by asking their employer to withhold more tax from their earnings. To do this, taxpayers can file a new Form W-4 with their employer. There is a special line on Form W-4 for you to enter the additional amount you want your employer to withhold. If you receive a paycheck, the IRS's Tax Withholding Estimator will help you make sure you have the right amount of tax withheld from your paycheck.

Additionally, you do not have to pay estimated tax for the current year if you **meet all three** of the following conditions:

- You had no tax liability for the prior year
- You were a U.S. citizen or resident for the whole year
- Your prior tax year covered a 12-month period

You had no tax liability for the prior year if your total tax was zero or you did not have to file an income tax return.

How do I figure out my estimated tax payments?

Individuals, including sole proprietors, partners, and S corporation shareholders, can compute their estimated taxes by following the instructions on Form 1040-ES, Estimated Tax for Individuals. To compute your estimated tax, you must figure out your expected adjusted gross income, taxable income, taxes, deductions, and credits for the year. Corporations generally use Form 1120-W to compute estimated tax.

When and how should I pay Federal estimated taxes?

For estimated tax purposes, the year is divided into four payment periods. Estimated tax payments are typically due as follows:

- January 1 to March 31 – April 15
- April 1 to May 31 – June 15
- June 1 to August 31 – September 15
- September 1 to December 31 – January 15 of the following year

Note: As mentioned, due to the COVID-19 outbreak, 2020 estimated tax payments that otherwise would have been due April 15 and June 15, 2020, are postponed to July 15, 2020.

You may send estimated tax payments with Form 1040-ES by mail, or you can pay online, by phone or from your mobile device using the IRS2Go app. Visit IRS.gov/payments to view all the options. Using the Electronic Federal Tax Payment System (EFTPS) is the easiest way for individuals as well as businesses (who must use EFTP) to pay federal taxes. Using EFTPS, allows you to set up direct payments in advance and access a history of your payments, so you know how much and when you made your estimated tax payments.

Are there penalties for underpayment of estimated tax?

If you did not pay enough tax throughout the year, either through withholding or by making estimated tax payments, you may have to pay a penalty for underpayment of estimated tax. Generally, most taxpayers will avoid this penalty if they owe less than $1,000 in tax after subtracting their withholdings and credits, or if they paid at least 90% of the tax for the current year, or 100% of the tax shown on the return for the prior year, whichever is smaller.

Use Form 2210, Underpayment of Estimated Tax by Individuals, Estates, and Trusts (or Form 2220, Underpayment of Estimated Tax by Corporations), to see if you owe a penalty for underpaying your estimated tax or qualify for a penalty waiver. Please refer to the Form 1040 and 1040-SR Instructions or Form 1120 Instructions, for where to report the estimated tax penalty on your return.

What about Wisconsin estimated tax payments?

Federal extensions provided by the IRS may be used for Wisconsin income and franchise tax and pass-through withholding tax purposes. Estimated payments due on or after April 1, 2020 and before July 15, 2020 are extended to July 15, 2020. For information on the new Wisconsin filing and payment due dates, see the article Wisconsin Tax Return Due Dates and Payments.

O'Neil, Cannon, Hollman, DeJong and Laing remains open and will continue to monitor federal and state law tax changes. For questions or further information relating to estimated tax payments, please contact Attorney Britany E. Morrison.

TAX AND WEALTH ADVISOR ALERT: THE IMPORTANCE OF A DURABLE FINANCIAL POWER OF ATTORNEY

A proper estate plan covers not only what should happen upon your death, but also what should happen if you lose your decision-making skills. While planning for incapacity may be as unpleasant as planning for death, it is an important step in the estate planning process.

Planning for incapacity ensures that someone you specifically choose and trust can act on your behalf while you are unable to do so for yourself. One key document to help you plan for incapacity is the Durable Financial Power of Attorney.

A Durable Financial Power of Attorney allows you to appoint someone, your “agent” or “attorney-in-fact,” to manage your financial affairs in the event you are unable to so for yourself. The word “durable” simply means that the power of attorney remains in effect after you become incapacitated or incompetent. These documents are fairly flexible, allowing you to give your agent broad or limited power. Further, you can choose to either give your agent immediate power or to make your agent’s power effective only once you’ve been determined to be incapacitated.

Some examples of tasks your agent can perform include paying your bills, managing your assets, filing an insurance claim, and even hiring a lawyer. It is easy to believe that a Durable Financial Power of Attorney is unnecessary if you don’t own many assets or if you own assets jointly with someone else. However, some of these actions require your agent to have specific legal authority to act on your behalf, and the Durable Financial Power of Attorney would provide your agent with that authority.

If you do not get a power of attorney and you were to become incapacitated or incompetent, then your family would need to ask the court to appoint someone to act on your behalf. Not only could the court appoint a stranger to manage your financial affairs, but also this process can be expensive, public, and time consuming. Having a proper estate plan that covers what should happen if you become incapacitated or incompetent will save you and your loved ones time and money.

Keep in mind, though, that a Durable Financial Power of Attorney would not allow your agent to continue managing your financial affairs after your death. For this reason, these documents are often drafted as part of a larger estate plan.

The attorneys at O’Neil Cannon have experience in drafting various estate plans, both simple and complex, and would be happy to discuss the estate planning process with you. If you are interested in learning more about estate planning, please contact attorney Kelly M. Spott.

NEW ACT PROVIDES MORE FLEXIBILITY TO PPP BORROWERS

Today President Trump signed the Paycheck Protection Program Flexibility Act of 2020 (the

"Act") to amend certain provisions of the CARES Act related to the forgiveness of loans under the Paycheck Protection Program ("PPP") and for a number of other purposes.

Here are some of the key takeaways:

- **Deadline to Use the Loan Proceeds**: Borrowers can now use their PPP loan over a period of 24 weeks, tripling the current covered period of eight weeks.[1]
- **Forgivable Uses of the Loan Proceeds**: Borrowers must use at least 60% of their PPP loan on payroll costs, amending the previous rule that required borrowers to use 75% of their PPP loan for payroll costs. The remaining 40% may be used for allowable non-payroll expenses.
- **Extension of Time for Rehiring Workers**: The period to rehire employees has been extended from June 30, 2020 to December 31, 2020.
- **New Exemptions from Rehiring Workers**: Two exemptions were added to the PPP's loan forgiveness reduction penalties.

    1. The forgiveness amount will not be reduced due to a reduced full time employee count if the borrower can document that it attempted, but was unable, to rehire individuals who had been employees on February 15, 2020.
    2. The forgiveness will not be reduced due to a reduced full time employee count if the borrower, in good faith, can document an inability to return to the "same level of business activity" as prior to February 15, 2020 due to sanitation, social distancing, and worker or customer safety requirements.

- **Payroll Tax Deferral**: The payroll tax deferral is now available to a borrower that has its loan forgiven. Previously, the deferral was available only to borrowers that did not have their loan forgiven.
- **Loan Deferral Period**: The loan deferral period has been changed to (i) whenever the amount of loan forgiveness is remitted to the lender, or (ii) 10 months after the applicable forgiveness covered period if a borrower does not apply for forgiveness during that 10 month period. Previously, a borrower's deferral period was to be between six and 12 months.
- **Loan Maturity Date**: The maturity date for the payment of the unforgiven portion of the PPP loan has been extended from two years to five years.[2]

Borrowers are now able to spend their PPP loan proceeds in a more flexible manner than previously permitted. As with the initial rollout of the PPP, it will be up to the Department of the Treasury and the Small Business Administration to provide regulations with respect to the Act.

O'Neil, Cannon, Hollman, DeJong and Laing remains open and ready to help you. For questions or further information relating to the Paycheck Protection Program, please speak to your regular OCHDL contact, or the authors of this article, attorneys Jason Scoby and Pete Faust.

[1] If the borrower would like, it can still elect to have the eight week period apply.

[2] This provision of the Act only affects borrowers whose PPP loan is disbursed after its enactment. With respect to an already existing PPP loan, the Act states specifically that nothing in the Act will “prohibit lenders and borrowers from mutually agreeing to modify the maturity terms of a covered loan.”

GRANT KILLORAN PARTICIPATE IN 14TH ANNUAL STATE BAR OF TEXAS BILL OF RIGHTS CONFERENCE

Attorney Grant Killoran, a shareholder in O’Neil, Cannon, Hollman, DeJong and Laing’s Litigation Practice Group, recently co-presented a speech entitled “The Tenth Amendment: The Sword and the Shield of the States” at the 14th Annual State Bar of Texas Bill of Rights: Cutting Edge Controversies in Constitutional Law Conference. Grant also co-presented another speech at the seminar entitled “The Free Exercise and Establishment Clauses: Is Anything We Learned in Law School Still the Law.”

The State Bar of Texas Annual Bill of Rights Conference brings together attorneys and law professors from around the country each year to speak on emerging issues in constitutional law.