ATTORNEY KRAWCZYK QUOTED IN THE MILWAUKEE JOURNAL SENTINEL'S JSONLINE ON AUGUST 28TH

The Christian Center will purchase the 25,000 square foot building from the Latino Community Center.

…Read More »

WISCONSIN… KEEP MANUFACTURING

Federal tax law allows a special manufacturing deduction, which provides incentives to keep jobs and manufacturing activity in the United States. The State of Wisconsin has disallowed this special deduction for state tax purposes over the past several years; however, with the passage of the 2011 Wisconsin Budget, an income tax credit has been included in this State's budget to encourage and strengthen manufacturing in Wisconsin.

This credit is available to individuals and certain entities for taxable years commencing on or after January 1, 2013, for manufacturing and agricultural activities in the State of Wisconsin. The credit will be phased in over a 4 year period beginning next year, and when fully phased in, the credit will be equal to 7.5% of a company's qualified production activities income. Thus, the credit will effectively eliminate the rate of tax on Wisconsin manufacturing income.

Some of the differences in the new Wisconsin credit from the federal deduction include:

- The Wisconsin credit is only available for income from manufacturing and agricultural activities.
- The Wisconsin credit is not allowed for construction income or other activities that qualify for the federal deduction.
- Further, the Wisconsin credit only applies for manufacturing and agricultural income allocable to Wisconsin and is not applicable to income allocated to other states.

An individual, estate, trust, partnership, limited liability company, or corporation can claim the credit if the claimant owns or rents and uses in Wisconsin real property and improvements assessed as property under Wisconsin Statute § 70.32(2)(a)4, or owns or rents and uses in Wisconsin real and personal manufacturing property assessed under Wisconsin Statute § 70.995.

The credit can be taken against the entity’s corporate income tax liability and for partnerships, LLCs or S corporations, against the personal tax liability of the entity’s partners, members or shareholders in proportion to his or her ownership interests. It is important to note that any credit that is claimed is considered income and must be reported as income on the claimant’s Wisconsin franchise or income tax return in the taxable year immediately after the taxable year in which the credit is computed. Further, a taxpayer may carry forward any unused credits against income or franchise taxes due for up to 15 years.

This tax credit is new and the benefits can be significant. If you have any questions about this tax credit, or if you need assistance in determining whether you can benefit from this credit, please contact us.

O’NEIL, CANNON, HOLLMAN, DEJONG AND LAING WELCOMES ATTORNEY SARAH MATT TO THE FIRM

O’Neil Cannon recently hired Attorney Sarah C. Matt to expand its Litigation Group. She will assist clients with a variety of civil litigation matters, primarily in the areas of commercial and business litigation. Sarah graduated from Marquette Law School, cum laude, and received a Cali Excellence for the Future Awards for receiving the highest grade in Advanced Brief Writing and Criminal Law.

O’Neil Cannon, founded in Milwaukee in 1973, is a full-service legal practice that primarily focuses on providing business law and civil litigation services to businesses and their owners. The Firm represents corporations, institutions and partnerships at all stages of the business life cycle, helping them start, grow and transition from one generation to the next. We also assist business owners with their personal legal needs including tax and estate planning, family law and litigation—including personal injury litigation.

ATTORNEY GUMINA AUTHORS CHAPTER 19 OF THE IICLE “ILLINOIS CONTRACT LAW”

HANDBOOK

Joseph E. Gumina will be a contributing author for the 2012 Edition of the Illinois Institute for Continuing Legal Education's treatise titled "Illinois Contract Law." Attorney Gumina has authored Chapter 19 entitled *Guidelines for Drafting Specific Contract Clauses in Employment Agreements*. This chapter provides practical advice and examples on how to properly draft an employment agreement and explores extensively the developing law with regard to the enforceability of arbitration provisions in employment contracts. In 2010, Attorney Gumina was the general editor and contributing author for the publication titled *Illinois Employers' Management Handbook—Leadership Training for Illinois Supervisors* providing front-line supervisors and managers practical advice on complex legal issues employers frequently encounter in the workplace.

Attorney Gumina leads O'Neil, Cannon, Hollman, DeJong and Laing S.C.'s labor and employment practice. Attorney Gumina has extensive experience representing management in a vast array of employment and labor matters and is a frequent speaker on the latest topics facing employers. Attorney Gumina is licensed to practice in the states of Illinois and Wisconsin and has represented clients in litigation matters in both state and federal courts in Illinois and Wisconsin.

SUCCESSION PLANNING SEMINAR

On April 26th, Joseph Maier was a featured speaker for a Wisconsin Underground Contractors Association member seminar focused on Succession Planning.

HELPING CLIENTS SELL A SMALL OR MEDIUM SIZED BUSINESS

On April 25th, Attorney Joe Maier was the featured speaker in a day long National Business Institute Seminar entitled "Helping Clients Sell a Small or Medium Sized Business." Mr. Maier's presentation focused on the tax aspects of selling a business and the valuation issues involved in the planning stages of a business sale.

LONG-TERM PLANNING TERMS

A discussion of long-term care planning will inevitably include a discussion of one or more of the following:

Countable Assets: Assets which are available to a Medicaid applicant and not exempt. A person's eligibility for Medicaid depends upon the amount of his or her countable assets. A single person can only have $2,000 in countable assets to be eligible for Medicaid. Depending on the circumstances, married individuals may be allowed substantially more countable assets through "spousal impoverishment protections." Certain assets, such as a person's home, are exempt from countable assets even though they may be available to the person. Other assets, such as real property listed for sale or life estate interests in property are considered to be "unavailable" to the owner, and are not countable assets for Medicaid purposes.

Divestments: A major component of long-term care planning is for the transmission of family assets to younger generations without the disqualification of the older generation for Medicaid benefits. In general, an individual cannot become qualified for Medicaid by giving away assets. To prevent individuals from qualifying for Medicaid by giving away their assets, Medicaid laws impose penalties for the divestment of assets. A "divestment" is the transfer of assets in exchange for nothing or an insufficient amount of assets or services during the "look back period." A divestment can be made, among other ways, by making a gift of cash or property, by paying a relative too much for services rendered, by foregoing an inheritance, or by not exercising a right to an asset. The normal penalty for a divestment during the look back period is the imposition of a period of time during which the divesting individual is ineligible for certain Medicaid benefits, including nursing home care and home and certain community-based care benefits. This period of ineligibility is referred to as the "ineligibility period." Because of these divestment penalties, care must be taken to transfer or shelter assets in a manner that does not disqualify the transferor from these Medicaid benefits.

Ineligibility Period: An ineligibility period is the duration of time in which an individual is disqualified for certain Medicaid benefits because he or she made a divestment of assets within the "look back period." Specifically, during an ineligibility period, the effected individual may be disqualified from Medicaid assistance for the cost of nursing home care, home health and personal care services, private duty nursing services, and certain other home and community-based services. The number of days of an "ineligibility period" is determined by dividing the value of the assets divested by the statewide average daily cost to a private pay patient in a nursing home (e.g., $209.17 in 2009); the quotient is the number of days of the ineligibility period. For example a gift (divestment) of $20,000 may result in an ineligibility period of 96 days ($20,000/$209.17=$95.61). Recently enacted legislation has changed the starting date of an ineligibility period from the day in which the divestment was made to the date in which the individual is eligible for and would otherwise be qualified to receive Medicaid except for the divestment. Because of this change, a divestment in year one could cause an ineligibility period to begin in year five when the effected individual is in a nursing home and without money to continue paying.

Long-Term Care Insurance: Long-Term Care Insurance is an option for privately paying for the costs of long-term care, which includes the cost of intermediate or skilled nursing care provided at a nursing home, an assisted living facility, or in the home. This insurance can be used to shelter other assets of the insured from the high costs of long-term care or to increase an individual's ability to receive in home care. Such insurance is often referred to as "stay at home insurance" because it can pay for care at home by a family member or an unrelated caregiver. Before benefits from a long-term care policy can be paid the insured must suffer from at least one of the following: a medical necessity requiring long-term care services (e.g., a stroke which leaves the individual partially paralyzed); cognitive impairments that necessitate supervisions (e.g., Alzheimer's dementia); or an inability to perform one or more of the "activities of daily living," such as the ability to dress oneself, to feed oneself, or to bathe or shower, get in and out of bed, or use the toilet without assistance. Long-term care policies normally do not cover all of the costs of long-term care. They generally cover a fixed, daily, benefit rate expressed as either a fixed per-diem dollar benefit for the insured (e.g., $125 a day that the insured qualifies for benefits) or a percentage of the incurred daily rate. Benefit payments may be increased over time if inflation protection is purchased. Long-term care policies are generally expensive, and they involve many complicated variations in coverage. There are tax benefits to long-term care policies such as limited deductions for premiums and exemption for benefits. Because of the expense and complications of long-term care insurance such policies should not be purchased without the assistance of a trusted professional and a review of the history of the company underwriting the policy. While the annual premiums on long-term policies may be expensive, they rarely exceed the cost of a single month in a nursing home. Statistically speaking, moreover, the potential need for a long-term care insurance benefit is 120 times more likely than automobile insurance and 600 times more likely than fire insurance. Considering the cost of long-term care, long-term care insurance may be the best investment you ever make.

Look Back Period: The look back period refers to the period of time immediately preceding an individual's application for Medicaid during which the individual's finances are examined to determine if he or she has made a "divestment." Prior to 2009, the look back period varied in Wisconsin depending on the recipient of the divestment (e.g., the recipient of the gift). For a gift to an individual, the look back period was 36 months, while for a gift to a trust, the look back period was sixty months. Starting in 2009, Wisconsin changed the look back period to sixty months for all gifts. Accordingly, individuals applying for Medicaid in Wisconsin after 2008 should be prepared to disclose gifts made within five years prior to their application for Medicaid. Therefore, elderly individuals should exercise care before making a substantial gift if they contemplate the need for institutional Medicaid benefits in the following five years.

Medicare Eligibility: Medicare is a federally subsidized health care insurance program that pays certain costs for hospitalization and other institutionalized care, physician charges, and certain prescription drugs. Medicare, however, provides only limited coverage for long-term care costs. It covers only a portion of the costs of “skilled nursing or rehabilitation care” when certain technical requirements are met, and then for only a limited duration of 100 days. An individual who is 65 or older and who qualifies for social security benefits or whose spouse qualifies for social security benefits is eligibility for Medicare. An individual under the age of 65 can also qualify for Medicare eligibility if he or she has received social security disability benefits for at least 25 months or if he or she suffers from certain chronic disease, such as ALS or end-stage renal disease. Unlike Medicaid, Medicare is an entitlement; it has no income or resource limitations for eligibility.

Medicaid Eligibility: Medicaid is a federal and state funded program that provides funds for, among other things, skilled and custodial nursing home care. For example, Medicaid may cover the cost of physician services, inpatient and outpatient hospital services, dental services, nursing home services, prescription drug services, mental health services, and physical therapy services. While Medicare covers only skilled care and only for a limited duration, Medicaid covers unlimited skilled care in a nursing home as well as two levels of intermediate care. Unlike Medicare, Medicaid is not an entitlement. There are very strict asset and income limitations to eligibility for Medicaid. The amount of income and assets an individual may have and still qualify depends upon the type of Medicaid coverage an individual receives and whether or not the individual receiving benefits has a spouse who is not receiving benefits. For example, a single individual seeking nursing home care can have no more than $2,000 of “countable assets” to qualify for Medicaid. The resource limits for married individuals are not quite so limited. They can take advantage of the spousal impoverishment rules which permit a healthy spouse to retain certain assets.

Spousal Impoverishment Protections: In the long-term care context, “spousal impoverishment protections” refers to certain asset and income protections provided to a spouse remaining at home, when his or her spouse is otherwise eligible for Medicaid. Essentially, while a single person must spend his or her “countable assets” down to $2,000, the spousal impoverishment protections permit a spouse remaining at home to retain a significant share of the couple’s marital assets, regardless of title, while allowing the other spouse to qualify for Medicaid. Specifically, spousal impoverishment rules permit a couple with total countable assets of $219,120 or more to retain up to $111,560 of countable assets and still qualify for Medicaid; while spouses with total countable assets of between $50,001 to $100,000 may retain up to $52,000. Spousal impoverishment rules also permit an institutionalized spouse to transfer monthly income of up to $2,739, depending on the circumstances, to the spouse remaining at home. Certain technical rules must be followed in order to take advantage of these protections.

LAACKE AND JOYS

"I have referred so many business colleagues to the firm because I know they'll do what they say they're going to do, when they say they're going to do it."

-Terry Mather, Laacke and Joys

A relationship built to last.

"Synergy" is most simply defined as an interaction where the "whole" is greater than the sum of the individual "parts". It defies mathematical logic, really. And yet, we see synergy all around us. It makes for good business. Sixteen years ago, when Terry and Marsha Mather needed assistance to negotiate and complete the purchase of the retail and manufacturing operations of Laacke and Joys, a well-known Wisconsin company, we were fortunate enough to be asked to help. It was a particularly challenging, stress-filled time for Terry and Marsha. After all, they would be making a substantial financial commitment to the business. With our assistance, the Mather's completed the ownership transition and embarked on their new business venture. Some might see the closing of a business transaction as a time to shake hands with legal advisors and to move on. But, all these years later, Laacke and Joys continues to regularly call on the lawyers at O'Neil, Cannon, Hollman, DeJong and Laing for help with their business' legal needs.

At O'Neil, Cannon, Hollman, DeJong and Laing, we believe that strong relationships with our clients provide long term benefits for them—and for us. Solid relationships with good clients are the building blocks of great law firms.

Over the years, we've learned a lot from clients like Laacke and Joys about what it takes to run a successful business. We look forward to many more years of working together.

Headquarters: Milwaukee, WI
Additional Store Locations: Brookfield, WI and Mequon WI

MITSUBISHI HEAVY INDUSTRIES OF AMERICA

"…because when it comes right down to it, you just need to win."
-Dean Laing

Job well done.

O'Neil Cannon represented Mitsubishi Heavy Industries America during the four-year dispute over costs related to the construction of the retractable roof at Miller Park. This complex case involved 162 depositions in three countries, the production of 2.9 million pages of documents, and several trips to the Court of Appeals. After three days of mediation involving 22 attorneys from seven states, a settlement was reached which benefited Mitsubishi, the Baseball Park District, and the taxpayers of the five county baseball district.

We are proud to have been an integral part of this negotiation, achieving the following result for our client:

- Mitsubishi paid nothing on the Baseball Park District's $50 million claim
- Mitsubishi received $18 million on its counterclaim
- OCHDL obtained a significant ruling, which resulted in Mitsubishi's litigation costs being 100% covered by insurance

When disputes arise, you need someone looking out for your best interests. We are well-known for our ability to succeed in high-stakes, complex business litigation cases, successfully representing both plaintiffs and defendants during court proceedings. Our unique, cross-disciplined practice provides our clients with effective, street-smart representation.

When you need to get the job done.

We know how to make it happen.

Headquarters: New York, NY

Offices: Numerous locations throughout the world

TEAM INDUSTRIES

Building strong connections.

“We’ve become a trusted sounding board and advisor.”

-Tom Merkle

Just outside of Kaukauna, Wisconsin lies the North American leader for on-time delivery of high quality pipe fabrication and fabricated vessels. TEAM Industries, Inc. prides itself on “Systemic Quality Control,” which ensures its products comply with exacting industry standards, providing a high level of customer value.

Serving the petro-chemical and power industry is a daunting challenge. From the complex bidding process, to fluctuating material costs, to unpredictable timelines and regulatory requirements, successful risk management is critical to a positive outcome. That’s where O’Neil, Cannon, Hollman, DeJong and Laing can help. Our 40 years of business-to-business experience allows us to provide advice and counsel as a foundation for sound decision making, and assertive representation in the event of litigation. The trust earned over the years has even placed one of our seasoned attorneys, Tom Merkle, on TEAM’s Advisory Board.

In the pipe fabrication business, problems and solutions are sometimes miles apart. When everything’s on the line, you need a law firm that knows your business, understands your objectives, and fights to protect your interests.

We can be a valuable player on your team.

Headquarters: Kaukauna, WI

Fabrication Facilities: Kaukauna, WI, Oconto Falls, WI and Port Arthur, TX