# O'NEIL, CANNON, HOLLMAN, DEJONG AND LAING WELCOMES MEGAN EISCH

Attorney Megan Eisch recently joined the Firm's Business Law and Banking and Creditors' Groups. She assists secured and unsecured corporate or individual creditors and other entities with the work out of loans, leases and other obligations. Eisch also regularly represents receivers in state Chapter 128 Receivership proceedings, real estate foreclosures, the wind-up of corporations, collection matters, and with the acquisition or disposition of business assets. She is a recent graduate of the University of Wisconsin Law School, J.D., *cum laude*, and is the senior Articles Editor of the *Wisconsin International Law Journal*.

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 closely-held 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.

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# ATTORNEYS LAING AND MCBRIDE PUBLISH ANNUAL EVIDENCE CHAPTER

The 2011 edition of the *Annual Survey of Wisconsin Law* published by the State Bar of Wisconsin CLE Books has recently been released for circulation and this year's work includes another contribution by Attorneys Dean P. Laing and Patrick G. McBride in the area of evidence. The *Annual Survey* reviews significant Wisconsin judicial and legislative developments from 2010 and is organized by individual chapters addressing recent developments in a specific area of law. Attorney Laing has been the author or co-author of the "Evidence" chapter of the *Annual Survey* for the past 23 years and Attorney McBride has been the co-author for the past 10 years.

This year's chapter on evidence addresses issues regarding the use of expert testimony, including whether the statutory prohibition to the admission of preliminary breath test results was trumped when the results were used as a basis for an expert's opinion, and whether expert testimony was required at summary judgment in a breach of contract action regarding a computer-services agreement. The Wisconsin courts also determined whether the state could play an edited portion of a child's video statement during closing argument in a sexual-

assault trial without making the child available for cross-examination after showing the video, and whether the state needed to preserve apparently exculpatory evidence consisting of threatening cell-phone voice messages for use by the defendant in establishing the self-defense standard in a homicide trial. In a civil action, the court of appeals considered whether an affiant demonstrated the requisite personal knowledge to establish the admissibility of account statements under the hearsay exception for records of regularly conducted activity.

The "Evidence" chapter summarizes these decisions and others as they impact the development of the law of evidence in Wisconsin. A full copy of the "Evidence" chapter appearing in the *Annual Survey* can be found here. A copy of the *Annual Survey of Wisconsin Law* can be obtained through the State Bar of Wisconsin CLE Books at www.wisbar.org

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## IRS REVOKES TAX EXEMPT STATUS FOR 275,000 CHARITIES DUE TO LACK OF COMPLIANCE

The Pension Protection Act (PPA), passed by Congress in 2006, requires most tax exempt organizations to file an annual information return or notice with the IRS. Failure to file the required return or notice for three consecutive years results in automatic revocation of the organization's tax-exempt status. The IRS has provided a list of organizations whose tax-exempt status has been revoked for failing to meet the filing requirements for 2007, 2008, and 2009. Most tax-exempt organizations file their returns or notices and are unaffected by the automatic revocation. Those organizations whose tax-exempt status is automatically revoked may reinstate their status by following the process outlined on the IRS website.

Donations or charitable contributions made to any organization whose tax-exempt status has been automatically revoked, remain tax deductible so long as the donation or contribution was made prior to the publication of the organization's name on the list. After publication, however, organizations that do not reinstate their tax-exempt status may no longer receive tax-deductible contributions, and any donations or contributions they receive may be taxable.

Donors should check the IRS listing to ensure that their contributions will be tax deductible. To determine an organization's tax-exempt status or eligibility to receive tax-deductible contributions, donors should rely on the updated listing provided by the IRS, and should no longer rely on the previous listing in IRS Publication 78, nor the IRS determination letter issued to the organization before the date of automatic revocation.  For an updated listing,

click here.

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## COURT FINDS IRAS EXPOSED TO CREDITORS IN BANKRUPTCY

The general rule in a federal individual bankruptcy is that IRAs and other qualified retirement assets are protected and such assets are not subject to the claims of the individual's creditors. However, in the case of Ernest W. Willis v. Deborah Menotte, Red Reef, Inc. the US Court of Appeals found an exception to that rule. In the Willis case the debtor used his IRA in a way that technically disqualified it for income tax purposes in 1994 and 1997. However, the IRS never caught the technical violations and the statute of limitation ran as to the IRS' claims. In 2007 Mr. Willis filed for a Chapter 7 Bankruptcy, long after the technical violations occurred. Nonetheless, the Bankruptcy Court and the US Court of Appeals ruled that the statute of limitation that applies for tax purposes had no relevance for bankruptcy purposes and the debtors $1.5 million of IRA assets were exposed to creditors. The lesson that should be taken from this is that the statutory rules that create the tax and bankruptcy favored status of these IRAs and retirement accounts must be followed very carefully.

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## ATTORNEY KRAWCZYK EXPERT GUEST SPEAKER ON WISN 1130 AM RADIO

Attorney Claude Krawczyk was the guest speaker on the "Business Solutions" program hosted by Diane Chamness" on Saturday May 21, 2011 on WISN 1130 AM radio. Claude discussed basic intellectual property issues to include trademark and copyright registration, patents and trade secrets. In case you missed it live, click here to listen to the full broadcast.

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## ATTORNEY CAPREZ REAPPOINTED AS CO-CHAIR OF MILWAUKEE BAR ASSOCIATION HEALTH

# LAW SECTION

Attorney Timothy Caprez has recently been reappointed to serve a fourth consecutive term as Co-Chair of the Milwaukee Bar Association ("MBA") Health Law Section. Under his direction, the MBA Health Law Section has presented numerous seminars focused on educating attorneys, executives and medical professionals on continuing developments and emergent issues within the complex legal landscape of the health care industry.

The topics on which the MBA Health Law Section has presented such seminars during the course of Attorney Caprez's service as Co-Chair include:

- implications of recently-enacted health care reform laws;
- physician supervision issues;
- statutory, regulatory and credentialing requirements of physician assistants, nurse practitioners and clinical nurse specialists;
- hot topics for hospital in-house counsel;
- physician and facility lease arrangements;
- Stark and state law and regulations prohibiting self-referrals;
- medical staff credentialing and privileging;
- management of disruptive physicians;
- medical staff document analyses;
- Recovery Audit Contractors ("RACs");
- HIPAA and HITECH Act obligations on physician and facilities;
- impacts of the 2009 regulations promulgated under the Patient Safety and Quality Improvement Act of 2005;
- conflict and coordination of cultural and medicinal practices; and,
- implications of reporting requirements and physician apologies related to medical errors.

Such issues are among the many types of matters in which the O'Neil Cannon health law practice provides counsel and representation to entities and individuals in nearly every sector of the health care industry, including provider health systems and networks, hospitals, clinics, long-term care and skilled nursing facilities, physician practice groups, medical suppliers, third-party insurers and individual health care professionals.

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# ELECTRONIC DATA AND ON-LINE INFORMATION IS OF INCREASING IMPORTANCE DURING

## ESTATE PLANNING

It has been estimated that over 90% of all business information today is created electronically. Use of social networking websites, such as Facebook, on-line photography accounts like Flicker, e-mail passwords and word processing files, is increasingly more common.

Various media commentators have addressed the need for individuals to consider their electronic data and on-line postings in conjunction with their estate planning. For example, the New York Times Magazine published a substantial article relating to this topic in its January 9, 2011 edition. Yet, because the rise of digital information is a relatively new phenomenon, many people have not yet fully considered or developed their plans for handling their electronic data and on-line profiles after death, or taken steps to minimize potential disputes about such items that could arise after death.

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## ATTORNEY DIZARD APPOINTED RECEIVER FOR TRI-STAR TOOL AND MACHINE INC.

The Waukesha County Circuit Court appointed Attorney Seth Dizard as receiver of Tri-Star Tool and Machine Inc. Dizard will oversee the business and sell the 20,000 square foot facility located in the Sussex Corporate Center. Read article here.

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## WISCONSIN TORT REFORM STRENGTHENS HEALTH CARE PROVIDER PEER REVIEW PROTECTIONS

The Wisconsin Health Care Quality Improvement Act (“WHCQIA”), part of Wisconsin’s recently enacted tort reform bill, has revised Wis. Stat. § 146.38 to broaden peer review protections for health care providers. Section 146.38, which provides for the confidentiality of information generated or obtained during peer review or evaluation, has been expanded by WHCQIA to apply confidentiality protections to a wider range of providers, communications and proceedings.

Under WHCQIA, Section 146.38 now expressly provides that various related entities participating in those peer review processes will be afforded confidentiality protections. These statutory protections now expressly encompass peer review-related communications involving the many types of persons and entities defined as “health care providers” elsewhere in Wisconsin Statutes (Wis. Stat. § 146.81), but also authorized peer review disclosures of those providers’ employers or the parent, subsidiary or affiliate organizations of those providers or their employers.

WHCQIA has also added a defined term of “incident or occurrence report” to Section 146.38 to clarify that written and oral statements and reports related to an incident, practice or situation at issue in a review or evaluation are expressly covered by the statute’s peer review protections. (It is also worth noting that newly created Wis. Stat. § 904.16 provides similar confidentiality protections with respect to reports that providers are required to submit to certain regulatory agencies).

WHCQIA has not only broadened the scope of peer review protections with respect to the types individuals and entities and communications covered, but also the kinds of proceedings to which those protections apply. Whereas prior to WHCQIA’s enactment, Section 146.38 only provided peer review protections barring the introduction of covered communications and information as evidence in personal injury actions, the statute now prohibits the use of such information in any civil or criminal action.

A complete copy of WHCQIA can be found here.

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## SETH DIZARD SELLS MEADOWBROOK COUNTRY CLUB

On Friday, April 8th, Attorney Dizard, as the court appointed receiver of Meadowbrook Country Club, received court approval to sell the 83 year old, 150 acre private country club to a group of local investors for $1.425 million. The sale was essentially the culmination of the receivership of Meadowbrook Country Club which was initially filed in November of 2010 in the Racine County Circuit Court.

Read the full article here.