OCHD WELCOMES ATTORNEY ESTABROOK

T.J. Estabrook, an attorney and certified public accountant, recently joined the Milwaukee law firm of O'Neil Cannon T.J. works with clients on the tax and corporate law aspects of mergers and acquisitions. His experience includes representation of clients in connection with tax-free reorganizations, taxable stock and asset sales and divestiture transactions. Prior to joining OCHD, T.J. was with the mergers and acquisitions practice group of Ernst and Young, LLP where he worked extensively with private equity and Fortune 500 companies.

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ATTORNEY DIZARD PRESENTS "DIPPING INTO BANKRUPTCY" AT WISCONSIN CREDIT ASSOCIATION WORKSHOP

Have you ever been confronted with the opportunity to do business with a company that is in bankruptcy, and not known how to make an informed credit decision? At this session, our presenter will discuss the risks and benefits of extending credit to entities that are operating in bankruptcy as Debtors-In-Possession. Attendees will also learn practical ways to identify risks associated with such transactions, and methods to minimize potential credit exposure. Come join us for this informative session.

See Seminar Details

ATTORNEY JOSEPH E. GUMINA JOINS OCHD

Milwaukee, WI (August, 2008) – Joseph E. Gumina joined the Milwaukee law firm O'Neil Cannon to lead their labor and employment practice. He brings with him extensive experience representing management in a vast array of employment and labor matters. Attorney Gumina is licensed to practice law in the states of Illinois and Wisconsin and has represented clients in litigation matters in both state and federal courts, including the federal

district courts in Illinois, Indiana, and Wisconsin.

Attorney Gumina has significant experience as a seasoned litigator having tried cases to juries in both federal and state courts achieving resounding success for his clients. He has also represented the interests of his clients in other parts of the country, including Florida, Indiana, Kentucky, Michigan, Minnesota, Mississippi, Nebraska, Ohio, New York, and Utah.

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ELECTION DAY REMINDERS FOR EMPLOYERS

While for some it may not come fast enough, election days will soon arrive—September 9 for primary contests, November 4 for the general election. As a reminder, Wisconsin law gives time off to employees to vote or work as an election official.

Employees must be allowed up to three (3) successive hours off to vote on election day. However, the employee must request the time off before the election day. The employer may decide what time of day the employee may leave and is not required to pay the employee for missed time.

If an employee wishes to act as an election official, he or she must be allowed to take off for all or any part of the work day, if the employee has given advance notice of at least seven (7) days. This is an uncompensated leave.
There are penalties for violating these rules. Failure to give time off for voting may result in six months' imprisonment or a fine of up to $1,000. Any person who attempts to influence a voter by threatening discharge, reduced wages or promising increased wages may be fined $100.

EMPLOYMENT CONTRACTS AGAIN BEFORE THE SUPREME COURT

Employers who want to protect their customer base and their businesses often ask their employees to sign an agreement pledging not to solicit customers or compete in the same

area when they leave the employer. Two recent Court of Appeals cases demonstrate just how difficult writing an enforceable agreement on these two points can be.
In *Star Direct, Inc., v. Pra*, 2008 WI App 17, the Court of Appeals addressed whether one invalid clause in an employment agreement invalidates the whole agreement, even though the agreement explicitly provides that if a court finds one provision unenforceable, the rest of the agreement remains in place.

The Court found that one provision of the agreement, the "business clause," which restricted Mr. Dal Pra from engaging in any similar business within a fifty mile radius that was substantially similar to or in competition with the employer's business, to be both overboard and vague.

The second provision of the agreement, the "customer clause," provided that Mr. Dal Pra could not entice away any customers that Star Direct had before Dal Pra left the business for a period of twenty four months. The Court did not discuss whether this provision, on its face, was unenforceable. Instead it held that the provision governed similar types of activities and restraints and was indivisible from the business clause. Having determined that the business clause was unenforceable, the Court held that the intertwined customer clause was also unenforceable.

The employer also lost its bid to impose a penalty period for violation of an employment contract in *H and R Block E. Enter v. Swenson*, 2008 WI App 3. H and R Block's employment agreement provided that both its noncompetition and nonsolicitation covenants ran for two years after termination. However, both covenants also provided that if there were a violation of the agreement, the two year period would be extended by any period that the violation was taking place.

As in Star Direct, the Court applied four rules of legal construction in interpreting employment agreements: 1) they are prima facie suspect; 2) they must withstand strict scrutiny to pass legal muster as being reasonable; 3) they will not be construed further than the language of the contract absolutely requires; and 4) they are to be construed in favor of the employee.

In that context, the Court held that the language of H and R Block's agreement was unreasonable and hard to construe, and therefore not enforceable.

The last word has not been written, however. The Supreme Court has agreed to review the Star Direct case. H and R Block has also petitioned for Supreme Court review, but has stayed its petition until Star Direct is resolved. So, stay tuned.

THOMAS G. CANNON SELECTED AS A LEADING WISCONSIN ATTORNEY

O’Neil Cannon is proud to announce that Thomas G. Cannon has been selected as a Leading Wisconsin Attorney. The American Research Corporation recently completed an extensive survey in Wisconsin to identify the attorneys most highly regarded by their peers in the Wisconsin Bar Association. Attorneys that have received numerous independent nominations are reviewed by the Advisory Board and further verified to be in good standing with the Wisconsin Bar Association. Fewer than 6% of the attorneys licensed to practice in Wisconsin are selected as Leading Wisconsin Attorneys.

Attorney Cannon currently serves as the Executive Director of the Milwaukee Legal Aid Society. He is an experienced trial and appellate lawyer with an extensive background in complex litigation. He has also served as an expert witness and consultant to other lawyers in the fields of legal ethics and constitutional law.

LAKE SHORE NAMES ATTORNEY ELDON L. BOHROFEN CHAIRMAN OF THE BOARD

Lake Shore Wisconsin Corp., the proposed holding company for Lake Shore Bank, recently announced the formation of its board of directors. Attorney Bohrofen was among the nine individuals selected to serve as external directors. “We asked Eldon to serve for a variety of reasons – his banking experience, business expertise, prominence in the community and knowledge of our market,” states Jeanene Meisser, COO and controller.

Eldon is an attorney of the Sheboygan office of O’Neil Cannon He assists individuals and business owners with their estate planning needs, helping them minimize estate tax costs to effectively transfer their wealth from one generation to the next. He also focuses on the establishment of family foundations and represents corporate and individual fiduciaries.

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CHAD RICHTER TO PRESENT “HOW TO BEGIN THE BUSINESS ACQUISITION/SALE PROCESS”

On Wednesday, April 9, 2008, Chad J. Richter will be presenting “How to Begin the Business Acquisition/Sale Process.” Mr. Richter will also discuss the effective use of Term Sheets and Letters of Intent in business transactions; including key legal components, misconceptions and pitfalls of these documents. The presentation is taking place at Cornerstone’s M&A Alliance Event from 7:30 a.m. – 9:30 a.m. at the Country Springs Hotel in Waukesha.

Mr. Richter is an attorney with the law firm of O’Neil Cannon He assists clients with a variety of corporate and business law matters such as the formation and organization of various types of business entities under operating, shareholder, and subscription agreements, including the preparation of financial and disclosure documentation. Chad concentrates his practice on the structuring of business relationships under franchise, licensing, and distribution arrangements, and has worked with numerous franchise and dealership models, representing both franchisors/grantors and franchisees/dealers.

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E-VERIFY MODERNIZES THE EMPLOYMENT VERIFICATION PROCESS

The E-Verify system is the best available means for employers to maintain a legal workforce. E-Verify allows employers to confirm employment eligibility in seconds, virtually eliminates the hassle of social security number mismatch letters, and improves the accuracy of wage and tax reporting.

E-Verify is an Internet-based program that is free to participating employers. The United States Citizenship and Immigration Services, which is part of the Department of Homeland Security (DHS), and the U.S. Social Security Administration (SSA) jointly operate the E-Verify system. As of December 2007, more than 33,000 employers had registered to participate in E-Verify, and nearly 3 million employee eligibility searches had been completed.

According to DHS and SSA, 92% of the searches produced employment eligibility confirmation within seconds.

Employers may use E-Verify to confirm the employment eligibility of new hires. If employers choose to use the system, E-Verify must be used for all new hires regardless of citizenship status. To use E-Verify, the employer must register online and post notices of participation. After registration is complete, employers have access to an automated system which searches the databases of the DHS and SSA. The employer submits the information supplied by the employee on the Form I-9 into the E-Verify system. Within seconds, the system will return one of three results: Employment Authorized, SSA Tentative Non-Confirmation, or DHS Verification in Process.

If the system returns a finding of Employment Authorized, the employer then records the system generated verification number on the Form I-9. If there is a SSA Tentative Non-Confirmation, which means the employee's social security number does not match the employee's name, the employer must follow the proper procedure to notify the employee of the SSA mismatch. The employee then has an opportunity to contest the finding. If the employee does not contest the Tentative Non-Confirmation, it is considered a Final Non-Confirmation, and the employer may terminate the employee. If the system shows a DHS Verification in Process, DHS will respond to the employer with a finding of Employment Authorized or Tentative Non-Confirmation, generally within 24 hours.

Wisconsin employers are not required to participate in E-Verify; however, nearly half of the other states require, or have pending legislation to require, employer participation in the public sector or both public and private sectors. Employers interested in registering for the E-Verify program may do so at https://www.vis-dhs.com/employerregistration. If you are interested in learning more about the E-Verify program, please contact Crystal Fieber at (920) 457-8400 or crystal.fieber@www.wilaw.com.

SHEBOYGAN COUNTY BAR ASSOCIATION ELECTS MUELLER AS V.P. AND PRESIDENT ELECT

J. Phil Mueller has been elected vice president of the Sheboygan County Bar Association. He will serve as vice president of the Association for 1 year, followed by a 1 year term as president starting January 1, 2009.

Mueller is an attorney with the Sheboygan law office of O'Neil Cannon He graduated from the University of Wisconsin-Madison in 1985 and received his law degree in 1988 from Creighton University. His practice focuses on business law and estate planning for small to medium

sized companies. “I am honored to be elected by the local Bar Association,” states Mueller. “I look forward to carrying on the Association’s mission to encourage participation in public service, enhance the public perception of lawyers and foster professionalism and camaraderie.”

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