

# 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](#).

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## ATTORNEY JASON SCOBY QUOTED IN WISCONSIN LAW JOURNAL

Jason Scoby was recently quoted in the *Wisconsin Law Journal* in an article about the proposed Bucyrus-Caterpillar merger. The article, titled “Bucyrus Clears Hurdle in Merger Lawsuits,” describes the Jan. 19 decision by Judge Charles Clevert Jr. of the Eastern District Court of Wisconsin in which he denied plaintiff shareholders’ motion for a preliminary injunction seeking to prevent the shareholder vote to approve the merger. The excerpt containing Jason’s quote reads:

- Attorney Jason Scoby, chairman of the Business, Banking and Corporate Law Section of the Milwaukee Bar Association, pointed out that under relevant case law, the plaintiffs needed to satisfy three requirements: irreparable harm, inadequate traditional legal remedies and a likelihood of success on the merits.
- Scoby, of O’Neil, Cannon, Hollman, DeJong and Laing SC, Milwaukee, said the court clearly explained why the plaintiffs failed to satisfy any of the three requirements.
- “The court could’ve denied the plaintiffs’ motion based on the fact that they couldn’t satisfy the first requirement, that they faced irreparable harm if the injunction was not granted,” he said. “However, the court took care to also hold that the plaintiffs failed to satisfy the other two requirements.”
- In arriving at its decision, the court alluded to the Business Judgment Rule, Scoby said. That rule provides that a court will rarely substitute its own judgment for that of the corporation’s board when the board engaged in sufficient due diligence prior to arriving at its decision.

Read the full article [here](#). The case is *City of Sterling Heights Police and Fire Retirement System v. Bucyrus International, Inc., et. al.*, Case No. 10-CV-1106.

Jason advises individuals and closely held businesses on a variety of corporate and business-related issues, including mergers and acquisitions, commercial transactions, corporate issues, franchising, contract negotiation and preparation, and business entity selection and formation.

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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## **O'NEIL CANNON WELCOMES ATTORNEY NEWBOLD TO EXPAND LITIGATION GROUP**

Attorney [Joseph D. Newbold](#) has joined the litigation practice at the downtown Milwaukee law firm of O'Neil Cannon. He will bring with him extensive experience in complex commercial and intellectual property litigation and has significant experience in trial and appellate matters in both the state and federal courts.

Prior to joining the firm, Mr. Newbold was an associate in the Chicago law firm of Freeborn and Peters LLP. While at Freeborn and Peters, Mr. Newbold worked extensively on a wide variety of matters, including representing industry leading patent holders before the Court of Appeals for the U.S. Federal Circuit and individuals standing up against large real estate developers before the Illinois Supreme Court. Mr. Newbold is a former clerk to United States District Judge Joe Billy McDade, United States Magistrate Judge Donald Wilkerson, and former United States Magistrate Judge Gerald Cohn.

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# O'NEIL CANNON NAMES SCHREIBER AND MAIER SHAREHOLDERS

Milwaukee, Wisconsin (January 31, 2011) – O'Neil Cannon is pleased to announce that Attorney John R. Schreiber and Attorney Joseph M. Maier have been elected as shareholders of the firm.

Attorney Schreiber will continue his practice in the Banking and Creditors' Rights practice group assisting creditors, commercial landlords and other entities, in the enforcement, collection and workout of loans, leases and other obligations.

Schreiber received his undergraduate Bachelor's degree from the University of Wisconsin and his law degree from the Marquette University Law School, *cum laude*. He was selected as a 2008, 2009 and 2010 Wisconsin Super Lawyers Rising Star, *Law and Politics and Milwaukee Magazine*, and is a member of the Board of Directors for Groundwork Milwaukee.

Attorney Maier will continue to assist businesses in employee benefit design and ERISA issues, executive compensation planning, income tax planning, state and succession planning, operation and liquidation of business entities and the creation, formation, merger and acquisition of businesses.

Maier received his B.B.A. in accounting, *summa cum laude*, from the University of Wisconsin-Milwaukee and earned his J.D., *summa cum laude*, graduating #1 in his class from the University of Wisconsin-Madison. He was a member of the UW Law Review and is a member of the Society of Financial Services Professionals.

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**OVER 50% OF O'NEIL, CANNON, HOLLMAN, DEJONG AND LAING ATTORNEYS RECOGNIZED**

# ON SUPER LAWYERS 2010 LIST

Fifteen attorneys from O'Neil Cannon have been selected for inclusion on the Wisconsin *Super Lawyers* 2010 list.

*Super Lawyers* is a peer-nominated award that recognizes the top 5% of outstanding attorneys across the state of Wisconsin. The *Super Lawyers* are selected using a rigorous, multiphase rating process. Peer nominations and evaluations are combined with third party research, and each candidate is evaluated based on 12 indicators of peer recognition and professional achievement.

## *Super Lawyers:*

- James G. DeJong
- Seth E. Dizard
- Peter J. Faust
- John G. Gehringer
- Dean P. Laing\*
- Gregory W. Lyons
- Patrick G. McBride
- Steven J. Slawinski

## *Rising Stars:*

- Timothy C. Caprez
- Gregory S. Mager
- Chad J. Richter
- John R. Schreiber
- Robert J. Tess

*\*Top 50 Super Lawyers Recipient*

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## ATTORNEY JASON SCOBY APPOINTED CHAIR OF MBA'S CORPORATE, BANKING AND BUSINESS SECTION

Attorney Jason Scoby of O'Neil Cannon was recently appointed to serve as Chair of the Corporate, Banking and Business Section of the Milwaukee Bar Association ("MBA"). In this role, Attorney Scoby will focus on providing continuing legal education presentations and

resources, as well as networking opportunities for attorneys and other professionals in the corporate, banking, and business field.

Some of the topics to be addressed in upcoming presentations may include:

- Choice of Business Entity and the Associated Business and Tax Implications
- Various Subjects in Mergers and Acquisitions

vLending Issues:

- Ethical Issues Involved in Business Transactions
- Contract Drafting

If you would like further information regarding an upcoming MBA event, or if you are interested in making a presentation for the MBA's Corporate, Banking and Business Section, please contact Jason.

Attorney [Scoby](#) is an associate at O'Neil Cannon, where he assists clients on a wide variety of corporate and business-related issues, including commercial transactions, mergers and acquisitions, franchising, business entity selection, and regulatory compliance.

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## THE BEST LAWYERS IN AMERICA®

The following O'Neil Cannon attorneys were selected for inclusion in the 17th edition of *The Best Lawyers in America* 2011 in the following practice areas:

- James G. DeJong—Corporate Law
- Seth E. Dizard—Bankruptcy and Creditor-Debtor Rights Law
- John G. Gehringer—Construction Law, and Real Estate Law
- Dennis W. Hollman—Real Estate Law
- Dean P. Laing—Personal Injury Litigation, and Product Liability Litigation
- Thomas A. Merkle—Family Law

*The Best Lawyers in America* "is the oldest and most respected peer-review publication in the

legal profession,” and is based on more than 3.1 million detailed evaluations of lawyers by other lawyers.” Lawyers “are not required or allowed to pay a fee to be included in *The Best Lawyers in America*,” and “have no say in deciding which practice areas they are included in;” they are selected for inclusion in the publication, and assigned practice areas, based entirely on the votes they receive from their peers.

Given that less than 3% of all attorneys in the U.S. are included in *The Best Lawyers in America*, it is a true honor for O’Neil Cannon to have approximately 25% of its attorneys selected for inclusion in this highly-respected publication.

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## **ATTORNEYS RANDY NASH AND JASON SCOBY PUBLISH ARTICLE IN ABA’S HEALTH LAW LITIGATION NEWSLETTER**

Randy Nash and Jason Scoby recently published an article in the Spring/Summer 2010 edition of the American Bar Association’s *Health Law Litigation newsletter* entitled “New Rules Dramatically Affect Health Care Expert Witness Disclosures.”

The article discusses the existing Federal Rules of Civil Procedure and a proposed change to Rule 26 involving the disclosure of expert witness draft reports and communications between the attorney and an expert witness in a case. This proposed rule change has the potential to impact expert witness disclosures before the federal courts. It is expected to go into effect on December 1, 2010.

Under the current rule, an expert witness’s entire file with regard to the matter in litigation, including any drafts of the expert’s report and any communications with the attorney, is discoverable by the opponent in the lawsuit.

The Committee on Rules of Practice and Procedure has recommended that the current rule be amended, stating that the rule has caused “significant practical problems.” The Committee described the problem as follows:

Lawyers and experts take elaborate steps to avoid creating any discoverable record and at the same time take elaborate steps to attempt to discover the other side’s drafts and communications. The artificial and wasteful discovery-avoidance practices include lawyers hiring two sets of experts—one for consultation, to do the work and develop the opinions, and one to provide the testimony—to avoid

creating a discoverable record of the collaborative interaction with the experts. The practices also include tortuous steps to avoid having an expert take any notes, make any record of preliminary analyses or opinions, or produce any draft report. Instead, the only record is a single, final report.

Recognizing these issues, many have sought to change the discovery rules. The proposed amendment to Rule 26 attempts to avoid disclosure of experts' draft reports and attorney/expert communications. The goal is to permit the attorney to communicate freely with the expert about the attorney's thoughts and opinions relating to the case without fear of those communications being discovered by opposing counsel. The Rule also aims to avoid the unnecessary costs caused by hiring multiple experts and to prevent attorneys from taking other intricate maneuvers to evade the discovery of communications or drafts of expert opinions.

The Supreme Court recently approved these amendments to Rule 26 of the Federal Rules of Civil Procedure. It is expected that Congress will approve the amended Rule, and if it does, the amended Rule 26 will go into effect on December 1, 2010. A full copy of "New Rules Dramatically Affect Health Care Expert Witness Disclosures" can be found [here](#).

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## **O'NEIL, CANNON, HOLLMAN, DEJONG AND LAING ELECT JOSEPH GUMINA AS SHAREHOLDER**

O'Neil Cannon is pleased to announce that Attorney [Joseph E. Gumina](#) has recently been elected as a shareholder of the firm. Joe will continue his labor and employment practice representing management in the states of Illinois and Wisconsin, and will represent clients in litigation matters in both state and federal courts, including the federal district courts in Illinois, Indiana, and Wisconsin.

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