

ATTORNEY MCBRIDE SECURES DISMISSAL OF CLIENT FROM CLASS ACTION

On May 20, 2010, the Wisconsin Court of Appeals affirmed a lower court ruling dismissing Nissan Motor Co., Ltd. (“Nissan Japan”) from a price-fixing class action venued in Milwaukee County for lack of personal jurisdiction under Wisconsin’s long-arm statute, Wis. Stat. § 801.05. The class action involved anti-trust claims against various automobile manufacturers and their North American subsidiaries for allegedly conspiring to maintain new car prices in the United States at levels higher than in Canada for the same vehicles and as part of the conspiracy, further arranged for the United States dealers not to honor warranties on cars imported from Canada. The plaintiff claimed that the circuit court had jurisdiction over Nissan Japan because it had “directly or through [its] subsidiaries, affiliates or agents” conducted business in Wisconsin through Nissan dealerships located in the state.

After a period of jurisdictional discovery, the circuit court determined that Wisconsin did not have personal jurisdiction over Nissan Japan and that exercising jurisdiction over the foreign corporation would violate Due Process. The court of appeals affirmed the dismissal of Nissan Japan, agreeing with Attorney McBride’s argument that the foreign corporation was not subject to general jurisdiction under Wisconsin law based solely on the acts of its wholly owned subsidiary, Nissan North America, under an agency theory. Similarly, the court of appeals also determined that specific jurisdiction over Nissan Japan was not warranted under the long-arm statute, where there was no evidence in the record that the class action arose out of an injury to persons or property in Wisconsin based on an out-of-state action by Nissan Japan.

The court of appeals further rejected an alternative argument advanced by the plaintiff related to the scope of jurisdictional discovery conducted prior to the circuit court’s dismissal of Nissan Japan, holding that the plaintiff was not denied his right to an evidentiary hearing when the circuit court ordered the plaintiff to direct his jurisdictional discovery requests to Nissan North American rather than Nissan Japan. The parties had entered into a series of stipulations related to jurisdictional facts and the plaintiff had stated that he did not seek any further discovery from Nissan Japan.

Attorney McBride is a former law clerk to Wisconsin Supreme Court Justice Jon P. Wilcox (ret.) and provides counsel to clients dealing with appellate issues in both state and federal court. A full copy of the opinion can be found [here](#), along with an article from Law360 discussing the appellate decision.

ATTORNEY MCBRIDE SECURES APPELLATE COURT VICTORY

On May 4, 2010, the Wisconsin Court of Appeals affirmed a lower court ruling dismissing a series of claims against the defendants for lack of personal jurisdiction under Wisconsin's long-arm statute, Wis. Stat. § 801.05 and held that, as Attorney McBride had argued, personal jurisdiction over the corporation cannot be the sole basis for personal jurisdiction over an officer. Attorney McBride's argument enabled the appellate court to differentiate between the business contacts of the corporation with Wisconsin and the lack of specific contacts within the state by the individual defendants, former officers of the corporation.

While the appellate court noted that the business contacts of the corporation in Wisconsin were sufficient to impose jurisdiction over the corporation, it agreed with Attorney McBride's argument that the individual defendant's work on behalf of the corporation, all performed outside Wisconsin, was not sufficient to constitute "substantial and not isolated activities within this state" sufficient to impose personal jurisdiction over the former officers. As a result, the court of appeals determined that the exercise of personal jurisdiction over the individual defendants was not permissible under the long-arm statute.

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PETER WALSH WRITES AND SPEAKS ON SPECIALIZED ESTATE PLANNING TECHNIQUE

Attorney Peter Walsh of O'Neil Cannon, has recently published an article and is a frequent speaker on the topic of formula adjustment clauses in estate planning to mitigate the valuation risk inherent in the gift of hard to value assets. Such hard to value assets include closely held business interests and real estate. The risk sought to be reduced by this technique is that of substantial additional gift tax plus interest resulting from an increase to the value of a gifted assets through an IRS audit. For example, a gift of hard to value stock in the family business in 2008 could result in additional gift tax plus interest in 2010, if the IRS successfully challenges the value of the gifted stock. Estate planners have employed various means to mitigate this valuation risk.

In two recent taxpayer victories, the Tax Court gave its blessing to the evolving use of

formula adjustment clauses to eliminate the valuation risk. For instance, the Tax Court, in *Estate of Petter*, allowed a taxpayer to avoid substantial gift tax through a “charitable cap adjustment clause” which allocated any increase in value to public charities. When the taxpayer in *Petter* conceded to an IRS demand for a substantial increase in the value of property given as a gift, the taxpayer was able to avoid additional gift tax through the adjustment clause that allocated the entire increase to donor advised funds offered by public charities. In this manner, the taxpayer traded a taxable gift for a charitable deduction.

Peter’s article on this subject titled “Formula Clause Changes Taxable Gift into Charitable Donation,” appeared in the April issue of the national tax magazine *Practical Tax Strategies*. Peter presented a seminar on this subject to the Milwaukee Estate Planning Forum, LTD, on May 5, 2010, and will present at the Milwaukee Bar Association, on May 20, 2010. [Click here](#) to view a copy of Peter’s presentation materials or to register [click here](#).

Peter is a member of the Tax, Estate and Succession Planning practice of the downtown Milwaukee law firm and assists clients with all areas of tax and estate planning. He is licensed in Wisconsin, Illinois, and Florida and has a master’s degree in taxation.

TIM CAPREZ NAMED AMERICAN BAR ASSOCIATION OUTSTANDING SUBCOMMITTEE CHAIR

On April 23, 2010, the American Bar Association (“ABA”) Section of Litigation awarded Attorney Tim Caprez “Outstanding Subcommittee Chair for the 2009-2010 Bar Year” honors at the 2010 ABA Section Annual Conference in New York City. The Section of Litigation, which first appointed Attorney Caprez as the Section’s Health Law Litigation Committee Newsletter Editor in 2009, honored him for his success in furthering the Health Law Litigation Committee’s efforts to be “the premier resource for healthcare litigators nationwide who wish to become informed of and engage in discussion and debate regarding current and emerging issues and trends in healthcare litigation.”

The [ABA Section of Litigation](#), the largest specialty section of the ABA, aims to help litigators become more effective advocates for their clients and is a legal publisher and source of news and analysis by way of publications such as the Health Law Litigation Committee Newsletter. That newsletter provides in-depth examinations of diverse topics within the broad range of health law litigation to which the [Health Law Litigation Committee](#) is dedicated through its individual subcommittees, which include: Antitrust and Consumer Protection, False Claims

and Qui Tam, Fraud and Abuse, Licensing and Peer Review, Managed Care, Medical Ethics, Medical Malpractice and Nursing Home.

Health law litigation is a substantial part of Attorney Caprez's practice at O'Neil Cannon, as he counsels and represents clients with respect to compliance and dispute resolution efforts in heavily-regulated industries and occupations. Licensed in Wisconsin and Illinois, Attorney Caprez advises and litigates on behalf of entities and individuals in relation to a wide variety of corporate governance, transactional and employment and personnel management matters.

ATTORNEY JOE MAIER PRESENTS AT THE SOCIETY OF FINANCIAL SERVICE PROFESSIONALS ON MAY 12TH, 2010

Attorney Maier will speak at the upcoming "Key Planning Issues for Financial Professionals" seminar hosted by the Milwaukee Chapter of the Society of Financial Service Professionals. His talk is entitled "What Do We Do Now? - A practical guide to adding clarity and flexibility to our client's strategic property and family protection plan."

The Milwaukee Chapter of the [Society of Financial Service Professionals](#) is organized to provide continuing education, professional networking, and to enhance public recognition and trust of credentialed financial service professionals.

To register visit [here](#).

ATTORNEY CHAD RICHTER PRESENTS AT LEE HECHT HARRISON SEMINAR

Attorney Chad J. Richter will be giving a presentation on Monday, April 12th at Lee Hecht Harrison located at 10000 Innovation Drive, Suite 100, in Milwaukee. The seminar is for displaced senior executives interested in getting into their own venture by purchasing a business or franchise, and discusses the various issues they may encounter along the way. Chad will be presenting with a group of panelists, in other professional services areas, and will focus on some of the key legal issues one faces when purchasing a business or franchise.

WISCONSIN INCREASES THE HOMESTEAD EXEMPTION AVAILABLE TO ALL RESIDENTS

Under Wisconsin law, a person's "homestead" is the dwelling and so much of the land surrounding it necessary for use as a home, not exceeding 40 acres. An individual resident is generally entitled to exempt his or her homestead from execution of a judgment, from the lien of a judgment, and from liability for his or her personal debts up to the amount designated by the Wisconsin Statutes.

Formerly, this amount equaled \$40,000.00 per resident. On December 1, 2009, however, the Wisconsin Legislature increased the exemption to which each resident is entitled to \$75,000.00. Additionally, the Legislature lifted its limitation of a \$40,000.00 homestead exemption per household (the "Marriage Penalty"), now allowing spouses to pool their exemptions and collectively claim a \$150,000.00 exemption. Unchanged are certain exceptions unaffected by the homestead exemption such as mortgages, laborers', mechanics', and purchase money liens and taxes recorded against the homestead property.

OCHD IS A FOUNDING VOLUNTEER LAW FIRM FOR THE MILWAUKEE JUSTICE CENTER

Since late 2009, OCHD attorneys have been working with Marquette University Law School and the Milwaukee Volunteer Lawyers Project to provide free legal assistance to Milwaukee County's unrepresented litigants through court-based self help desks and legal resources.

OCHD is proud to assist the Milwaukee Justice Center work to help make the communities in which we work better places to live.

ATTORNEY GRANT KILLORAN PARTICIPATES IN MACALESTER COLLEGE LEGAL STUDIES FORUM

Grant Killoran, a partner in OCHD's Litigation Practice Group, recently participated as a

speaker in the Macalester College “Front Row” lecture series, a two-day event focusing on law and entrepreneurship and business, held in St. Paul, Minnesota on February 25 and 26, 2010.

Attorney Killoran was one of twelve lawyer alumni of Macalester College invited to participate in the event. There, he met with Macalester College administration, faculty, alumni and students to discuss the role of a liberal arts education in the legal training and preparation of lawyers.

Other speakers at the forum included the general counsel of a large multi-national company, a sitting United States District Judge, a sitting United States Attorney and other distinguished corporate and private practice attorneys.

OCHD ELECTS CHAD J. RICHTER AS SHAREHOLDER

O’Neil Cannon is pleased to announce that Attorney Chad Richter has recently been elected as a shareholder of the firm. He will continue his practice working on corporate and business law matters, including the structuring, acquisition and sale of businesses under operating and purchase agreements, as well as providing assistance on various business contracts and certifications. Attorney Richter will continue serving clients operating under franchise, dealership and agency arrangements.

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. OCHD also assists business owners with their personal legal needs including tax and estate planning, family law and litigation – including personal injury litigation.