FEDERAL JUDGE RULES IN FAVOR OF E-RATE PROGRAM WHISTLEBLOWER

On January 20, a Wisconsin federal judge ruled in favor of a private telecommunications auditor, Todd Heath, who filed a lawsuit claiming that Wisconsin Bell defrauded the federal E-Rate program by overcharging schools and libraries. The lawsuit was brought under the False Claims Act (FCA), a federal law encouraging whistleblowers to come forward when they discover "false claims" or fraud committed on the federal government.

The E-Rate program was established by the Telecommunications Act of 1996 to provide schools and libraries with subsidies needed to upgrade their telecommunications equipment and improve access to the Internet and related services. Here's how Propublica described why the E-Rate program matters: "E-Rate was set up… at the dawn of the Internet era to avert a digital divide between rich and poor students by subsidizing telecommunications services to schools and libraries… [The program] requires providers to set rates for schools and libraries at the lowest prices offered to comparable customers… [to] help schools in less-wealthy areas provide their students with access to the Web."

E-Rate is funded by "Universal Service" charges, which federal law authorizes Wisconsin Bell and other telecommunications companies to include on business and consumer telephone bills nationwide. The funds collected are administered by the Universal Services Administrative Company (USAC) under the direction of the FCC.

Wisconsin Bell argued that the E-Rate Program did not involve any "federal funds" and, therefore, Wisconsin Bell could not be liable under the FCA for the overcharges being alleged. United States District Court Judge Lynn Adelman rejected these arguments, pointing out that the E-Rate program was established by the federal government and that E-Rate funding would not exist if not for the government's actions. He also rejected Wisconsin Bell's argument that it had no liability under the FCA because USAC was not acting as a government "agent" when administering E-Rate. He noted: "It seems difficult to dispute that USAC was acting on the FCC's behalf and subject to its control while administering the subsidy fund."

Wisconsin Bell asked to appeal Judge Adelman's decision to the Seventh Circuit Court Appeals immediately, which would have put the trial court case on hold indefinitely, but Judge Adelman rejected this request in his January 20 court order, meaning that the lawsuit can continue toward trial.

The law firm of O'Neil Cannon Hollman DeJong and Laing SC represents the whistleblower in this case. If you believe you have information that an individual or company is defrauding the federal government, contact Doug Dehler at OCHD&L for a confidential consultation about

your rights and options at (414) 276-5000.

WILL MY ADULT CHILD WITH AUTISM LIVE INDEPENDENTLY? ESTATE PLANNING FOR FAMILIES OF ADULTS WITH AUTISM SPECTRUM DISORDERS

According to the Centers for Disease Control, the prevalence of autism has increased by 6% to 15% annually since 2002, making autism the fastest-growing developmental disability in the United States.

While this trend may be alarming to young couples having children today, there are also families in our country right now dealing with the confusing prospect of providing for adult children with autism spectrum disorders. More than 3.5 million Americans currently live with autism and 35% of young adults (ages 19–23) with autism have not held a job or received any postgraduate education.

Doug, co-author of this article, is the father of an adult son (19 years old) with autism. Together, he and Megan wrote this article to help families understand that there are ways to provide for their autistic adult children without disqualifying those children from available government programs.

That is the heart of the issue: How can you help your child achieve a level of independence appropriate for him or her while also assuring that you keep all government assistance options available?

Your Help vs. Government Benefits

If you are a parent of an adult child with autism, you are likely looking for ways to help him or her today, and you also want to provide for your child after your death. However, there is a dilemma. If not carefully planned, gifts or inheritances from family members or friends can disqualify your child from eligibility for certain potential government benefits. Those benefits, though often modest in amount, may make the difference between your child living independently in adulthood, or remaining at home or possibly being institutionalized after your death.

For example, an adult child with autism often may meet the legal definition of “disabled”

such that he or she could be entitled to Supplemental Security Income (SSI) benefits. The purpose of SSI is to provide income for food and shelter. It was designed to provide recipients with approximately 75% of the threshold amount for the federal poverty cut-off. As of January 1, 2015, the maximum federal SSI monthly payment for an individual is $733. Many states provide a supplemental SSI benefit, which ranges from about $20 to $100 per month, depending on the state. In Wisconsin, the maximum supplemental SSI benefit is currently $84 per month, which makes the total maximum SSI benefit $817 per month for Wisconsin residents.

Some SSI recipients may be eligible for an additional SSI benefit if they have exceptional needs. These benefits are called SSI-E benefits. Exceptional needs generally means 40 hours per week of attendant care, including custodial care. In Wisconsin, for those who qualify, the maximum SSI-E monthly payment is currently $95.99.

While not exorbitant, these payments can help your adult child have some level of financial independence. But, here's the important part for parents to remember: There are strict limits on how much your child can earn and own and still be eligible for SSI. For example, the amount of your child's SSI benefit is reduced dollar-for-dollar by "countable income." This includes gifts or financial contributions (other than SSI) used by your child to pay for food or shelter. There is also a strict limit of how much your child can own and remain eligible for SSI. The asset limit is generally $2,000, with certain important (but limited) exceptions for necessary items such as a car, home, and certain other assets.

Unfortunately, this means that a well-intended gift or inheritance from a family member (such as you, or a grandparent) could result in your child being disqualified from receiving future SSI benefits. However, this dilemma can be avoided with proper estate planning, through which you can develop a comprehensive plan for your child's financial future. Many times, this estate planning involves creating a special needs trust, through which certain financial assistance can be provided without impacting your child's SSI eligibility.

Special Needs Trusts May Help You Achieve Your Goals

Special needs trusts (also called "supplemental needs trusts") (SNTs) have specific provisions pertaining to the needs of disabled beneficiaries. The purpose of an SNT is to preserve the beneficiary's eligibility to receive public benefits while supplementing his or her lifestyle with private funds in order to enrich his or her life. Usually, parents will set up an SNT during their lifetimes to benefit their disabled child after the parents pass away in order to ensure there are adequate funds available for the child's benefit, without worrying that such funds will disqualify the child from receiving public benefits.

Why Use an SNT?

An SNT may be used to retain and expend funds to supplement (not supplant) government benefits without rendering the beneficiary ineligible to receive them. Here are a few examples of expenses that a properly created SNT generally may cover for the benefit of your disabled child:

- Purchase of a residence.
- More sophisticated or advanced medical, dental, psychiatric, or psychological treatment, cosmetic surgery, rehabilitation, and educational or vocational services.
- Paying the differential cost for shelter between a shared or private room in a group home or nursing home.
- Providing entertainment, such as admission to museums and movie theaters, tuition for art courses, restaurant meals while away from his or her residence, cable television service, a computer with games and other software installed, a stereo or CD or DVD player, and tapes or disks.
- Paying for travel for recreation purposes.
- Paying for any services needed by the beneficiary to permit him or her to reside in his or her own home.
- Providing household furniture and furnishings.
- Paying for preparation of income tax returns and paying any income tax liabilities.
- Paying the expenses of a hobby.
- Paying for legal services to obtain, maintain, or regain eligibility for governmental or private agency benefits, to pay for any legal advice and consultation needed by the trustee to administer the SNT properly and to maintain public benefits eligibility.
- Paying for hair grooming and nail care services.
- Paying for writing supplies and postage.
- Purchasing and paying the costs of maintaining pets.
- Purchasing an automobile, including any modifications or special accommodations needed due to his or her disabilities, whether the motor vehicle is operated by the beneficiary or someone else for his or her benefit.
- Paying the costs of making the beneficiary’s living environment more amenable in light of his or her disabilities, whether or not the home in which he or she resides is owned by him or her or by someone else, or is a residence purchased by the SNT, or is a nursing home, or health care center, or community based residential facility.
- Prepaying for funeral and burial pre-arrangements for the beneficiary.

SNTs provide a very powerful financial vehicle to help you provide for your child. But, SNTs are just one estate planning tool you might consider.

If you have a child with autism or other disabilities, you must think strategically about how you might help provide for your child in a way that ensures he or she will be adequately cared for, especially after your death, without taking any actions that might disqualify him or her from receiving government assistance.

If you would like additional information, you may contact either Doug Dehler or Megan Harried at (414) 276-5000.

VICTORY FOR WHISTLEBLOWERS AND TAXPAYERS: USE OF PUBLICLY AVAILABLE INFORMATION DOES NOT BAR CASES INVOLVING GOVERNMENT FRAUD

Under a federal statute known as the False Claims Act, whistleblowers with knowledge of overcharges or other fraudulent activity directed at the federal government may be entitled to substantial monetary rewards through lawsuits known as *qui tam* cases. The monetary rewards authorized by the False Claims Act provide those who have valuable information about government fraud a strong incentive to come forward and report it. Companies alleged to have engaged in such fraud often fight back by arguing that a whistleblower's *qui tam* case should be dismissed because it is improperly based on "publicly available" information, citing the False Claims Act's "public disclosure bar."

In a victory for whistleblowers and taxpayers, a federal appellate court based in Chicago recently rejected a broad reading of the public disclosure bar. In *U.S. ex rel. Heath v. Wisconsin Bell, Inc.*, the Seventh Circuit Court of Appeals ruled that the public disclosure bar did not apply where a whistleblower's *qui tam* claim cited a contract that was available for public review on a government website. The Court of Appeals decided that the whistleblower's claim against Wisconsin Bell could proceed because it was not "based upon" the publicly available contract, but instead was based on "genuinely new and material information" that the whistleblower obtained through "his own investigation and initiative."

The whistleblower who filed the case, Todd Heath, is a telecommunications consultant based in Waupun, Wisconsin. Heath is retained by school districts and private businesses to identify overcharges contained in their telephone bills. Those bills and supporting materials are often complex and can be confusing even to sophisticated consumers. Heath, who has been auditing phone bills for more than 20 years, has the training and experience necessary to interpret such materials. Relying on information obtained through his own investigation and professional experience, Health filed a *qui tam* case alleging that Wisconsin school districts were overcharged for telecommunications services.

The Wisconsin school districts were not the only victims of the alleged overcharging, according to Heath, because the federal government subsidizes and pays a substantial portion of the schools' telecommunications bills under a federal program known as the E-Rate program. Before he filed his *qui tam* case, Heath notified the federal government of his findings, as required by the False Claims Act.

The public disclosure bar relied upon by Wisconsin Bell as a defense is intended to prevent whistleblowers from filing "parasitic" or "opportunistic" *qui tam* lawsuits based on information obtained through government reports or other public documents of the type specifically listed in the federal law. The Court of Appeals concluded that the public disclosure bar did not apply to Heath's lawsuit, however, explaining that his case was not "based upon" the contract that Wisconsin Bell cited to support its defense. After ruling in Heath's favor on this issue, the Court of Appeals decided not to consider other arguments made by Heath concerning the public disclosure bar.

Heath is represented in this case by Doug Dehler of O'Neil, Cannon, Hollman, DeJong and Laing, S.C. in Milwaukee, Wisconsin. It is expected that, within several weeks, the Seventh Circuit Court of Appeals will send the case back to a federal court in Wisconsin for additional proceedings.

If you have questions regarding this case or any other potential whistleblower case under the False Claims Act, please contact Attorney Doug Dehler at 414-291-4719 or doug.dehler@wilaw.com.

O'NEIL, CANNON, HOLLMAN, DEJONG AND LAING S.C. NAMES ATTORNEY DOUG DEHLER AS SHAREHOLDER

O'Neil Cannon is pleased to announce that Attorney Douglas P. Dehler has been elected a shareholder of the Firm. Mr. Dehler's legal practice involves business litigation, class action litigation, whistleblower (*qui tam*) lawsuits, ERISA fiduciary litigation, and the representation of clients in a wide range of insurance matters, including insurance bad faith litigation. He is a University of Wisconsin Law School graduate, and a member of the *pro bono* committee for the Eastern District of Wisconsin Bar.

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.

O’NEIL, CANNON IS PLEASED TO ANNOUNCE THAT ATTORNEY DOUGLAS DEHLER HAS JOINED THE FIRM

O’Neil Cannon recently hired Attorney Douglas Dehler to expand it’s litigation group. Mr. Dehler’s legal practice involves business litigation, class action litigation, whistleblower (*qui tam*) lawsuits, ERISA fiduciary litigation, and the representation of clients in a wide range of insurance matters, including insurance bad faith litigation. He has practiced law in the Milwaukee community for more than 20 years, since graduating *cum laude* from the University of Wisconsin Law School in 1991. Mr. Dehler graduated *cum laude* from Washington University in St. Louis, Missouri, where he received his Bachelor of Science in Business Administration in 1987.

During his legal career, Mr. Dehler served as vice-president and senior litigation counsel for a national health insurance company, where he supervised a staff of in-house attorneys, paralegals and local attorneys and defended the company in litigation throughout the country, including class action litigation. He also regularly advised senior management on risk management and operational issues arising in the claims and underwriting units of the company.

Mr. Dehler has been actively involved in various local bar and community organizations. He currently serves on the *pro bono* committee for the Eastern District of Wisconsin Bar Association, and has been commended by courts for his *pro bono* service. Mr. Dehler also has an interest in issues concerning children with autism spectrum disorders, and is a member of the national Autism Society, the Autism Society of Wisconsin, and the Autism Society of Southeastern Wisconsin.

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