SUPER LAWYERS RECOGNIZES 28 O'NEIL CANNON ATTORNEYS

Each year, *Super Lawyers* surveys the State of Wisconsin's 15,000 attorneys and judges, seeking the State's top attorneys. Recently, *Super Lawyers* published its lists for 2023, which include the Top 10 Attorneys in Wisconsin, Top 50 Attorneys in Wisconsin, Top 25 Attorneys in Milwaukee, Super Lawyers (consisting of the top 5% of attorneys in Wisconsin), and Rising Stars (consisting of attorneys who are 40 years old or younger or who have been in practice for 10 years or less).

Twenty-nine of our attorneys were recognized by *Super Lawyers*, which has referred to the firm as "the Milwaukee mid-sized powerhouse." Those attorneys are the following:

- Nick Chmurski:
    - Rising Star
- Doug Dehler:
    - Super Lawyer
- Jim DeJong:
    - Super Lawyer
- Seth Dizard:
    - Top 50 Attorneys in Wisconsin
    - Top 25 Attorneys in Milwaukee
    - Super Lawyer
- Pete Faust:
    - Super Lawyer
- John Gehringer:
    - Super Lawyer
- Joseph Gumina:
    - Super Lawyer
- Jessica Haskell:
    - Rising Star
- Mike Kennedy:
    - Rising Star
- Grant Killoran:
    - Super Lawyer
- Dean Laing:
    - Top 10 Attorneys in Wisconsin
    - Top 50 Attorneys in Wisconsin
    - Top 25 Attorneys in Milwaukee
    - Super Lawyer
- Trevor Lippman:
    - Rising Star
- Greg Lyons:
    - Super Lawyer

- Patrick McBride:
    - Super Lawyer
- Britany Morrison:
    - Rising Star
- Joe Newbold:
    - Super Lawyer
- Erica Reib:
    - Rising Star
- Chad Richter:
    - Super Lawyer
- Ryan Riebe
    - Rising Star
- John Schreiber:
    - Super Lawyer
- Jason Scoby:
    - Super Lawyer
- Steve Slawinski:
    - Super Lawyer
- Kelly Spott:
    - Rising Star
- Christa Wittenberg:
    - Rising Star

Super Lawyers is a national rating service that rates attorneys in all 50 states. The selection process utilized by *Super Lawyers* is multi-phased and includes independent research, peer nominations, and peer evaluations. One court recently had this to say about *Super Lawyers*:

> "[T]he selection procedures employed by [*Super Lawyers*] are very sophisticated, comprehensive and complex. It is abundantly clear . . . that [*Super Lawyers* does] not permit a lawyer to buy one's way onto the list, nor is there any requirement for the purchase of any product for inclusion in the lists or any quid pro quo of any kind or nature associated with the evaluation and listing of an attorney or in the subsequent advertising of one's inclusion in the lists."

We are proud to be one of the few firms in Wisconsin that had more than 50% of its attorneys receive recognition by *Super Lawyers.*

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19 O'NEIL CANNON LAWYERS SELECTED AS

2024 BEST LAWYERS; ANOTHER 4 NAMED BEST LAWYERS: ONES TO WATCH

We are pleased to announce 19 of our lawyers have been included in the 2024 Edition of *The Best Lawyers in America*, and an additional four have been selected as 2024 *Best Lawyers: Ones to Watch*.

The following are the O'Neil Cannon lawyers named to the 2024 lists:

Best Lawyers in America

- Douglas P. Dehler – Litigation – Insurance
- James G. DeJong – Corporate Law, Mergers and Acquisitions Law, and Securities / Capital Markets Law
- Seth E. Dizard – Bankruptcy and Creditor Debtor Rights / Insolvency and Reorganization Law and Litigation – Bankruptcy
- Peter J. Faust – Corporate Law and Mergers and Acquisitions Law
- John G. Gehringer – Commercial Litigation, Construction Law, Corporate Law, and Real Estate Law
- Joseph E. Gumina – Employment Law – Management and Litigation – Labor and Employment
- Dennis W. Hollman – Corporate Law and Trusts and Estates
- Grant C. Killoran – Commercial Litigation and Litigation – Health Care
- JB Koenings – Corporate Law
- Dean P. Laing – Commercial Litigation, Personal Injury Litigation – Plaintiffs, and Product Liability Litigation – Defendants
- Gregory W. Lyons – Commercial Litigation and Litigation – Insurance
- Patrick G. McBride – Commercial Litigation
- Joseph D. Newbold – Commercial Litigation
- Chad J. Richter – Business Organizations (including LLCs and Partnerships) and Corporate Law
- John R. Schreiber – Bankruptcy and Creditor Debtor Rights / Insolvency and Reorganization Law and Litigation – Bankruptcy
- Jason R. Scoby – Corporate Law

- Steven J. Slawinski – Construction Law

Best Lawyers: Ones to Watch

- Trevor C. Lippman – Litigation – Trusts and Estates
- Erica N. Reib – Labor and Employment Law – Management and Litigation – Labor and Employment
- Kelly M. Spott – Trusts and Estates
- Christa D. Wittenberg – Commercial Litigation

About Best Lawyers

Best Lawyers has published their list for over three decades, earning the respect of the profession, the media, and the public as the most reliable, unbiased source of legal referrals.

Best Lawyers: Ones to Watch recognizes associates and other lawyers who are earlier in their careers for their outstanding professional excellence in private practice in the United States.

Lawyers on *The Best Lawyers in America* and *Best Lawyers: Ones to Watch* lists are divided by geographic region and practice areas. They are reviewed by their peers on the basis of professional expertise, and they undergo an authentication process to make sure they are in current practice and in good standing.

CHAMBERS AND PARTNERS RECOGNIZES FAUST AND O'NEIL CANNON FOR M&A EXCELLENCE

Attorney Pete Faust and O'Neil Cannon's mergers and acquisitions team have been named by Chambers and Partners as among Wisconsin's best deal lawyers.

O'Neil Cannon is one of only seven Wisconsin law firms ranked by Chambers in the mergers and acquisition/general corporate category.

Faust, the firm's president and managing shareholder, is one of 23 Wisconsin lawyers individually honored by Chambers in the same category.

In addition to Faust, O'Neil Cannon's mergers and acquisitions team includes JB Koenings, Britany Morrison, Chad Richter, Jason Scoby, James DeJong, Dennis Hollman, Nicholas Chmurski, Michael Kennedy, Samuel Nelson, and Nancy Wilson.

Chambers is a London-based research firm that ranks the top lawyers and law firms in 185 countries. More than 200 Chambers researchers interview thousands of lawyers and clients as part of an in-depth analysis of the leading lawyers and law firms.

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    - Rising Stars
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    - Super Lawyer
- James G. DeJong:
    - Super Lawyer
- Seth E. Dizard:
    - Top 50 Attorneys in Wisconsin
    - Top 25 Attorneys in Milwaukee
    - Super Lawyer
- Peter J. Faust:
    - Super Lawyer
- John G. Gehringer:
    - Super Lawyer
- Joseph E. Gumina:
    - Super Lawyer
- Jessica K. Haskell:
    - Rising Stars
- Grant C. Killoran:

    - Super Lawyer

- Dean P. Laing:
    - Top 10 Attorneys in Wisconsin
    - Top 50 Attorneys in Wisconsin
    - Top 25 Attorneys in Milwaukee
    - Super Lawyer

- Trevor C. Lippman:
    - Rising Stars

- Gregory W. Lyons:
    - Super Lawyer

- Patrick G. McBride:
    - Super Lawyer

- Britany E. Morrison:
    - Rising Stars

- Joseph D. Newbold:
    - Super Lawyer

- Erica N. Reib:
    - Rising Stars

- Chad J. Richter:
    - Super Lawyer

- John R. Schreiber:
    - Super Lawyer

- Jason R. Scoby:
    - Super Lawyer

- Steven J. Slawinski:
    - Super Lawyer

- Kelly M. Spott:
    - Rising Stars

- Christa D. Wittenberg:
    - Rising Stars

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19 OCHDL LAWYERS SELECTED AS 2023 BEST LAWYERS®; ANOTHER 4 NAMED BEST LAWYERS: ONES TO WATCH

We are pleased to announce 19 of our lawyers have been included in the 2023 Edition of *The Best Lawyers in America,* and an additional four have been selected as 2023 *Best Lawyers: Ones to Watch*.

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Best Lawyers in America

- Douglas P. Dehler – Litigation – Insurance
- James G. DeJong – Corporate Law, Mergers and Acquisitions Law, and Securities / Capital Markets Law
- Seth E. Dizard – Bankruptcy and Creditor Debtor Rights / Insolvency and Reorganization Law and Litigation – Bankruptcy
- Peter J. Faust – Corporate Law and Mergers and Acquisitions Law
- John G. Gehringer – Commercial Litigation, Construction Law, Corporate Law, and Real Estate Law
- Joseph E. Gumina – Employment Law – Management and Litigation – Labor and Employment
- Dennis W. Hollman – Corporate Law and Trusts and Estates
- Grant C. Killoran – Commercial Litigation and Litigation – Health Care
- JB Koenings – Corporate Law
- Dean P. Laing – Commercial Litigation, Personal Injury Litigation – Plaintiffs, and Product

Liability Litigation – Defendants

- Gregory W. Lyons – Commercial Litigation and Litigation – Insurance
- Patrick G. McBride – Commercial Litigation
- Joseph D. Newbold – Commercial Litigation
- Chad J. Richter – Business Organizations (including LLCs and Partnerships) and Corporate Law
- John R. Schreiber – Bankruptcy and Creditor Debtor Rights / Insolvency and Reorganization Law and Litigation – Bankruptcy
- Jason R. Scoby – Corporate Law
- Steven J. Slawinski – Construction Law

Best Lawyers: Ones to Watch

- Trevor C. Lippman – Litigation – Trusts and Estates
- Erica N. Reib – Labor and Employment Law – Management and Litigation – Labor and Employment
- Kelly M. Spott – Trusts and Estates
- Christa D. Wittenberg – Commercial Litigation

About Best Lawyers

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Best Lawyers: Ones to Watch recognizes associates and other lawyers who are earlier in their careers for their outstanding professional excellence in private practice in the United States.

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FOUR OCHDL ATTORNEYS NAMED 2022

“LAWYER OF THE YEAR” IN THE MILWAUKEE AREA BY BEST LAWYERS®

Attorneys Seth Dizard (Bankruptcy and Creditor Debtor Rights / Insolvency and Reorganization), Pete Faust (Mergers and Acquisitions), Greg Lyons (Litigation – Insurance), and Steve Slawinski (Construction) have been named by Best Lawyers® as the 2022 **“**Lawyer of the Year” in Milwaukee for their area of practice.

Only one lawyer in each practice area and designated metropolitan area is honored as the “Lawyer of the Year.” Lawyers are selected based on the assessments of other leading lawyers in the same category.

This designation reflects the high level of respect lawyers have earned for their abilities, professionalism, and integrity.

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19 OCHDL LAWYERS SELECTED AS 2022 BEST LAWYERS®; ANOTHER 5 NAMED BEST LAWYERS: ONES TO WATCH

We are pleased to announce 19 of our lawyers have been included in the 2022 Edition of *The Best Lawyers in America,* and an additional five have been selected as 2022 *Best Lawyers: Ones to Watch*.

The following are the O’Neil, Cannon, Hollman, DeJong and Laing lawyers named to the 2022 lists:

Best Lawyers in America

- Douglas P. Dehler – Litigation – Insurance
- James G. DeJong – Corporate Law, Mergers and Acquisitions Law, and Securities / Capital Markets Law
- Seth E. Dizard – Bankruptcy and Creditor Debtor Rights / Insolvency and Reorganization Law and Litigation – Bankruptcy
- Peter J. Faust – Corporate Law and Mergers and Acquisitions Law
- John G. Gehringer – Commercial Litigation, Construction Law, Corporate Law, and Real

Estate Law

- Joseph E. Gumina – Employment Law – Management and Litigation – Labor and Employment
- Dennis W. Hollman – Corporate Law and Trusts and Estates
- Grant C. Killoran – Commercial Litigation and Litigation – Health Care
- JB Koenings – Corporate Law
- Dean P. Laing – Commercial Litigation, Personal Injury Litigation – Plaintiffs, and Product Liability Litigation – Defendants
- Gregory W. Lyons – Commercial Litigation and Litigation – Insurance
- Patrick G. McBride – Commercial Litigation
- Joseph D. Newbold – Commercial Litigation
- Chad J. Richter – Business Organizations (including LLCs and Partnerships) and Corporate Law
- John R. Schreiber – Bankruptcy and Creditor Debtor Rights / Insolvency and Reorganization Law and Litigation – Bankruptcy
- Jason R. Scoby – Corporate Law
- Steven J. Slawinski – Construction Law

Best Lawyers: Ones to Watch

- Trevor C. Lippman – Litigation – Trusts and Estates
- Erica N. Reib – Labor and Employment Law – Management and Litigation – Labor and Employment
- Kelly M. Spott – Trusts and Estates
- Christa D. Wittenberg – Commercial Litigation

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current practice and in good standing.

PETE FAUST ELECTED MANAGING SHAREHOLDER AND PRESIDENT OF OCHDL

Pete Faust has been elected as the Managing Shareholder and President of O'Neil Cannon

Faust replaces Dean Laing, who was the firm's Managing Shareholder and President for six years. Laing will remain a member of the firm's Board of Directors, along with Faust. Laing, one of the top litigators in the state, will continue his litigation practice.

"Dean has been an exceptional leader of the firm and set an extremely high standard for all who follow him," Faust said. "His commitment to the firm and his work ethic are unparalleled. We are very grateful that he has agreed to remain on the Board of Directors."

Faust is a corporate attorney who works primarily in mergers and acquisitions and has been the head of the firm's transactional practice.

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20 OCHDL LAWYERS SELECTED AS 2021 BEST LAWYERS®; ANOTHER 5 NAMED BEST LAWYERS: ONES TO WATCH

We are pleased to announce 20 of our lawyers have been included in the 2021 Edition of *The Best Lawyers in America,* and an additional five have been selected as 2021 *Best Lawyers: Ones to Watch*.

The following are the O'Neil, Cannon, Hollman, DeJong and Laing lawyers named to the 2021 lists:

Best Lawyers in America

- Douglas P. Dehler – Litigation – Insurance
- James G. DeJong – Corporate Law, Mergers and Acquisitions Law, and Securities / Capital Markets Law

- Seth E. Dizard – Bankruptcy and Creditor Debtor Rights / Insolvency and Reorganization Law and Litigation – Bankruptcy
- Peter J. Faust – Corporate Law and Mergers and Acquisitions Law
- John G. Gehringer – Commercial Litigation, Construction Law, Corporate Law, and Real Estate Law
- Joseph E. Gumina – Employment Law – Management and Litigation – Labor and Employment
- Dennis W. Hollman – Corporate Law and Trusts and Estates
- Grant C. Killoran – Commercial Litigation and Litigation – Health Care
- JB Koenings – Corporate Law
- Dean P. Laing – Commercial Litigation, Personal Injury Litigation – Plaintiffs, and Product Liability Litigation – Defendants
- Gregory W. Lyons – Commercial Litigation and Litigation – Insurance
- Patrick G. McBride – Commercial Litigation
- Thomas A. Merkle – Family Law
- Joseph D. Newbold – Commercial Litigation
- Chad J. Richter – Business Organizations (including LLCs and Partnerships) and Corporate Law
- John R. Schreiber – Bankruptcy and Creditor Debtor Rights / Insolvency and Reorganization Law and Litigation – Bankruptcy
- Jason R. Scoby – Corporate Law
- Steven J. Slawinski – Construction Law

Best Lawyers: Ones to Watch

- Kelly M. Spott – Trusts and Estates
- Trevor C. Lippman – Litigation – Trusts and Estates
- Erica N. Reib – Labor and Employment Law – Management and Litigation – Labor and Employment
- Christa D. Wittenberg – Commercial Litigation

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COVID-19 RAISES PRIVACY ISSUES FOR MAJOR-LEAGUE BASEBALL

After months of delay trying to address COVID-19 issues, the 2020 Major League Baseball ("MLB") season finally opened Thursday night with the New York Yankees defeating the Washington Nationals, 4-1, and the Los Angeles Dodgers pulling away from the San Francisco Giants for an 8-1 victory. Because of the COVID-19 pandemic, this season – assuming it is not called off because of COVID-19 outbreaks – will be unlike any prior MLB season. The regular season has been reduced from 162 games to 60 games, the number of playoff teams was expanded from 10 to 16 teams, games are being played in empty stadiums, and players, coaches, and other staff are subject to extensive COVID-19 testing and daily monitoring.

As of July 17, 80 players have tested positive for COVID-19, 17 of which tested positive after teams began their workouts on July 1. Of those 80 players, the general public knows the identity of only 56 of them. Why only 56, especially since MLB clubs traditionally have disclosed details of a player's injury? For example, when New York Mets pitcher Noah Syndergaard tore the ulnar collateral ligament in his pitching elbow in March, the Mets announced that Syndergaard had suffered the injury and would undergo Tommy John surgery. The Mets later announced that the surgery had been successful, and that Syndergaard was expected to pitch again at some point during the 2021 season.

MLB clubs are more tight-lipped about COVID-19 issues. MLB has effectively created a COVID-19 Related Injured List for players who have tested positive, have been exposed, or have shown symptoms of the COVID-19. The list does not differentiate between players who have tested positive and players who have been exposed to someone who has tested positive for COVID-19, and is not being published as a stand-alone list. Instead, players with positive COVID-19 testing or exposure status will be acknowledged on the normal injury report just like any other injured player. Their injury, however, will be described as an undisclosed injury, an illness, or a non-baseball injury. While naming a player to the injury list with a designation of "undisclosed" does open the door for public speculation regarding a

player's health status, the various designations on the list do not function to definitively confirm that a particular player has tested positive for or been exposed to the virus that causes COVID-19.

Why do MLB clubs disclose less about the status of a player who is missing games because of COVID-19 than a player one who is out for the season with a torn elbow ligament?

The simple answer is that the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") and the Americans with Disabilities Act ("ADA") provide broad health privacy and confidentiality protections for players. Specifically, HIPAA and the ADA each restrict the clubs' ability to publicize information about employee illness without permission.

How do HIPAA and the ADA Apply?

HIPAA applies to an MLB club in its role as a health-care provider to the players. HIPAA is a federal law that was created to protect sensitive patient health information and prevents disclosure of individual health information without such individual's consent. This privacy rule generally applies only to specified types of covered entities and their associates. Covered entities include healthcare providers and group health insurance plans. Certain business associates and vendors of a covered entity can also be required to observe HIPAA's requirements. Where an entity is either not regulated by HIPAA, or is subject to HIPAA, but has obtained individual consent, the federal privacy law does not prevent the disclosure of personal medical information. Because professional sports teams provide healthcare to their players via team doctors, they are healthcare providers under HIPAA. The terms and conditions of professional athletes' employment, as documented in the applicable collective bargaining agreement, generally requires player consent to disclose individual medical information relevant to team status.

The ADA applies to an MLB club in its role as an employer. The ADA functions to prohibit employers from discrimination against employees on the basis of a disability and to require employers to treat all information about employee illness as a confidential medical record. While federal guidance indicates that COVID-19 status is unlikely to constitute a disability, the Equal Employment Opportunity Commission ("EEOC") has made clear that employers must treat employee COVID-19 status as confidential.

Why is There Different Treatment?

An elbow injury and a positive COVID-19 test are treated differently because of HIPAA, the ADA, and MLB's collective bargaining agreement and standard player contract. MLB players and clubs must operate in accordance with the health information disclosure rules as currently codified under Article XIII.G.(1) of the collective bargaining agreement known as the 2017-2021 Basic Agreement (the "CBA") and by Paragraph 6(b)(1) of each standard player

contract, known as the Uniform Player's Contract ("UPC"). Under these agreements, each player is required to execute a HIPAA-compliant authorization for the use and disclosure of health information about the player. By signing the UPC, the player authorizes disclosure of employment-related injuries. The UPC incorporates the relevant health information disclosure provisions of Article XIII.G. of the CBA, Section 4, which provide that:

> [for] public relations purposes, a Club may disclose the following general information about employment-related injuries: (a) the nature of a Player's injury, (b) the prognosis and the anticipated length of recovery from the injury, and (c) the treatment and surgical procedures undertaken or anticipated in regard to the injury.

If a medical condition, other than an employment-related injury, prevents a player from playing and the player has not provided the club with specific written authorization to disclose information about the medical condition, the club may disclose only that a medical condition is preventing the player from playing and the anticipated absence of the player from the club. COVID-19 status, therefore, is not deemed to be an employment-related injury that would allow an MLB club to disclose details regarding prognosis and treatment. Although a player may authorize a team to disclose his COVID-19 status, such authority is not automatic under either HIPAA or the documents governing the employment relationship. The ADA does not explicitly address employee authorization of an employer to disclose medical information, but does permit limited disclosure as necessary to respond to a request for reasonable accommodation.

In practical terms, this compliance with the HIPAA privacy and ADA confidentiality rules with respect to COVID-19 means that even if a player tests positive, the club or its staff may not disclose that to the public unless granted permission to do so by the player. Any unauthorized disclosure could constitute a HIPAA violation, for which significant federal civil monetary penalties may apply if the U.S. Department of Health and Human Services investigates a compliant or performs a compliance audit. Additionally, a player might be able to bring a collective bargaining grievance, or to allege a breach of the employment contract.

Lessons for the Rest of Us

Of course, most businesses are not professional sports franchises with collective bargaining agreements providing HIPAA disclosure consent. The caution displayed by the MLB in avoiding the disclosure of player COVID-19 status, however, is a reminder to all employers with access to employee health information and records to carefully assess which health-related information disclosures may or may not be permitted under applicable law.

HIPAA

HIPAA is a complex health privacy law with multiple exceptions and with sometimes

conflicting state law counterparts. Health care providers, employer sponsors of self-insured group health plans and their business associates are subject to its requirements and should take care to ensure that affirmative compliance actions are taken and maintained. Violations of these rules, as well as the inability to demonstrate operational and documented (written) compliance, can subject the health care providers, health plan sponsors, or their associates, to large civil, or even criminal, penalties.

The ADA, FMLA, and GINA

For employers who, unlike MLB clubs, are not directly subject to HIPAA, it is important to remember that other laws provide separate protections for employee health information. Any information known to an employer regarding an employee's disability or gathered as a result of an employer-provided medical examination (which can include taking a temperature) should remain confidential. Employers must maintain all information about employee illness as a confidential medical record in compliance with the ADA and EEOC guidance. Similarly, employers subject to the Family and Medical Leave Act ("FMLA") or the Emergency Family Medical Leave ("EMFL") provisions of the CARES Act must confidentially maintain any records and documents relating to employee (and family) medical certifications and medical histories and created for FMLA or EMFL purposes. The Genetic Information Nondisclosure Act ("GINA") also requires employers to keep all genetic information, including information about an individual's genetic tests, the genetic tests of a family member, family medical history, regarding employees confidential. The ADA, FMLA, EFML, and GINA all require that such records be stored separately from the usual personnel files.

If you have questions related to your business's obligations under the ADA, FMLA, CARES Act, or GINA, or HIPAA, or seek attorney-client privileged review of your current compliance program, including as to HIPAA policies and procedures, please contact your regular OCHDL attorney or Pete Faust.