



PRESENTATIONS AND EVENTS

Recent Presentations

Bill Ehrke recently presented to the Allied Finance Adjusters at their 2018 Midyear Convention in October. Bill's presentation was on the practical effects and ramifications of repossession agents' actions in the field in subsequent litigation alleging wrongful repossession. The presentation included detailed information on what could be expected during discovery and depositions of repossession agents, including mock adverse depositions of repossession agents.

Agatha Raynor recently presented at the Archdiocese of Milwaukee's "Gigs, Geeks & God" conference, on January 10, 2019. Aggie's presentation, "Social Media, Technology and the Workplace: A Legal Perspective," explored the effects of social media/technology on the workplace from the legal perspective.

For more information or to arrange a presentation on any of these or other legal topics, please contact Crivello Carlson at 414-271-7722.

Upcoming Presentations

Jeff Nichols and **Rich Orton** will be presenting at the National Association of Equipment Manufacturers' (AEM) annual Product Liability Conference in Des Moines, IA, on May 2, 2019. Rich and Jeff will be presenting to engineers, safety professionals, product liability managers, and counsel from the heavy equipment industry, and will break down the anatomy of a product liability claim. In particular, they will explain how every step in a product's life cycle – from initial design to recalls and retrofits – can impact a lawsuit, and what these professionals can do to help protect their companies from liability exposure.

Agatha Raynor will be presenting a series of seminars on Workplace Harassment in mid-February for a mid-size employer in southeastern Wisconsin. The presentation will explain workplace harassment, dispel common myths, and provide training to employees regarding their employers' harassment policies.

FIRM NEWS

Crivello Carlson, S.C. has been named a Tier 1 firm in Milwaukee for Personal Injury Litigation – Defendants by U.S. News – Best Lawyers® "Best Law Firms in 2019, as well as being named a Tier 2 firm in Milwaukee for Medical Malpractice Law – Defendants, Product Liability Litigation – Defendants and Professional Malpractice Law – Defendants.

Donald H. Carlson, Patrick W. Brennan and **Eric D. Carlson** have been named to the list of 2018 Wisconsin Super Lawyers.

In addition, six of the firm's attorneys have been named to the list of 2018 Wisconsin Rising Stars. The list includes: **Samuel C. Hall, Jr., Timothy M. Johnson, Sara C. Mills, Daniel K. Mullin, Richard T. Orton** and **Ashley E. Webber**.

Eric Carlson, Don Carlson and **Laura Schuett** recently authored the article "Wisconsin's Asbestos Bankruptcy Trust Law" which appeared in the October 2018 newsletter of the Civil Justice Response Committee which is part of the International Association of Defense Counsel. The article discussed Wisconsin's 2014 asbestos bankruptcy trust transparency and the laws enacted to foster greater disclosure by plaintiffs with respect to exposures to asbestos-containing products sold by bankrupt former defendants.

Christine M. Jahncke, Bethany J. Berndt, Heather M. Innes, Sheila F. Steinweg, Susan L. Clark, and **Jennifer A. Waterstraat** have received their State Bar of Wisconsin Certified Paralegal (SBWCP) credentials.

FIRM NEWS

Favorable Verdicts and Outcomes

Eric Carlson and **Nathan Bayer** recently obtained a defense verdict in the U.S. District Court for the Northern District of Illinois in a trial involving a rear end collision between two semi-tractor trailers. As a result of the accident, the Plaintiff claimed to be completely disabled due to cervical and brain injuries, and was seeking \$14 million. The jury concluded that the accident did not cause the Plaintiff's claimed injuries and awarded no damages.

Eric Carlson, George Peek, and Laura Schuett received a favorable Wisconsin Supreme Court decision in an asbestos matter pending since 2010. The court agreed that our client was not liable under theories of successor liability. This precedential decision found that the Wisconsin Uniform Fraudulent Transfer Act does not govern the "fraudulent transaction" exception to the rule of successor nonliability.

Jim Niquet, Travis Rhoades, and Bill Keeler prevailed on summary judgment, securing the complete dismissal of our four, power-generation company clients from a premises liability-based wrongful death claim. Determined to get rulings on the particular facts of the case, with the potential for a much broader appellate application, they worked to provide both trial and appellate courts a set of undisputed facts on which to rule. They proposed and negotiated a set of stipulated facts with the plaintiff, and successfully argued that the application of Wis. Stat. § 893.89 to those facts resulted in a complete bar of plaintiff's claims.

Bill Ehrke received a favorable decision from the Seventh Circuit Court of Appeals affirming the summary judgment dismissal of a plaintiff's wrongful repossession claims against a lender and its repossession agent.

Under the Fair Debt Collection Practices Act, the decision confirmed that the repossession agent did not violate the Act with regard to the potential assessment of fees relating to the retention and return of plaintiff's personal property. Originally entered by the United States District Court for the Western District of Wisconsin, a money judgment for the taxable costs incurred in the case by the clients, against the plaintiff, had been affirmed.

Jeff Nichols, and Sara Mills recently prevailed on summary judgment in the Eastern District of Wisconsin. The Plaintiff alleged his constitutional rights had been violated as a result of the food he was served while incarcerated. The court agreed that our client did not violate the Constitution and was not deliberately indifferent to the Plaintiff's conditions of confinement based on the food it served. The court dismissed the Plaintiff's case.

Bill Ehrke also received a favorable decision from the Federal District Court for the Western District of Wisconsin, granting summary judgment on all Fair Debt Collection Practices Act claims against a lender and its repossession agent arising out of Plaintiff's claims that her vehicle was wrongfully repossessed and that the lender/repossession agent wrongfully failed to return her vehicle to her when she paid her redemption fees to the lender. A money judgment for the taxable costs incurred in the case by the clients has been entered against the Plaintiff.

Jeff Nichols and Ashley Webber received a defense verdict in a recent trial in Racine County, Wisconsin. Plaintiff alleged he sustained significant neck injuries requiring multiple surgeries and permanent work restrictions resulting in total special damages of \$338,000 as a result of being rear-ended at a stop sign. The jury found otherwise and concluded Plaintiff's injuries were not caused by the accident and awarded zero damages.

RECENT SEVENTH CIRCUIT COURT DECISIONS

Employment Law – Discrimination

Terry v. Gary Community School Corp.,
No. 18-1270 (7th Cir. 2018)

For 35 years, Terry worked as a teacher and an administrator for a local school district. After the 2013–2014 school year, the District closed the school where Terry served as the Principal because of declining enrollment and reassigned her as the Assistant Principal at another school. The District picked a male employee (Cain) over Terry for a separate promotion, although Terry had earned the highest ranking of the applicants from the interviewers. Terry filed suit, alleging sex discrimination under Title VII of the Civil Rights Act, 42 U.S.C. 2000e-2(a)(1), and the Fourteenth Amendment; retaliation under Title VII; and unequal pay. The Seventh Circuit affirmed summary judgment in favor of the District on Terry's federal claims. Even assuming Terry's change in position constituted a material adverse action, Terry did not present any evidence that the District had a discriminatory purpose. The chronology of events alone is not evidence that the District lied when it said it picked Cain for the promotion because of his experience working at the particular school. Timing, even combined with Terry's positive employment history, is not enough to create a dispute of material fact as to whether the District retaliated against Terry.

Insurance Law – Contracts

Martinsville Corral, Inc. v. Society Insurance,
No. 18-1945 (7th Cir. 2018)

In this case, the Seventh Circuit held that there was no coverage for a Claim of Impairment of Goodwill and Reputation under Defamation Endorsement of a commercial liability policy. MCI held a business owners insurance policy with an "Employment-Related Practices Liability Endorsement" from Society Insurance. When DirecTV sued MCI under 47 U.S.C. 521 for publicly displaying its programming in MCI's two restaurants without paying the commercial subscription rate, Society denied MCI's claim. MCI sued Society and the trial court concluded that Society did not owe coverage as a matter of law. The Seventh Circuit affirmed summary judgment for Society. In its ruling, the Seventh Circuit recognized that the Endorsement required Society to cover MCI for "damages resulting from a 'wrongful act' to which [the Policy] applies" and defines "wrongful act" to include, "[l]ibel, slander, invasion of privacy, defamation or humiliation." There is no reasonable interpretation of the DirecTV complaint that could arguably fall within the category of libel, slander or defamation. The complaint alleged that MCI damaged DirecTV's goodwill by showing its programming without paying the correct subscription fee, but there were no allegations that MCI made any false, defamatory statement about DirecTV.

RECENT WISCONSIN COURT OF APPEALS DECISIONS

Insurance – Permissive Users

Balde v. Haas, Appeal No. 2017AP2173 (November 27, 2018)

In a case handled by Stacy Luell of Crivello Carlson, the Wisconsin Court of Appeals recently held that, in a coverage dispute related to a UTV accident, coverage from the property insurer was not due because another insurer covered the UTV. Plaintiff was injured in a UTV accident in which defendant was a permissive user and, as such, had liability coverage under the UTV owner's policy. Plaintiff also sought coverage under the liability policy of the land owner on which the accident occurred based on the definition of Insured, including "with respect to the operation, with your permission, of mobile equipment." This, insurance however, applied only "if there is no other insurance covering the liability available to them." Defendant argued the UTV policy provision was "excess over other insurance that applies to the loss or claim" should be interpreted, to make the property policy's coverage applicable. The Court held that other insurance clause went to order of coverage, not existence of coverage, and thus, property owner's policy made its coverage inapplicable.

Insurance – Dog Bite Liability

Joan A. Kelly v. Amanda E. Berg, Appeal No. 2017AP2033 (December 11, 2018)

The Wisconsin Court of Appeals recently denied double damages to a plaintiff injured by a dog bite, based on policy concerns. In this case, Plaintiff sought double damages when her neighbor's dog bit her because the dog had previously caused injury to property by digging holes under her fence. Plaintiff argued that her neighbor's knowledge of the dog's previous property damage allowed Plaintiff to recover double damages. The court rejected Plaintiff's argument and set out several factors limiting liability that applied in this case:

(1) the injury to Plaintiff was too remote from Berg's negligence, because Berg simply failed to predict her dog's extraordinary, unprovoked attack; (2) the recovery of double damages would be out of proportion and an unreasonable burden related to Berg's limited negligence; and (3) the recovery of double damages would have no "just stopping point," because any minor damage would be considered attributable to Berg's negligence.

Property Damage – Economic Loss Doctrine

Kmart Corp. v. Herzog Roofing, Inc., Appeal No. 2017AP1041 (October 30, 2018)

In this case, Herzog and Kmart entered into a contract by which Herzog would provide materials and install a rubber roofing system on an Eau Claire Kmart store. Ten years later, the roof collapsed, and Kmart filed a negligence claim against Herzog. The Court ruled the economic loss doctrine barred the negligence claim. In the decision, the Court defined the economic loss doctrine as "generally barring contracting parties from pursuing tort claims...for economic losses arising from the parties' contractual relationship." Under the doctrine, the claim is barred if it meets two requirements: (1) the contract is predominantly for the sale of a product; and (2) the plaintiff is seeking solely economic damages, not including damages to property other than the contracted product. Here the Court determined that the contract was predominantly for the sale of the roofing materials, not the service of installing them, so the economic loss doctrine applies. Further, the Court determined that the roof was an integral part of the damaged building. Moreover, Kmart should have foreseen that the roof's failure would have caused damages to the building and should have protected against that loss in the contract. Therefore, the damaged building was not "other property" that would prevent application of the economic loss doctrine.

RECENT WISCONSIN SUPREME COURT DECISIONS

Insurance Law – Occurrences from a Single Cause

Secura Ins. v. Lyme St. Croix Forest Co., LLC, 2018 WI 103 (Oct. 30, 2018)

The Wisconsin Supreme Court issued its first major decision of the 2018–19 term, ruling in a unanimous decision on a tort case involving insurance coverage for property damaged in the Germann Road Fire. The issue before the Court was whether multiple occurrences may arise from a single cause for insurance coverage purposes. In this case, SECURA argued that the fire spreading across multiple property lines was a single occurrence and, thus, coverage arising from the fire would be capped at the per-occurrence limit of \$500,000. On the other hand, plaintiffs argued that a separate occurrence began each time the fire crossed onto another property. Thus, coverage would be capped at \$500,000 per property damaged, up to the policy's \$2 million aggregate limit. The Court ultimately sided with SECURA, determining that the fire was a single occurrence, and coverage should be capped at the policy's \$500,000 per-occurrence limit. The Court based its decision on the "cause theory" that says damages from a "single, uninterrupted cause" are a single occurrence. The Court ruled the fire a single, uninterrupted cause and argued ruling otherwise would have arbitrary and unreasonable consequences.

Municipal Law – Governmental Immunity and the Known Danger Exception

Engelhardt v. City of New Berlin, 2019 WI 2 (January 4, 2019)

The Wisconsin Supreme Court held that the known danger exception to governmental immunity applied in this case. Eight-year-old Lily Engelhardt drowned in a swimming pool at an aquatic center during a field trip organized and run by the New Berlin Parks and Recreation Department. While the "playground coordinator" was informed that Lily could not swim, Lily drowned while staff were changing in the locker rooms. After Lily's parents filed suit, New Berlin moved for summary judgment, asserting that it was immune from suit pursuant to the governmental immunity statute, Wis. Stat. 893.80(4). The circuit court denied the motion. The Wisconsin Court of Appeals reversed and concluded that immunity should be applied. The Supreme Court reversed the appellate court, holding: (1) the danger to which Lily was exposed at the pool was compelling and self-evident, and therefore, the staff had a ministerial duty to give Lily a swim test before allowing her near the pool; and (2) because the staff did not perform this ministerial duty, New Berlin was not entitled to the defense of governmental immunity.



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LAW WATCH

A MESSAGE FROM THE CRIVELLO CARLSON FAMILY

A message from the Crivello Carlson Family

Not only during the holidays, but throughout the year, Crivello Carlson is proud to donate to charitable organizations in the Wisconsin community and worldwide in the following ways

United Way – Strategically improving health, education and financial stability in our community;

Big Brothers Big Sisters of Metro Milwaukee – Provides children facing adversity with strong and enduring, professionally supported, one-to-one mentoring relationships that change their lives for the better, forever;

Prevent Blindness Wisconsin – Provides free vision screenings for children and adults and provides access to professional eye care for low income families around Wisconsin;

Ronald McDonald House Charities of Eastern Wisconsin – Helps families stay together when their sick children are treated far from home;

Cream City Foundation – Advancing equality for the LGBTQ+ communities;

Wisconsin African American Lawyers (WAAL) Education Foundation – Encouraging diversity in the legal practice by providing scholarships to African-American law students at Marquette University Law School and the University of Wisconsin Law School; and

Association for Women Lawyers – Participated in the Gift Bag Drive providing supplies for women in area shelters.



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