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Law Watch

A Quarterly Update from Crivello Carlson, S.C.

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RECENT PRESENTATIONS

George S. Peek co-authored and presented a video webcast entitled "Probate Process from Start to Finish" for the National Business Institute. The webcast aired January 19, 2018.

Sheridan Shauntee presented at the National Business Institute's December 2017 "Litigation Boot Camp for Paralegals Webcast Seminar." Topics included: preparing pleadings, motions, discovery requests and responses with document productions and preparation and service of subpoena.

Sam Hall, Amy Doyle, and **Sara Mills** recently presented at the Wisconsin Department of Justice's Annual Jail Administrator's Conference in Green Bay, Wisconsin. Topics included: recent verdicts and settlements in jail litigation, developments with the Prison Rape Elimination Act, transgender inmates and other recent developments in corrections.

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

FIRM NEWS

Susan C. VenRooy, Mitchell Hamline School of Law '17, joined the firm this fall as an associate in our Eau Claire office. Attorney VenRooy's practice focuses on insurance defense and municipal and civil rights defense.

Patrick Brennan was selected to the 2017 Wisconsin Super Lawyers list in the practice area of civil litigation defense.

Danny Mullin and **Timothy Johnson** were included on the Wisconsin Rising Stars list in the practice area of civil litigation defense for the past three years.

Sam Hall was selected to the 2017 Wisconsin Rising Stars list in the practice area of civil rights litigation.

Richard Orton was selected to the 2017 Wisconsin Rising Stars list in the practice area of general litigation.

Don Carlson and **Danny Mullin** were successful in recovering money expended by their client, a leading manufacturer of automated products, from a switch gear manufacturer for payment of warranty claims under an asset purchase agreement.

Jasmyne Baynard joined **Nathan Bayer** in his seventeenth year as coach for the Shorewood High School Mock Trial Team.

Danny Mullin and **Jeff Nichols** were successful in the Second District Court of Appeals of Illinois when it affirmed the trial court's summary judgment decision. The case involved a bar fight that originated inside the defendant's bar and carried out into the parking lot where the plaintiff was struck in the head with a baseball bat, sustaining significant and permanent injuries that resulted in almost $1 million in medical treatment. After the plaintiff made a $1 million policy-limit demand and threats of bad faith, the lower court in Winnebago County, Illinois granted summary judgment to the neighborhood bar. The court of appeals confirmed the lower court's finding that the bar owed no duty for unforeseeable events such as the fight that took place in the parking lot. The bar employees were unaware that the fight took place.

Travis Rhoades, Laura Schuett and **Noelle Muceno** prevailed in a series of partial and complete bars to plaintiff's expert testimony regarding causation in several toxic tort cases in recent months. Our lawyers succeeded in establishing that plaintiffs' experts' opinions were not reliable or admissible on several fronts, including that plaintiffs' experts' methodologies and conclusions had not been tested, were not subject to peer review, had no known error rate, lacked standards and controls and were not generally accepted in the scientific community.

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Update

RECENT WISCONSIN COURT OF APPEALS DECISIONS

INSURANCE -

Equitable Subrogation

Steadfast Ins. Co. v. Greenwich Ins. Co.,
2018 WL 446236

A Wisconsin appeals panel recently affirmed that an insurer is equitably responsible for a government agency insured's $1.55 million underlying defense costs because it breached its duty to defend the insured against a lawsuit alleging that the insured was negligent in the inspection, maintenance, repair, and operation of its sewer system before and during a June 2008 rain event in the greater Milwaukee area.

After the rain event, several homeowners filed lawsuits against the Milwaukee Metropolitan Sewerage District (MMSD). MMSD tendered its defense to its insurers, Steadfast and Greenwich. Steadfast accepted the tender; however, Greenwich declined. One of the arguments that Greenwich made was that if this court determines that Greenwich's policy is not in excess to Steadfast's policy, each insurer should have to contribute pro rata toward the loss. The court of appeals did not agree and held that under the doctrine of equitable subrogation, upon payment of MMSD defense costs in the rain event lawsuits, Steadfast stepped into MMSD's shoes and was entitled to recover from Greenwich the same damages that MMSD would have been entitled to recover from Greenwich.

MUNICIPAL LAW -

Partition Fences on Farming and Grazing Land

White v. City of Watertown,
2017 WI App 78

Plaintiffs, the White family, own land in the City of Watertown, which they use as a livestock farm. A dispute arose with the Whites' and their neighbors regarding the costs and maintenance of a partition fence. The Whites' filed a complaint for declaratory judgment after the City of Watertown refused to resolve a property dispute that arose under the plaintiffs' obligation established under Wis. Stat. Chapter 90, which regulates partition fences on farming and grazing lands. In particular, the plaintiffs argued that Wis. Stat. Ch. 90 required them to maintain a partition fence between their land and neighboring residential properties, and that the city was required to resolve a dispute between them and their neighbors regarding the cost and maintenance of the fence.

The city refused to resolve the dispute, arguing that Chapter 90 applies to towns, but not to cities. The circuit court disagreed; holding that Chapter 90 is ambiguous, but is most reasonably read as applying to cities as well as to towns. The court of appeals held that when qualifying land is in a city or village, that city or village must administer and enforce Chapter 90 the same as a town would.

PROPERTY -

Payable on Death Accounts and Changed Beneficiaries

Mueller v. Edwards,
2017 WI App 79

The depositor created a payable on death ("POD") account at U.S. Bank, naming two beneficiaries on a signature card held by the bank. When the depositor died, Mueller, a neighbor and friend of the depositor, produced a handwritten note in which both claimed that the depositor had named him as the sole beneficiary on this and other accounts. The court of appeals cited Wis. Stat. 705 and held that a handwritten note separate from the contract of deposit does not change the beneficiary designation on the POD account.

REAL PROPERTY -

Condemnation

Otterstatter v. City of Watertown,
2017 WI App 76

The City of Watertown sought to expand its airport by purchasing the plaintiff's property. An appraiser valued the property at $240,000 and the city offered $270,000. Under Wis. Stat. § 32.05 the state requires that the condemnor provide a jurisdictional offer that is "based upon" the appraisal provided by the condemnor to the property owner. The court reasoned that the city's jurisdictional offer of $270,000 was based upon the appraisal, as required by statute. Thus, the court upheld the issuance of the writ of assistance that removed the plaintiff from the condemned property.

RECENT WISCONSIN SUPREME COURT DECISIONS

SMALL CLAIMS -

Damages

Estate of Miller v. Storey,
2017 WI 99

The estate of Stanley G. Miller filed a small claims action against Storey, under Wis. Stat. § 895.446, for theft of money from her elderly uncle. The circuit court awarded the estate actual damages of $10,000 under Wis. Stat. § 799.01(1)(d), exemplary damages of $20,000 under Wis. Stat. § 895.446(3)(c), attorney fees of $20,000 under Wis. Stat. § 895.446(3)(b), and double taxable costs under Wis. Stat. § 807.01(3).

The court of appeals reversed this decision. The Supreme Court of Wisconsin made three holdings with regards to the damages, it held that: (1) action under civil theft statute alleging property damage or loss caused by crime is an "other civil action" instead of an "action based in tort" under the Procedure in Small Claims Actions statute, Wis. Stat. § 799.01, thus the damages cap is $10,000 and double costs were authorized; (2) that attorney fees were included in the meaning of "costs of investigation and litigation" under Wis. Stat. § 895.446(3)(b); and (3) the court held that the jury must decide the award of exemplary damages because the jury was the trier of fact.

CONTRACTS -

Unjust Enrichment

Sands v. Menard,
2017 WI 110, 904 N.W.2d 789

Sands claimed that her cohabitating partner, Menard, repeatedly promised her that in return for her contributions, he would give her an ownership interest in his business ventures. The court held that Sands failed to state a claim of unjust enrichment, because she alleged no facts from which to conclude that her contributions caused an increase in Menard's assets or property.

RECENT SEVENTH CIRCUIT COURT DECISIONS

NEGLIGENCE AND PERSONAL INJURY -

Open and Obvious Dangers

Larry Dunn v. Menard, Inc.,
(7th Cir. filed 1/29/2018)

After a falling stack of insulation at one of Defendant Menard, Inc.'s ("Menards") stores hit Plaintiff Larry D. Dunn, Dunn filed suit against Menards, alleging that Menards negligently stacked the insulation, causing him injuries. Menards moved for summary judgment on the grounds that Menards did not owe Dunn a duty to warn or protect, given that the stack of insulation constituted an open and obvious danger. The district court granted summary judgment to Menards and found that Menards did not owe a legal duty to Dunn because leaning on a stack of insulation constituted an open and obvious condition.

Dunn appealed and the Seventh Circuit Court of Appeals affirmed the district court.

The Seventh Circuit Court of Appeals undertook an extensive review of the open and obvious doctrine and explained that the open and obvious doctrine is an exception to the general duty of care owned by a business or landowner. Further, the Seventh Circuit reasoned that the open and obvious nature of the condition, i.e. a large stack of insulation, gives caution itself and the plaintiff should have appreciated and avoided the obvious risk. The Seventh Circuit also discussed Dunn's argument that Menards owed him a legal duty regardless of the open and obvious nature of the insulation. The Seventh Circuit agreed with the district court, holding that Menards did not owe a legal duty to Dunn because the risks of danger was not foreseeable and imposing a greater duty on Menards would be onerous, requiring Menards to expend significate resources.

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Upcoming Decisions

CRIVELLO CARLSON, A YEAR IN REVIEW:

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

March of Dimes – Fighting for increased access to healthcare for all mothers and babies

American Heart Association – Funding innovative research to fight against heart disease and stroke

Camp Hometown Heroes – Funding a free camp to support the children of fallen U.S. service members

Elmbrook Humane Society – Sheltering homeless animals and preventing animal cruelty

MACC Fund – Funding research to end childhood cancers and blood disorders

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

Milestones Programs for Children – Creating educational opportunities for young children

American Hellenic Educational Progressive Association – Countering bigotry and racism through promoting humanity, freedom, and democracy

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

CONTACT US

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