

WISCONSIN Law Journal

VOLUME 37 NUMBER 10

OCTOBER 2023

THE POWER30

WISCONSIN LAW JOURNAL

PERSONAL INJURY ATTORNEY

POWER OF ATTORNEYS

*The Wisconsin Law Journal selects
its top-30 personal injury attorneys*

PAGES 4-14

HAVANA SYNDROME

Senator says US government part of coverup

PAGES 20-21



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STATE COURT REPORT

Every state
constitution is
longer than the
U.S. Constitution.

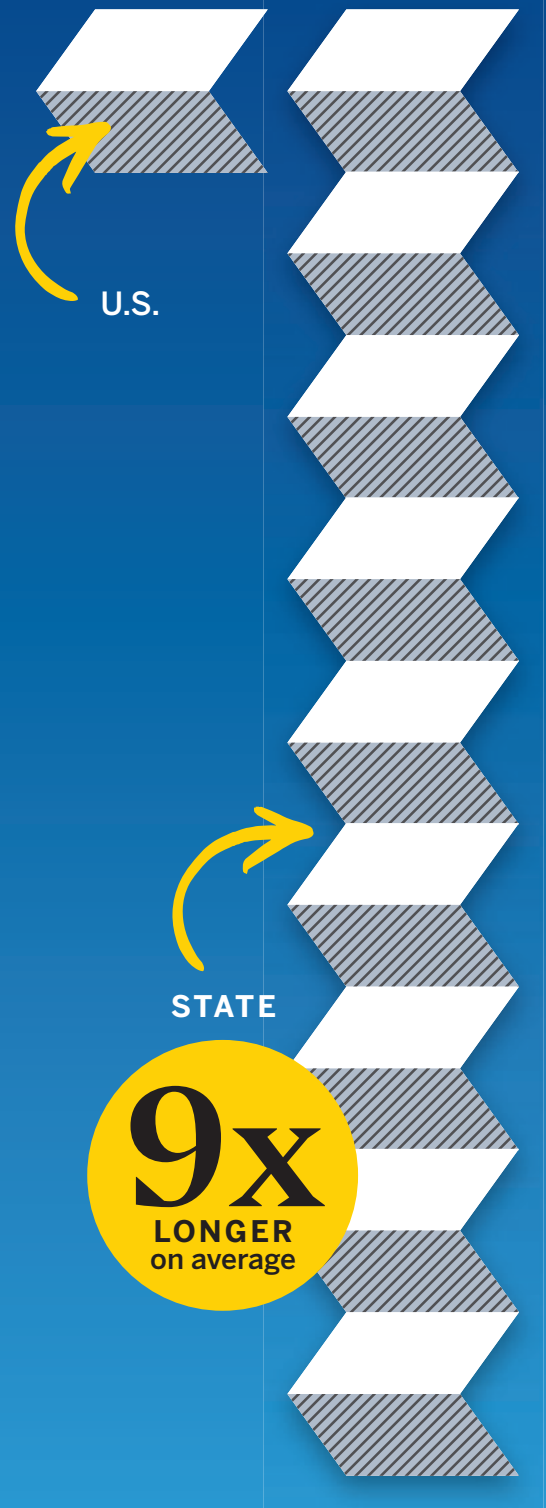
State constitutions provide rights
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CONSTITUTION WORD COUNTS

402,850 Alabama
(longest)

92,345 Texas
(2nd longest)

4,543 United States



DID YOU KNOW? The Alabama constitution is longer
than all but two of Stephen King's novels – *The Stand* and *It*.

Get to know your state constitution and courts at StateCourtReport.org



POWER LIST

OUR EDITORIAL STAFF PICKS THE TOP PERSONAL INJURY ATTORNEYS

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TIE GOES TO THE LOSERS

COMMENTARY: PROTASIEWICZ RECUSALS DEADLOCK SUPREME COURT

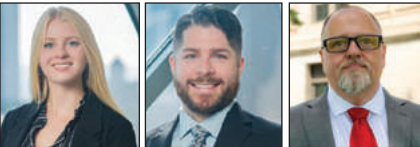
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WHO'S DOING WHAT

GET THE LATEST NEW HIRES, APPOINTMENTS AND MORE.

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POSTMASTER: Electronic Address Change Service Requested, Send address changes to: Subscription Services P.O. Box 1051, Williamsport, PA 17703-9940 Published monthly by The Daily Reporter Publishing Co. 225 E. Michigan St., Suite 300, Milwaukee, WI 53202 **Subscriptions:** One Year Print and Online: \$329 One Year Online: \$289 Periodicals Postage Paid at: Milwaukee, WI 53203 Copyright 2023 The Daily Reporter Publishing Co. The Wisconsin Law Journal [ISSN

#1534-1917] (USPS # 000-857) is published monthly by: The Daily Reporter Publishing Co. 225 E Michigan St., Suite 300, Milwaukee, WI 53202 Material published in Wisconsin Law Journal is compiled at substantial expense and is for the sole and exclusive use of purchasers and subscribers. The material may not be photocopied, republished, resold, recorded, or used in any manner, in whole or in part, without the publisher's explicit consent. Any infringement will be subject to legal redress. Registered with the Secretary of State of the State of Wisconsin.

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THE POWER 30

WISCONSIN LAW JOURNAL

PERSONAL INJURY ATTORNEY

OCTOBER 2023

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The POWER List - 30 Personal Injury Attorneys

Welcome to the POWER 30, a new feature from the Wisconsin Law Journal that examines the power brokers who lead and influence various parts of the Wisconsin legal community.

For this edition of the POWER 30 list, we're focusing on personal injury attorneys. In the POWER 30, we highlight those whose mere presence on a case signifies the stakes, who have influenced the direction of the law, whose leadership in the community is pervasive and whose respect within the bar is undeniable. To create this editorial-selected list, we interviewed respected attorneys and other

leaders around the state, reviewed outcomes of significant cases handled by these and other attorneys, and consulted the archives of the Wisconsin Law Journal to highlight people whose achievements and influence we recognize as powerful personal injury attorneys in Wisconsin.

The profiles in the section were written by Law Journal Managing Editor Steve Schuster and legal freelance writer Brooke Stickland.



MACKENZIE BISHOP-BUCHANAN

Mackenzie Bishop-Buchanan's earned her Juris Doctorate from the University of Wisconsin Law School. As a law student she worked alongside a federal magistrate judge and with county district attorney offices.

She transitioned into private practice where she was able to hone her skills in the areas of civil, traffic, criminal, and family law. Later, she worked as an attorney for a non-profit organization, where she provided legal services for survivors of domestic and/or sexual abuse.

Working in each of these sectors provided her with invaluable experience that she was able to take into her current role as a principal at Mahony Law, where she primarily serves clients dealing with injury cases.

"When a client chooses me to represent them in a personal injury case, I take that responsibility seriously and handle that case like I would for a friend or family member," Bishop-Buchanan said. "My firm is aggressive and thorough in its investigation and prosecution of our client's cases," she added.

Bishop-Buchanan doesn't shy away from difficult cases and often works on complex matters that range from medical malpractice, wrongful death and car accidents.



SAM BOMIER

Sam Bomier says practicing workers' compensation law has assisted injured workers throughout Wisconsin for more than 36 years. A lifelong Fox River Valley resident, he says he is deeply committed to helping people at very vulnerable points in their lives. Bomier says his goal is to leave each person in a better position than when they came to him.

Bomier says that a love for law was instilled in him by his father who was a classic trial attorney in multiple practice areas.

"He worked really hard and was a fierce advocate for his clients," Bomier said. "He was adversarial but never arrogant, and I appreciated his work ethic and trial skills. He also treated everyone equally and with respect. I've tried to follow that," he added.

Bomier works exclusively in helping those who've been forced off work due to a serious work injury, helping through the process when their claim has been denied.

"The best part of my work is seeing people get back on the path of their chosen life after a serious work injury," he noted. "This may mean compensation for their future wage loss or finding an education program to allow them to find a new path. They need guidance, direction, and compensation to move on. We try to provide that."



BILL CANNON (POSTHUMOUSLY)

One of Milwaukee's most respected personal injury attorneys and well-known philanthropists, William (Bill) Cannon passed away from cancer at his Mequon

home on Oct. 7 at age 75.

Bill Cannon's brother, Tom Cannon, said he and his brother come from a long line of attorneys. The four-generation legal family has practiced more than a century in Wisconsin. Their father and grandfather were both attorneys and Bill Cannon's two children are also attorneys, not to mention several other family members.

In addition to Bill Cannon's track record for securing millions in settlement for his clients — more so than any other lawyer in Wisconsin — Cannon has earned a reputation in the Wisconsin legal community. To date, his firm has recovered more than \$1 billion in client compensation through settlements and jury verdicts.

Godfrey & Kahn Shareholder Peter M. Sommerhauser said Bill Cannon was a legal and technological pioneer.

"He was a pioneer in a lot of things, in his profession too."



ROBERT D. CRIVELLO

Robert D. Crivello credits his parents, colleagues and support staff for his success.

"Over the last 20+ years, I have worked with the best personal injury team in the state of Wisconsin, attorneys and staff. That certainly has elevated my practice. I would also attribute any success that I have had to mentorship and experience. With respect to mentorship, I was taught by the best. Among others, I was able to learn from my father, the Honorable Frank T. Crivello, who was a well-known as an expert on the subject of evidence, and Pat Dunphy, who I consider to be the best trial lawyer that I have ever witnessed in a courtroom.

"To be a successful lawyer, you have to develop your own style, and there is no substitute for getting the experience of handling cases early-on and developing that style. I was lucky to be given that opportunity. Lastly, what drives me is that I want every single client that I represent to have no hesitation referring someone else to our firm that has been wrongfully injured. I chose personal injury law to help people," Crivello said.



PATRICK O. DUNPHY

Patrick O. Dunphy says helping clients through channeling times and seeing the positive impact has been fulfilling.

"I received my law degree in 1976. I have always felt it was providing an opportunity to serve a social useful purpose and to do so in a professional manner. My clients need help to resolve what are often times overwhelming, life altering problems. Helping them through their difficult times and having a positive impact on their lives is my reward," Dunphy said.

Dunphy is a co-founder of Cannon & Dunphy S.C., a firm dedicated to representing persons injured by the negligence of others since 1985. Dunphy has more than 40 years of trial experience with record-setting verdicts and awards ranging from \$9.8 million to \$35.3 million.

Dunphy is past-president of the Wisconsin Academy of Trial Lawyers (now the Wisconsin Association for Justice). In 2015 WAJ awarded Dunphy its President's Award for outstanding trial work. He is an invited member of the Inner Circle of Advocates, a national organization of plaintiffs' attorneys, limited to 100 of the best plaintiffs' attorneys in the United States, his website states.



DAVID FITZPATRICK

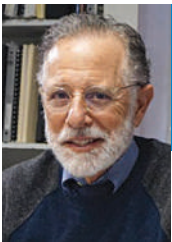
La Crosse-based Attorney Dave Fitzpatrick is one of the founding members of Fitzpatrick, Skemp & Butler, and his practice is devoted to work with Social Security Disability, Personal Injury and Workers' Compensation claims.

Fitzpatrick is involved with professional law associations and improving his skills as an attorney. He is licensed to practice law in both Wisconsin and Minnesota. Fitzpatrick also nationwide practice helping people obtain Social Security Disability.

Fitzpatrick is a current member of the State Bars of Wisconsin and Minnesota, the La Crosse County Bar Association. He has represented more than 2,500 clients in Social Security Disability hearings and received over 34 million in past due benefits, according to the firm's website.

Fitzpatrick said relates well to his clients.

"I understand the value of cases and how to negotiate a fair settlement. I make myself available to speak to my clients so they can talk to the attorney handling the claim. I will try to be available for phone calls or call the client back the same day if possible. I am also available by email to answer questions and provide updates," he said.



PAUL GAGLIARDI SR.

Paul Gagliardi Sr.'s relentless pursuit for justice stems from passion and empathy.

"I believe the key to making a difference for injured victims in a courtroom is passion and empathy for their injury. It comes from the respect and humility acquired from standing with injured victims and their families through their crisis. You know what this means when their pain and loss keep you awake at night. Unfortunately, the small monetary victories we achieve do little to right the wrong. We only hope our voice has changed the cost-conscious minds of those who cause the injury. Change is a form of protection," Gagliardi Sr. said.

His Kenosha County-based firm Gagliardi Law LLP has a track-record for helping clients for more than four decades.

The firm focuses on medical malpractice, nursing homes, civil litigation, family law, estate planning and probate, as well as business law.

In his free time, Gagliardi volunteers through pro-bono activities with the Kenosha Visiting Nurse Association and the Sharing Center - Neighborhood Housing Service.



FRANK GIMBEL

Frank Gimbel founded Gimbel Reilly Guerin Brown (GRGB) after serving as an assistant United States attorney from 1963 through 1968. More than 50 years later, Gimbel is now in his upper 80s and is still making his mark in the legal world in Wisconsin and beyond.

Throughout the course of his career, Gimbel found his niche in civil litigation, often working on multifaceted business, employment, and communications and First Amendment cases. Whether it's working alongside a corporation, small business, or the average person needing a knowledgeable and tenacious ally in the courtroom, Gimbel gives his all – every time, he said.

Gimbel says he also invested in the community at large and under his guidance, helped the Wisconsin District complete the construction, renovation, and financing of the buildings that now make up the core of Milwaukee's convention business, the Wisconsin Center, the U.W. Milwaukee Panther Arena, and the Miller High Life Theatre. He has also been very active in different board positions and has served as the president of the Milwaukee Bar Association and State Bar of Wisconsin.



WE CARE. WE WIN. WE NEVER STOP GETTING BETTER.

Here at Nicolet Law, our mission is to provide access to game-changing, award-winning legal representation that helps and empowers all of our clients.

No one expects to get injured, just like no one expects to battle an insurance company for the compensation they deserve. We understand that life can be unexpected despite our best intentions.

Our attorneys care and show up every day because of their genuine compassion for their clients.

Our attorneys win and leverage their experience to win the best possible recoveries for their clients.

Our attorneys never stop getting better. Where other attorneys might think progress stops, our attorneys know that even at the top they can strive to be better than they were the day before, just like we hope for our clients on their healing journey.

NICOLET LAW IS EXCITED AND HONORED TO FEATURE TWO ATTORNEYS ON THE WISCONSIN LAW JOURNAL 2023 PERSONAL INJURY POWER LIST.

Congratulations to **Russell Nicolet** and **Benjamin Nicolet** for changing the game and winning this prestigious award.



Russell Nicolet
TRIAL ATTORNEY AND PRESIDENT



Benjamin Nicolet
PERSONAL INJURY ATTORNEY





BOB GINGRAS

What is the secret sauce to Bob Gingras' legal career?

"Passion, hard work, and tenacity are the reasons underlying my successful career," Gingras

said, during an interview with the Wisconsin Law Journal.

Gingras started his firm in 1989.

"It was only me and my paralegal. We now have four offices throughout the state and 12 attorneys as well as great employees. Our core values are hard work, honesty and fortitude. These are the same values I learned from my parents growing up in Minot, North Dakota," Gingras' firm's website states.

According to Gingras, he practices law because he loves fighting for the underdog.

"I take on the big corporations, insurance companies, and the government in order to right serious wrongs. I relish the fact that I can equal the playing field for my clients ... nothing is more rewarding for me than cross examining the wrong doer and obtaining a settlement or jury verdict that speaks the truth. I am great at my job because I believe in these words," his website states.

Gingras was admitted to the State Bar of Wisconsin in 1981 and holds several other state and national admissions.



JON GROTH

Growing up in Milwaukee and raised by a father who served as a city firefighter and a mother who worked in the healthcare industry at nursing homes, Jon Groth's dedication for the people of Wisconsin

runs deep.

Groth graduated from Marquette Law School and has spent more than two decades working exclusively in personal injury law.

He explains, "I love the strategy of law ... working on a case and thinking of what needs to be done today and next week, knowing that the result may not be realized for months or years. Vince Lombardi's quote about 'act like you've been there before' really hits home. We have tried cases, and we have argued on appeal and before the Supreme Court of Wisconsin. Knowing what our experience tells us about the path of a case helps us to choose the right road."

Groth also enjoys teaching other attorneys about the details of personal injury law, and previously taught at the former Cardinal Stritch University.

"For the past few years, we have been helping people across the country with our vaccine injury practice. That is very exciting really because not many people know about this program – if you are injured because of a flu vaccine for example. The variety in our practice is why I love being a lawyer," Groth added.



ROBERT L. HABUSH

Robert L. Habush is the chairman of the Board of Habush Habush & Rottier S.C. Habush says the key to his success has been lack of fear.

"There are a number of things that have led me to be a successful trial lawyer. I learned the hard way. I tried difficult automobile cases, that I wasn't terribly successful at as most of my clients didn't have the right of way. I was very fortunate to get referrals in the 1960s for product liability cases. I tried several of them successfully and obtained at the time was very large jury verdicts. Products liability and medical malpractice became a subspecialty for me. I love to try cases, and have taught in law schools you can not have fear of losing, you have to be fearless and I think I always have been," Habush said.

Habush, who recently retired, says beyond a strong support staff, another key to success is connecting with juries.

"I tried the Miller Park crane case. It was the greatest case I ever tried. I had the kind of compassion and sympathy that jury's like very much. I never talk down to them and so I was very comfortable. I think the success was based upon the willingness to try tough cases and desire to go to trial rather than settle, with client's consent," he said.



WEBSTER A. HART

Webster A. Hart is a partner at the firm Webster & Hart S.C. in Eau Claire.

His areas of practice include: business litigation, personal injury, insurance defense, complex litigation, products liability law, professional malpractice and mediation – arbitration.

He was admitted to the State Bar of Wisconsin in 1968 and the State Bar of Minnesota in 1967.

His admitted to practice before U.S. District Court, District of Minnesota, 1967, U.S. District Court Eastern District of Wisconsin, 1968 and U.S. District Court Western District of Wisconsin, 1968.

Honors and awards:

- Inducted Fellow: American College of Trial Lawyers, 1997
- Recipient of James Huff Stout Award, 2011
- Named Best Lawyer in The Best Lawyers in America in the areas of Commercial Litigation, Personal Injury Litigation - Defense and Personal Injury - Plaintiffs since 1995.

"I have been practicing law in Eau Claire and all of northwestern Wisconsin for over 40 years. My personal pledge to you, my clients, is to provide you with the best representation, economically and efficiently," according to his website.



ROBERT JASKULSKI

Robert Jaskulski says client advocacy has been a privilege.

"There is no greater honor than having the opportunity to advocate for your client before a judge and jury. Any success that I have been lucky enough to achieve as a trial lawyer is a direct result of the incredible mentors I have encountered in my legal career and the deserving clients whom I have had the privilege to represent," Jaskulski said.

Jaskulski is a shareholder at the Habush law firm, practicing in the firm's Milwaukee, Waukesha and West Bend offices, and is a co-managing partner of the firm's Waukesha office.

According to Habush's website, Jaskulski has received the distinction of being selected to the Super Lawyers list since 2005, and was listed as one of Wisconsin's Top 50 Super Lawyers in 2009, 2011, and then from 2014-2018 and again in 2021 and 2022. Since 2006, he has been listed to the Best Lawyers in America and has been recognized for his work in appellate practice and personal injury litigation.

In 2004, he received a Leaders in the Law award from the Wisconsin Law Journal for his appellate advocacy in insurance law in Wisconsin.



ROBERT KASIETA

Since becoming a lawyer and successfully practicing for the last four decades, Robert Kasieta has made it his life mission to make a difference and help change the world. He shares that the best part of his job is working with the team he's helped form at Kasieta Legal Group and interacting with the clients – many of them who are full of grace, despite their difficult circumstances.

He said, "At age 65, I often encounter lawyers who have practiced about as long as I have, and they can't wait to retire. Not me. After 40 years as a lawyer, I can't wait to see what the next challenge will be. I have never enjoyed practicing law more than I do now."

In addition to practicing law, serving in other ways has also been key to Kasieta's success, he noted. At age 29, he was elected mayor and after that, served on the city council, regional planning commission, and State Elections Board. Today, he is the president of Badger Prairie Needs Network, which provides a food pantry, social services, legal representation and other services to Dane County residents in need. By the end of this year, the volunteer-run organization will have helped more than 87,000 people.



CURTISS NORMAN LEIN

According to the firm's website, Curtiss Norman Lein is a native of Hayward. He earned his B.A. degree in accounting from the University of Wisconsin Madison in 1973, an M.B.A. from the

University of Puget Sound in 1980, and his J.D. from the University of North Dakota School of Law in 1983 with distinction.

Upon graduating law school in 1983, Lein returned to Hayward. Since then, he has developed his expertise in diverse areas of law including, but not limited to: personal injury, workers' compensation, social security, chapter 7 bankruptcies, and criminal defense, his firm's website says.

Areas of practice include:

- Workers' Compensation
- Personal Injury
- Social Security Disability
- Bankruptcy
- Real Estate
- Estate Planning & Probate.

According to his firm's website, he is admitted to practice in Wisconsin and Minnesota.



MATTHEW LEIN

Matthew Lein says he is a creative thinker that isn't afraid to roll up his sleeves to fight for his clients. He graduated from Marquette University Law School in 2011 and currently serves as a partner at Lein Law Offices in Hayward. He specializes in personal injury, bankruptcy, consumer and workers compensation law. Together, his team helps shape the trajectory of people's lives in Wisconsin.

"The people I work with are second to none," he said. "We all work harder than anyone I know. Plus, we love what we do! I love that the legal field is always changing and creativity is needed to get the results folks need. I love that there usually isn't a problem that cannot be solved with some hard work and creativity," Lein said.

According to Lein, he has been inspired by the determination of Joe Jamil, a well-known American attorney, billionaire and businessman. He tries to channel some of that same tenacity to help each client. He is also no stranger to appearing in courts of all kinds, including bankruptcy, district, and tribal. He also works on handling both individual and class action cases.

Outside of work, Lein is involved in service to the legal community, and currently works on the board of the Wisconsin Association of Worker's Compensation Attorneys.



KATHERINE METZGER

Katherine Metzger's empathy is part of what makes her stand out as a leader in the legal field, she says.

"Even as a little girl, I could not help but empathize with others," Metzger said. "I have a heart for people. I believe this deep compassion for others, including those I am fortunate enough to represent, have uniquely positioned me to fight for my clients," Metzger noted.

Metzger comes from a big family with two parents, five brothers, and three sisters. Being surrounded by a family that supported her gave her the courage to discover her gifts and pursue them.

"I was fortunate enough to grow up in a home with two parents who showed me every day what it is to work hard for what I want," she said. "They taught me that I could accomplish whatever I wanted, so long as I was willing to work for it and not give up when things got tough. They inspired me then, and they inspire me now," Metzger added.

Currently, Metzger serves as an associate for Pitman, Kalkhoff, Sicula, and Dentice (PKSD), where she devotes herself to representing victims of personal injury and nursing home abuse and neglect.



BENJAMIN NICOLET

Benjamin Nicolet takes time to build trust and connection with his clients. Whether it's through phone calls, texts, emails or even visiting the homes of his clients to review documents, Nicolet works hard to foster relationships with his clients, so they know he has their best interests at heart.

Nicolet shares that from a young age, his parents demonstrated hard work and determination. This instilled a work ethic that helped him succeed in law school and ultimately he decided that he wanted to work alongside his brothers at Nicolet Law, where they could band together in seeking justice for people from all walks of life.

"I'm passionate about creating substantial change in the lives of his fellow community members," he explained. "We don't work for big corporations; we work directly with the people and families of our communities," he added.

Looking ahead, Nicolet looks forward to continuing to develop change to tip the scales of justice in favor of the people, he said.

"For too long, our politics has been corrupted by big corporations and insurance companies. They've spent decades enacting legislation and laws that protected the corporations and insurance companies, but we've slowly been chipping away at it," Nicolet said.



RUSSEL NICOLET

Russel Nicolet has learned a lot about gratitude, working, and enjoying life from the long generation of farmers in his family. He's also inspired by his father, who taught him to take pride in his work, and his mother, who taught him empathy and kindness. With all this woven into him, Nicolet set out on his legal journey and was the first person in his family to graduate from law school. He founded Nicolet Law in 2007 and soon his brothers, sister, and eventually his mother all joined him at the firm.

"I think what my clients like about me and what has helped me be successful, is that I am just a normal guy that happens to have a law degree," he said. "I talk to my clients like they were a friend or family member, and more importantly, I treat their case as if they were a family member or close friend," Nicolet added.

When asked what his favorite part of his job is, he said, helping the community, giving back, providing good jobs and knowing that good people need his help when they or a loved one are injured. Getting life-changing verdicts and settlements is what keeps Nicolet fueled to continue the fight for justice.



EMIL OVBIAGELE

Milwaukee attorney Emil Ovbiagele is living the American dream.

Ovbiagele came to Milwaukee from Nigeria when he was 16 years old and has since earned three degrees from Marquette University (undergraduate, MBA and JD).

He is the founding partner of OVB Law & Consulting S.C. and was recently sworn in as the newest Milwaukee Bar Association (MBA) President.

His latest honor is being named among the top-30 personal injury attorneys in the state of Wisconsin. Back in the Summer of 2022, The American Bar Association selected Ovbiagele as an On the Rise – Top 40 Young Lawyers.

Ovbiagele said he lost his father at age 13. Through those struggles, a positive attitude has guided the attorney's success.

"From the onset of my journey into law, I have always believed that the law should serve as a beacon for positive change. This principle has always been a deep-rooted commitment to my clients, positioning myself as their anchor amidst life's turbulent storms and guiding them through challenges with purpose and poise," Ovbiagele said.



BRIAN PARISH

Brian Parish earned his J.D. from Marquette University in 2004 and his B.A. cum laude, in 2001 from Marquette University.

Parish's legal career has focused primarily on personal injury, insurance defense and appellate practice in state and federal courts throughout the United States.

Parish has also pursued qui tam actions on behalf of individuals, various state governments and the United States. He joined the firm of The Ryan Law Office in January of 2016.

According to LinkedIn, Parish worked as an associate attorney with the law offices of Coy & Hofbauer S.C.



WILLIAM PEMBERTON

William Pemberton's core values are what make him stand out as a personal injury attorney, he said. These are what makes him who he is and it deeply influences the way he practices law.

"My faith compels me to provide more than just legal representation; it drives me to offer hope, support and genuine care to my clients. I understand that injuries can shatter lives, and my goal is to help our clients regain control and find hope in their situations. The lasting relationships we build with our clients, long after their cases are resolved, reflect the impact of my faith-driven approach. While some may view personal injury law as a transactional profession, I view it as a calling to make a tangible difference in the lives of those who have suffered injuries."

In 2006, he opened Pemberton Law Offices and has since secured a variety of settlements and verdicts for his injured clients. And while he advocates for his clients and tackles the issue of corporate greed, Pemberton also makes time to mentor other up-and-coming attorneys.

"Guiding and nurturing the next generation of legal professionals is something I find deeply fulfilling," Pemberton said.

Congratulations Jonathan Groth and all of the Power List Attorneys.



Wisconsin
Personal Injury
Attorneys

Groth Law Firm Accident Injury Attorneys has handled complex personal injury matters across Wisconsin. Our offices help us help others in every county in Wisconsin. Groth Law has 3 attorneys admitted before the US Court of Federal Claims to help victims of Vaccine injuries anywhere in the US.



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Grothlawfirm.com



JEFFREY A. PITMAN

Jeffrey A. Pitman focuses on representing victims of serious personal injury and nursing home abuse and neglect. In more than 28 years of practice, Pitman has handled thousands of personal injury cases and obtained tens of millions of dollars in verdicts and settlements in Wisconsin, Illinois, Iowa and New Mexico. Pitman has been certified as a Civil Trial Advocate by the National Board of Trial Advocacy since 2000.

“In addition to serious injury cases, Mr. Pitman is recognized by his peers as a preeminent nursing home neglect and abuse attorney. He leads the firm’s nursing home neglect and abuse practice. Mr. Pitman is a devoted advocate of residents’ rights and the quality of healthcare for the vulnerable and frail of Wisconsin. He has testified before the Wisconsin legislature and its committees regarding the standard of quality care and holding nursing homes accountable. Mr. Pitman’s ultimate goal remains improving the nursing home system as a whole,” his website says.

According to the firm’s website, “Pitman and the team have the knowledge, skill, and experience, expert staff and necessary resources for the job. Mr. Pitman’s reputation for tough, successful representation helps his clients obtain the justice and recovery they deserve.”



JAMES M. RYAN

A 1985 graduate of Marquette Law School, James M. Ryan has exclusively practiced insurance defense law. According to his firm’s website, he has tried more than 100 jury trials to verdict.

Special Investigation Unit cases are Ryan’s bread and butter. “Ryan has been a pioneer in litigating SIU claims,” his website states.

In addition to SIU cases, he has been involved in a variety of other cases. For example, he successfully argued the seminal bad faith case to the Wisconsin Supreme Court, entitled *Brethorst v. Allstate*. In that case, the court held that bad faith cannot be predicated merely on an insurance company’s poor investigation, but plaintiff must also prove that the insurance company breached its contract.

A decision was rendered in a case recently where Ryan successfully argued to the Wisconsin Supreme Court concerning whether an injured worker could be forced to accept a settlement offer made by the tortfeasor in a §102.29 lawsuit. *Adams v. Cincinnati Insurance* (2014).

Ryan has also received the highest AV Rating from Martindale-Hubbell for the past 25 years.



JOSEPH RYAN

Lifelong southeastern Wisconsin resident Joseph Ryan was born in Milwaukee and grew up in Waukesha. He received his B.A. in Political Science from the University of Wisconsin and his law degree from Marquette University Law School, his firm’s website states.

While in law school, Ryan interned for the Office of the United States Trustee. According to Ryan’s firm’s website, the office serves as “watchdogs” of bankruptcy court. Ryan also interned for the Internal Revenue Service (IRS) - Office of the Chief Counsel. After graduation, Ryan founded Milwaukee Debt Attorneys, assisting clients with the filing of Chapter 7 and Chapter 13 personal bankruptcies.

Ryan’s website says he left his bankruptcy practice after two successful years in order to open Ryan Law Firm with his father, James Ryan. Ryan Law Firm specializes in civil litigation, with an emphasis on insurance defense.

Ryan is admitted to practice law in the State of Wisconsin as well as the Federal Eastern and Western Districts of Wisconsin. He is also a member of the Wisconsin Defense Counsel.



ALLISON V. SHEPARD

Allison V. Shepard works for the Eau Claire firm of Herrick & Hart S.C.

“I enjoy having a diverse practice because it keeps me busy (and never bored)! I value getting to know my clients and the unique issues that they’re facing. My goal for my clients is to reach a satisfactory resolution; as a litigator, I’m not afraid to take a case to trial and enjoy arguing on behalf of my clients.

She earned her law degree from Marquette University Law School where her studies focused on litigation. Prior to law school, she received her Bachelors of Arts Degree from Loyola University in Chicago, where she double majored in Political Science and International Studies.

Originally from the Upper Peninsula of Michigan, Shepard moved to Eau Claire in 2015, when she joined Herrick & Hart, and has remained in the community.

She is a 2017 graduate of the Leadership Eau Claire program, a board member of Literacy Chippewa Valley, and a member of Young Professionals of the Chippewa Valley. As a member of the Eau Claire Bar Association, she regularly volunteers with the Free Legal Clinic.

2023

Wisconsin Law Journal Personal Injury Power List Honorees



**Mark
Thomsen**

**Bob
Gingras**

**Dana
Wachs**

ALL IN TO WIN

After an auto accident, dealing with injuries and insurance companies can be overwhelming for victims. The personal injury attorneys at GTW bring a team approach to all cases and don't shy away from trial if it means more justice. With more than 35 years of experience, Gingras, Thomsen & Wachs is all in to win higher settlements and awards for its clients.

**GINGRAS
THOMSEN
& WACHS** LLP
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HOWARD S. SICULA

Howard S. Sicula received his undergraduate degree cum laude from the University of Wisconsin-Madison and his law degree cum laude from Marquette University.

According to his firm's website, he is admitted to practice in the state of Wisconsin, the Eastern and Western Districts of the United States District Court of Wisconsin and the 7th Circuit of the United States Court of Appeals. He is a member of the State Bar of Wisconsin, the American Association for Justice and the Wisconsin Association for Justice where he serves as chair of the Membership Committee.

Sicula has been selected by his peers on multiple occasions as a Wisconsin Super Lawyer, his website states.

In addition to his professional affiliations, Sicula also serves on the board for the Myasthenia Gravis Foundation of Wisconsin.

Sicula has represented thousands of personal injury victims and has lectured to fellow trial lawyers. He has been counsel on injury cases that received million dollar verdicts or settlements, and has been the lead attorney in class action litigation, the firm's website notes.



MARK L. THOMSEN

Mark L. Thomsen says the key to his legal career success has been persistence.

"I believe my success as a lawyer and partner in my law firm is based on persistence, a desire to always improve, listening, the need to constantly fight 'until justice rolls down like water,' and respecting each human being, all while trying to help create our constitutionally mandated 'more perfect Union,'" Thomsen said.

According to his firm's website, he has practiced law for 35 years in both state and federal court. He has primarily devoted his career to personal injury (e.g. car and truck crashes), civil rights (Sec. 1983 claims), medical malpractice, nursing home abuse and legal malpractice claims.

Thomsen says he strives to create a legal infrastructure designed to expand justice and protect people and their individual rights to life, liberty and the pursuit of happiness. During his tenure, whether by settlement or trial whenever necessary, Mark has successfully obtained millions of dollars for those individuals, families and clients he has been honored to represent.



DANA WACHS

Dana Wachs says that his father, who served as a practicing attorney well into his 90s, inspired him to also pursue a career in law. A lifelong Eau Claire resident, Wachs has practiced law for the last 39

years and says he is invested in the lives of people, especially those who are injured and need help navigating the legal system.

He shares that part of what makes him unique as a personal injury attorney is his preparation and focus.

"From the first day I meet with a client, all the way through trial, I am intensely focused on the details of the case," Wachs said.

Wachs truly enjoys getting to know people, too. He said this resonates with his clients and others around him.

"I like people," Wachs said. "I like meeting them, representing them and being there during their hard times," he added.

Outside of the courtroom, Wachs is involved in the community. He has served on the Eau Claire City Council, served in the state legislature, and ran for governor on a Democratic ticket back in 2017. Currently, he is serving on the UW Board of Regents.



DUSTIN T. WOEHL

Milwaukee-attorney Dustin T. Woehl says he is honored to be named among the best personal injury attorneys in the state of Wisconsin.

"I am deeply honored to have been selected for the Wisconsin Law Journal's Power 30 personal injury attorney list. Over the years, my passion for the law and my unwavering commitment to the pursuit of justice have been the cornerstones of my career as a litigation attorney. It's not just about the legal victories but also about the impact we have on the lives of those we represent," Woehl said.

"One of the driving forces behind my success has been my love of legal scholarship. I've always believed that to be the best attorney, you must be a perpetual student of the law. I have dedicated myself to staying at the forefront of legal knowledge, understanding the nuances of the law, and mastering the intricacies of every case. This commitment to legal scholarship has not only helped me provide the best possible representation for my clients but has also elevated our profession," Woehl noted.

"I remain committed to the principles of justice, empathy, and unwavering determination, and I am truly grateful for this honor. It only further fuels my enthusiasm for the law," Woehl added.

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WISCONSIN Law Journal

WISCONSIN SUPREME COURT

State Legislative Redistricting

WI Court of Supreme Court

Case Name: Rebecca Clarke v. Wisconsin Elections Commission

Case No.: 2023AP001399-OA

Officials:

Focus: State Legislative Redistricting

The Court entered the following order on October 6, 2023:

On August 2, 2023, petitioners Rebecca Clarke, et al., 19 Wisconsin voters, filed a petition for leave to commence an original action under Wis. Stat. § (Rule) 809.70, together with a supporting memorandum, an appendix, and a motion for a scheduling order. The petitioners allege that the state legislative districts adopted by this court in *Johnson v. Wisconsin Elections Comm'n*, 2022 WI 19, 401 Wis. 2d 198, 972 N.W.2d 559 (*Johnson III*)—including the voters' districts—are an unconstitutional extreme partisan gerrymander; violate Article IV, Sections 4 and 5 of the Wisconsin Constitution because the districts do not consist of "contiguous territory;" and violate the Wisconsin Constitution's separation-of-powers doctrine. The petitioners ask that the supreme court assume original jurisdiction and, after resolving certain legal questions, declare the existing state legislative districts unconstitutional. This court has long deemed redistricting challenges a proper subject for the court's exercise of its original jurisdiction.

Decided 10/10/23

Judge Recusal Motion

WI Court of Supreme Court

Case Name: Rebecca Clarke v. Wisconsin Elections Commission

Case No.: 2023AP001399-OA

Officials: Janet C. Protasiewicz, J

Focus: Judge Recusal Motion

Here, individual Wisconsin citizens ask the court to hear an original action concerning the State's legislative districts. The Wisconsin Legislature seeks to intervene—and, joined by a group of senators, has asked the judge to recuse because the Democratic Party of Wisconsin (DPW) made substantial contributions to the judge's campaign (\$9.9 million) and would benefit if this court were to order the adoption of new maps. According to the judge, the claim lacks merit for two reasons. First, the Legislature has not cited any case in which a judge recused because a political party that was not involved in the litigation had contributed to their campaign. The Legislature's second argument: that the Due Process Clause

of the United States Constitution requires recusal because, while campaigning, the judge described the legislative maps as "gerrymandered," "rigged," and "unfair," and expressed disagreement with the *Johnson* case (which ordered the adoption of these maps). The Legislature views this as legally impermissible. The judge noted that these were personal values not how she thinks the court should rule.

Recusal Denied
Decided 10/06/23

WISCONSIN COURT OF APPEALS

Land Condemnation Challenge

WI Court of Appeals – District III

Case Name: Paul E. Van Dreel v. IEI General Contractors Inc.

Case No.: 2022AP001641

Officials: Stark, P.J., Hruz and Gill, JJ

Focus: Land Condemnation Challenge

According to the complaint, Van Dreel previously owned the entirety of a forty-acre property termed "Parcel D-235" in the Town of Ledgeview, Wisconsin. On May 20, 2002, Van Dreel recorded a "mineral deed," which purported to convey "an undivided interest in all of the oil, gas, and other minerals in and under" Parcel D-235 to Van Dreel's mother, Marion Van Dreel, in exchange for \$1.00. At the time the mineral deed was recorded, the Town of Ledgeview ("the Town") was seeking to condemn Parcel D-235 for public use—specifically, for the placement of public water transmission, storage, and distribution facilities and storm water management facilities. The Van Dreels sued challenging the condemnation of Parcel D-235.

Van Dreel appeals an order dismissing his claims against IEI General Contractors Inc. and other contractors and the Town of Ledgeview. The appeals court concludes the circuit court properly determined that the doctrine of claim preclusion bars Van Dreel's claims.

Affirmed.
Decided 10/11/23

Termination of Parental Rights

WI Court of Appeals – District I

Case Name: State of Wisconsin v. S. A.

Case No.: 2023AP001288

Officials: Geenen, J.

Focus: Termination of Parental Rights

Sherry appeals the orders of the circuit court terminating her parental rights to Terri, Tisha, Troy, Tina, and Todd. Sherry argues that the court erroneously exercised its discretion when it determined that it was in the best interest of the

children to terminate Sherry's parental rights and asserts that there was insufficient evidence in the record for the court's conclusions.

Sherry does not contend that the circuit court failed to consider any required factor, but rather that when it weighed the evidence against the factors, it should have weighed more heavily Sherry's recent efforts to continue as a significant factor in the children's lives, her strides in addressing the issues that led to the children's removal, and that she loves her children and wants them returned to her. Sherry therefore argues that the circuit court erroneously exercised its discretion when it found that the termination of parental interests was in the best interest of her children.

After a review of the record and evidence as a whole, the appeals court is confident that the circuit court considered the standard and all statutory factors in determining what was in each child's best interest. The circuit court addressed and explained how the record evidence supported its findings with respect to each factor for each child and determined that granting the TPR petitions was in each child's best interest. Wisconsin law does not "mandate the relative weight" to be placed on any particular factor, but rather that all factors be considered.

Affirmed.
Decided 10/10/23

Mandamus Claim-Administrative Law

WI Court of Appeals – District III

Case Name: Peter C. Tharp v. Village of Roberts

Case No.: 2021AP002209

Officials: Gill J.

Focus: Mandamus Claim-Administrative Law

In 2004, the Village of Roberts established a municipal court. Tharp was elected in 2017 as a municipal court judge to a four-year term ending in April 2021. In March 2019, in contemplation of abolishing the municipal court, the Village Board voted to "authorize[] the then Village Police Chief . . . to stop issuing citations for municipal ordinance violations, regardless of parallel state statutes, and to transmit any and all citations to St. Croix County Circuit Court by issuing only citations for violations of adopted parallel state statutes." In August 2020, Tharp filed suit against the Village Board, seeking a writ of mandamus and declaratory relief. Specifically, Tharp requested that the circuit court issue an order requiring the Village Board "to immediately enforce municipal ordinance violations and cease any attempt to bypass" the municipal court. Further, Tharp sought a declaration that "municipal ordinance violations must be enforced by the

[Village], and those violations be brought to the municipal court.”

Tharp sued the Village of Roberts and various other defendants (collectively, the Village Board), seeking declaratory judgment and a writ of mandamus. Tharp’s claims were based on the Village Board’s failure to “issue any municipal ordinance violations or citations regardless of parallel state statutes[,] effectively bypass[ing]” and “abolishing” the Village’s municipal court. Later, in the context of his declaratory judgment claim, Tharp argued that the Village Board had violated separation of powers principles “by ceasing enforcement of its municipal ordinances.”

The circuit court granted the Village Board’s motion to dismiss Tharp’s mandamus claim, and, later, granted summary judgment in favor of the Village Board on Tharp’s declaratory judgment claim. The court concluded that, under *Vretenar v. Hebron*, 144 Wis. 2d 655, 663, 424 N.W.2d 714 (1988)—a mandamus case—the Village Board’s decision not to enforce municipal ordinances was discretionary and did not violate separation of powers principles. Thus, according to the court,

Tharp’s mandamus claim could not lie, and his declaratory judgment claim was barred as a matter of law. The court subsequently entered a final order affirming its prior orders dismissing the mandamus claim and granting summary judgment on the declaratory judgment claim, and Tharp now appeals from that order.

Affirmed.

Decided 10/11/23

Postconviction Relief-Plea Withdrawal

WI Court of Appeals – District III

Case Name: State of Wisconsin v. Jacob P. Pate

Case No.: 2022AP000698-CR

Officials: Stark, P.J., Hruz and Gill, J.J.

Focus: Postconviction Relief-Plea Withdrawal

In January 2019, Pate robbed both a liquor store and a gas station while armed. He also attempted to rob a second gas station. Pate ultimately confessed to the crimes, admitting that he committed the robberies and used a gun “for the means

of getting money.” The State charged Pate with two counts of armed robbery and one count of attempted armed robbery.

Pate appeals from a judgment, entered upon his no-contest pleas, convicting him of two counts of armed robbery. He also appeals from the circuit court’s order denying his motion for postconviction relief. Pate argues that he is entitled to plea withdrawal because the court’s defective plea colloquy rendered his pleas unknowing, unintelligent, and involuntary. The appeals court rules that there is no evidence in the record that Pate required a more meaningful discussion of his rights at the plea hearing than what was provided in this case to ensure a knowing, intelligent, and voluntary plea.

Affirmed.

Decided 10/11/23

Serious Juvenile Offender Order-Discretion

WI Court of Appeals – District III

Case Name: State of Wisconsin v. T. H., Jr.

Case No.: 2023AP000285



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Officials: Stark, P.J.

Focus: Serious Juvenile Offender Order-Discretion

According to testimony introduced at the waiver hearing, Thomas—then sixteen years old and without a driver's license—was driving a car with three passengers when he decided to drive over a dip in the road at “70 to 100 miles per hour” so that the vehicle would “catch air.” Thomas crashed the vehicle, resulting in the deaths of two of the passengers and serious injuries to the third passenger.

Thomas appeals a nonfinal order that waived him from juvenile court into adult court. Thomas argues that the circuit court erroneously exercised its discretion by: finding that it could not enter and stay a serious juvenile offender (SJO) order—which would have extended the time during which Thomas could remain under juvenile court supervision; making dispositional findings concerning Thomas' eligibility for the SJO program at the waiver hearing; and failing to explain the basis for its finding that the one year and five months available for Thomas' juvenile supervision was insufficient to protect the public. The appeals court concluded that the court did not erroneously exercise its discretion. The record therefore reflects that the circuit court's order was based upon the need for protection of the public. Given the seriousness of Thomas' offenses, coupled with his significant treatment needs, the court wanted Thomas to be supervised long enough so that he would be required to participate in all treatment and programming necessary to be certain that he did not engage in future offenses.

Affirmed.

Decided 10/03/23

Suppression of Evidence

WI Court of Appeals – District III

Case Name: State of Wisconsin v. David J. VanRemortel

Case No.: 2022AP001717-CR

Officials: Stark, P.J., Hruz and Dugan, JJ.

Focus: Suppression of Evidence

David VanRemortel appeals from a judgment convicting him of a seventh offense operating a motor vehicle while under the influence of an intoxicant. He challenges a suppression ruling, claiming that: (1) the police lacked reasonable suspicion for a traffic stop that was not based upon an observed traffic violation; and (2) the police impermissibly extended the stop to conduct field sobriety tests. The appeals court concludes that the totality of the circumstances provided sufficient grounds for both the stop and the subsequent sobriety tests.

VanRemortel emphasized that none of the observed behaviors prior to the stop, was itself illegal. The appeals court ruled

that it is not necessary, however, that an officer observe illegal behavior in order to conduct an investigatory stop. Evasive behavior—that is, conduct suggesting that an individual is attempting to avoid police contact—can give rise to a reasonable suspicion of criminal activity and therefore justify an investigatory stop in and of itself.

Affirmed.

Decided 10/03/23

Postconviction Relief-Ineffective Assistance of Counsel

WI Court of Appeals – District I

Case Name: State of Wisconsin v. Henry L. Watson

Case No.: 2022AP001449-CR

Officials: White, C.J., Donald, P.J., and Dugan, J.

Focus: Postconviction Relief-Ineffective Assistance of Counsel

Watson appeals from a judgment of conviction for homicide by negligent handling of a dangerous weapon following a jury trial and an order denying his motion for postconviction relief. In his brief, Watson asserts, in his statement of issues, that “[t]he [c]ircuit [c]ourt did not properly instruct the jury on perfect self-defense[.]” He also states that trial counsel was ineffective because he “failed to challenge the constitutionality of the statute. His trial counsel failed to properly object to the [j]ury's verdict.”

The appeals court agrees with the State's argument, adopted by the circuit court, and conclude that Watson did not adequately plead his claim that trial counsel was ineffective for not challenging the constitutionality of WIS. STAT. § 939.48(3).

Affirmed.

Decided 10/03/23

Wisconsin DSPS Approval

WI Court of Appeals – District III

Case Name: Premium Properties Limited Partnership v. Wisconsin Department of Safety and Professional Services

Case No.: 2021AP002192

Officials: Stark, P.J., Hruz and Gill, JJ.

Focus: Wisconsin DSPS Approval

Premium Properties Limited Partnership appeals a circuit court order affirming a notice of violations and orders (“the notice”) against Premium Properties by the Wisconsin Department of Safety and Professional Services (“the DSPS”). The notice required Premium Properties to submit building change of use plans and fire suppression plans to the DSPS for review and approval.

On appeal, Premium Properties contends that the administrative law judge's (ALJ) findings at a hearing challenging the notice were not supported by substantial

evidence. Premium Properties also argues that the DSPS exceeded its authority and that its policy of classifying fireworks as “high hazard” in certain circumstances is unenforceable.

Because Premium Properties' building was not approved for fireworks sales or storage in June 2002, the continued use of the building for that purpose requires Premium Properties to comply with the current code. In other words, the building's approved use has changed from “Business, Storage” to the sale and storage of fireworks, which the DSPS characterizes as high hazard.

Affirmed.

Decided 10/03/23

Summary Judgement-Negligence

WI Court of Appeals – District I

Case Name: Ross Kopfer v. Eric Daniel Lalor

Case No.: 2022AP000490

Officials: White, C.J., Donald, P.J., and Dugan, J.

Focus: Summary Judgement-Negligence

This case arises out of a number of accidents that occurred in the morning hours of June 12, 2020, on northbound I-39/90/94 near the Town of Arlington in Columbia County. Kopfer appeals from an order of the circuit court granting summary judgment in favor of Eric Daniel Lalor and dismissing Kopfer's claims. Kopfer argues that summary judgment is inappropriate because whether Lalor was a substantial factor in causing Kopfer's injuries is a question of fact for the jury and, alternatively, that public policy does not preclude the imposition of liability. Upon review, the appeals court concludes that Lalor was not a substantial factor in producing Kopfer's injuries and therefore, was entitled to judgment as a matter of law.

Affirmed.

Decided 09/26/23

7TH CIRCUIT COURT OF APPEALS

Forum Selection-Contracts

7th Circuit Court of Appeals

Case Name: In re Application of Venequip, S.A. v. Caterpillar Inc.

Case No.: 22-1463

Officials: Sykes, Chief Judge, and Rovner and Jackson -Akiwumi, Circuit Judges.

Focus: Forum Selection-Contracts

Venequip, a supplier of heavy equipment based in Venezuela, used to sell and service products manufactured by Caterpillar, a company headquartered in Illinois. Venequip's dealership was governed by sales and service agreements with CAT Sàrl, a Swiss subsidiary of Caterpillar. In 2019,

CAT Sàrl terminated the dealership. These agreements contained clauses stipulating that any disputes should be resolved in Swiss courts under Swiss law. In 2021, Venequip initiated contract claims against CAT Sàrl in Geneva, Switzerland.

Venequip also filed applications in various U.S. jurisdictions under 28 U.S.C. 1782(a), which grants district courts the authority (but not the obligation) to order individuals residing or located within the district to provide testimony or documents for use in proceedings before foreign or international tribunals. In the Northern District of Illinois, Venequip requested extensive discovery from Caterpillar.

Regarding Venequip's application, the district judge considered the four factors outlined by the Supreme Court in *Intel*, which typically address the applicant's need for discovery, the extent of the request's intrusiveness, comity considerations, as well as the parties' contractual choice of forum and law, and Caterpillar's willingness to provide discovery in the Swiss court. The judge ultimately denied the application. The Seventh Circuit upheld this decision. Importantly, the appeal was not rendered irrelevant by subsequent developments in the Swiss court. The judge appropriately balanced the *Intel* factors and other relevant factors when making the decision.

Affirmed.

Decided 10/10/23

Uncompensated Taking of Property-Due Process

7th Circuit Court of Appeals

Case Name: Willow Way, LLC v. Village of Lyons, Illinois

Case No.: 22-1775

Officials: Easterbrook, Hamilton, and Pryor, Circuit Judges.

Focus: Uncompensated Taking of Property-Due Process

Willow acquired a house in need of substantial repairs, with project estimates surpassing \$100,000. Renovation efforts commenced in 2017 but came to a halt shortly thereafter. Over the course of several years, the house remained unoccupied, prompting the Village to propose its demolition on account of being a nuisance. The Village took steps to notify the public, including publishing notices, affixing notices to the house, and sending correspondence to Willow, who openly acknowledged being aware of the impending demolition. Willow, however, only responded in the week designated for the demolition, when their attorney proposed a meeting. Subsequently, the property was sold at auction to settle the Village's lien for the expenses incurred in the demolition.

In response, Willow filed a lawsuit under 42 U.S.C. 1983, alleging an uncompensated taking of their property. The Seventh Circuit upheld the summary judgment in favor of the Village. The demolition of a deteriorated structure deemed a public nuisance does not raise concerns under the Due Process Clause and does not necessitate compensation. The constitutional protection extended to property owners consists of notice and the opportunity for a hearing, both of which were provided by the Village to Willow. Notably, Willow did not request a hearing. Illinois law provides constitutionally adequate procedures; anyone seeking to prevent a demolition merely needs to initiate legal proceedings in state court, which automatically suspends any action until a judge determines whether the building satisfies the statutory criteria for demolition. Consequently, the district court was not obligated to address a state law inverse-condemnation claim.

Affirmed.

Decided 10/05/23

Employment Law

7th Circuit Court of Appeals

Case Name: Michael Meadows v. NCR Corporation

Case No.: 21-3309

Officials: Sykes, Chief Judge, and Ripple and Kirsch, Circuit Judges.

Focus: Employment Law

NCR's customer engineers (CEs) provide on-site service for NCR devices, primarily working remotely. NCR had instructed CEs to strictly adhere to their official work shifts, explicitly prohibited any off-the-clock work, and mandated the accurate recording of their working hours through an electronic system. If a CE worked overtime against NCR's guidance, they would only be compensated for those extra hours if they were properly recorded. In the case of Mr. Meadows, during his tenure as a CE from 2008 to 2019, he was compensated for any unauthorized overtime hours that he recorded, but he received no compensation for unrecorded overtime.

Mr. Meadows subsequently filed a lawsuit against NCR under the Fair Labor Standards Act (FLSA), specifically 29 U.S.C. 201, seeking compensation for the overtime work that went unrecorded. The district court's ruling held that Meadows's off-the-clock activities were not considered core responsibilities of his job but were considered incidental. According to the FLSA, employers are required to compensate employees for their principal activities, but not for incidental activities, unless an exception applies, such as when compensation is mandated by an employment contract or customary practice. The court argued that NCR could not evade liability by imposing a requirement to record

working hours on its existing customary practice of compensating for incidental activities because NCR had constructive knowledge of these activities.

However, the Seventh Circuit disagreed with this interpretation. According to their ruling, the FLSA does not necessitate overtime pay for incidental activities, even if the employer traditionally compensated employees for such activities, if the employee failed to comply with the payment requirements established by that customary practice or contract.

Vacated and remanded.

Decided 10/05/23

Attorney Licensing

7th Circuit Court of Appeals

Case Name: Maurice Salem v. Illinois Attorney Registration and Disciplinary Com

Case No.: 22-3222

Officials: Easterbrook, Rovner, Pryor, Circuit Judges.

Focus: Attorney Licensing

In 2003, Salem obtained a license to practice law in New York. Although he applied for a license to practice in Illinois, where he lived, he was denied. Nonetheless, from 2004 to 2019, he continued to practice law in Illinois by obtaining special permission to appear in court on specific cases ("pro hac vice"). However, this led to legal trouble when the Illinois Attorney Disciplinary and Registration Commission (IARDC) accused him of falsely claiming to be licensed in Illinois. As a result, they successfully requested that the Illinois Supreme Court prohibit him from appearing pro hac vice for 90 days. Salem responded by filing a lawsuit under 42 U.S.C. 1983.

The Seventh Circuit upheld the dismissal of Salem's lawsuit and ordered him to explain why he shouldn't face sanctions. Firstly, the court rejected Salem's argument that all Illinois district judges should be disqualified and the case should be moved to Michigan. Secondly, the court ruled that the Illinois Supreme Court's decision could not be challenged in this civil litigation. They pointed out that the IARDC, the defendant in the case, had not deprived Salem of his liberty or property, and there was a reasonable basis for the Supreme Court's decision. The court described Salem's lawsuit as frivolous and highlighted his history of engaging in "preposterous" behavior in federal court. Salem has 14 days to show cause why he should not be subject to sanctions, No. 22-3222 11 including an order to pay the defendants' attorneys' fees.

Affirmed.

Decided 09/28/23

Havana Syndrome hits CIA, Congress in Wisconsin, Russia takes credit

DESPITE COMPLEXITY OF CASES, ATTORNEYS STAND TO SEEK JUSTICE, MAKE MONEY

Steve Schuster

sshuster@wislawjournal.com

CIA employees around the world, including in Wisconsin and U.S. Sen. Ron Johnson, are among the latest possible targets of Havana Syndrome.

"I don't publicize this much, but I have certainly been evaluated for possible exposure myself," Johnson said during an interview with the Wisconsin Law Journal.

"I lost my hearing and my balance simultaneously," Johnson said, noting that the 2018 hearing loss has been permanent.

Johnson said he experienced significant neurological symptoms consistent with Havana Syndrome following a 2018 trip to Moscow, which resulted in permanent hearing loss in one ear, balance issues and evaluation at the National Institutes of Health (NIH) and Walter Reed Hospital for Havana Syndrome.

"I had blood loss to my cranial nerve. . . . I am basically deaf in my right ear. My balance has come back to a certain extent, but it's still impaired," Johnson said, noting he wasn't given a definitive Havana Syndrome diagnosis, but that was what was being evaluated.

Washington, D.C., attorney Mark Zaid who represents victims of Havana Syndrome said, "imagine waking up one morning feeling great and getting ready for work. Then all of a sudden being hit with paralyzing simultaneous symptoms."

Those symptoms include, but are not limited to, ear pain, blurred vision, vertigo, uncontrollable vomiting lasting days.

Zaid also said children and family pets have reported suffering from the same symptoms, noting this has been the case for the brave men and women of our intelligence community who work relentlessly each and every day to protect our freedoms and keep our nation safe.

New information provided to the Wisconsin Law Journal explains how technology likely developed and deployed by the United States has now been used by Russia to target American citizens. As a result, many U.S. citizens are entitled to settlements, and as Wisconsin residents are no exception. The need for legal representation is increasing.

Tier I settlements with the federal government under the Havana Act start around \$140,000, Zaid said during an interview with the Wisconsin Law Journal.

Zaid said he represents clients in the intelligence community throughout the nation, including CIA employees based in Wisconsin.

"I wish there were more attorneys involved. One of my CIA clients is originally from Wisconsin,"



The Frankfurt Consulate in Germany is the largest U.S. consular post and one of the largest diplomatic missions in the world. Members of the U.S. intelligence community posted there were targeted with an energy weapon resulting in Havana Syndrome. Photo credit: U.S. Department of State

sin," Zaid said, noting that he's a small D.C. firm that specializes in National Security.

Navigating these complex legal matters within the intelligence community is no easy task, Zaid said, noting it's not traditional litigation.

"Compensation under the Havana Act doesn't require much in way of litigation work, it's simplistic filings. It's more trying to coordinate within agencies to push them to render decisions favorable of their clients," he said.

A U.S. government cover-up?

According to Zaid, Havana Syndrome may be part of a larger scale government cover-up.

"I would dare say there is cover-up," Zaid said, noting there are several theories why the U.S. government has downplayed it and made victims of the syndrome think there is something off with them psychologically, when in reality there is a serious brain injury.

In response, Johnson said there are certainly more questions than answers.

"I think the executive branch and the intelligence agencies classify way too much information. We are not transparent. We are not honest to the American public who are paying their bills," Johnson said. "I will always be on the side of greater transparency and always suspicious of the federal government not telling us the truth."

When: History of Havana Syndrome

To start, Zaid noted that same microwave

technology used in Havana Syndrome has been around since the 1950s and the U.S. government had a duty to protect its employees and perhaps has not, he said, noting that there are no known incidents back in that time frame. Zaid added, the Moscow Signal incident, "bathed" the U.S. Embassy with microwaves in the 1960's and 1970's.

"The technology goes back decades. It's very likely the U.S. government created the technology in the first place. If it is what we think it is, and it has been going for as long as we think, this also means we didn't take proper steps to protect our people," Zaid said.

Zaid also pointed out that attacks on U.S. citizens could constitute an act of war and so perhaps it's "intentional ignorance" that has prevented the federal government from responding appropriately.

"If it's intentional to harm our people, not only overseas and here on our soil, this is an act of war and we need to respond. Nobody wants that," Zaid said.

Johnson said he has learned a variety of different theories on the history and origins of Havana Syndrome.

"I don't know what to believe other than I believe you really can't trust the federal government to tell you the truth, which is really a sad state of affairs," Johnson said, noting he has been kept out of classified briefings on the matter.

"You would think maybe a U.S. senator who

the State Department and NIH provided medical exams for because they thought I might be a victim of Havana Syndrome, might be a little more transparent with an individual like me, but I don't have any clue," Johnson said.

Why are U.S. Citizens being targeted

Zaid noted a theory floating around that the U.S. intelligence community first used similar microwave technology in surveillance operations, and the first victims of this were from those who were conducting those operations and then were exposed to the radiation.

Officially, "we do not publicly know who the first victims were/are. I have no knowledge that the first victims were exposed by these alleged U.S. operations," Zaid added.

The Wisconsin Law Journal reached out to Northrop Grumman. Officials for the company said they would issue a statement, but did not.

Zaid then outlined another theory, not yet proven where Russia used the technology for surveillance purposes and it morphed into a weapon given it is publicly known humans are being injured.

He also noted most who suffer from Havana Syndrome were actively working on Russian intelligence operations.

Who and where: Responsibility and targets

State Department personnel in Cuba and CIA officers in Europe have all been targeted. The targeting does not stop with the intelligence community. Families have been "zapped" too, according to Zaid.

"Minor children and the family pet have been hit too, Zaid said. "Most of the time the incidents happen at home where sometimes family members are caught in the wave," he added.

Zaid also noted hotels are frequent targets. According to another theory, in some cases the adversary will rent a hotel room right next to the target to "zap" them in close range.

"It's especially easy when in a country where the host nation would have greater knowledge of individual U.S. officials staying there," Zaid noted.

Russia has recently proudly claimed responsibility for attacking the U.S. intelligence community with a directed energy weapon.

"There is no doubt that Russia is the primary party responsible for this," Zaid said, noting other adversaries of the United States also engage in similar activities.

To date, the majority of those who have been targeted are U.S. State Department employees and Central Intelligence Agency personnel who have been working on gathering intelligence on Russia, Zaid said.

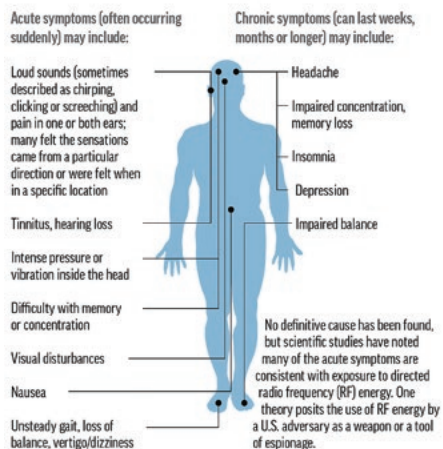
On Sept. 15, 2023, Reuters reported a top Russian security official bragged how Moscow had successfully "neutralized" hundreds of foreign spies in recent years.

Nikolai Patrushev, the secretary of Russia's Security Council, wrote in Russia's foreign intelligence agency's house magazine:

"In recent years, hundreds of employees of foreign intelligence services, as well as other persons involved in organizing intelligence and subversive activities against our country and our strategic partners, have been identified and

What is Havana syndrome?

The medical mystery named for the Cuban city where U.S. diplomats first experienced sudden, debilitating symptoms in 2016 has been reported by Americans serving in several other countries.



neutralized."

Zaid said no one is safe from being targeted, even those who have never written about the subject or represented a client who suffered from it.

"An interesting working theory, wouldn't it make sense for the adversary in order to hide tracks or undermine legitimacy of actual incidents by hitting random people across the country who have no connection to anything intelligence related? Those people sound like they are crazy, so everyone gets lumped into the same basket. Mass hysteria and mass psychosis, no evidence," Zaid said.

Among those "random" people — Chicago-land Doctor Len Ber had been a medical doctor in the former USSR before having to go on disability after what he says was a targeted energy attack — Havana Syndrome. Ber said the attack occurred while in his home in suburban Chicago.

Reporting a similar onset of symptoms as those employed by the CIA and State Department, he says although he never worked for the intelligence community he was diagnosed with acquired neurosensory dysfunction and is now a part of an 18-party lawsuit, represented by Attorney Ana Toledo.

Ber claims he has been in close contact with the Department of Defense as well as other U.S. government agencies about the incident.

"They swept it under the rug. Nobody is looking for answers," Ber said.

How does one get 'zapped'?

A small portable microwave-based energy weapon is deployed by the foreign agent. The way the technology works is the sudden and possibly uneven pressure change in the brain causes a propagating stress wave in the brain. This mechanical wave shakes structures in the ear, causing the perception of sound. It is hypothesized that the same effect at much higher power density levels could cause pressure waves similar to those experienced during traumatic brain injury.

Crisis of conscience

"The reality is the Russians don't give a damn about stuff like that and have done research well beyond would be ethically appropriate. They have much better data and or they don't seem to care about impact," Zaid said.

Technology applications

Beyond the intelligence community, a lower dose of the microwave technology is currently being deployed throughout the United States by local law enforcement for crowd control and crowd disbursement, Zaid said.

Caught in the act

What seems like it might belong in a James Bond film are actors who carry these small, highly concealable and portable directed energy weapons to "zap" victims at hotels, in private residences, in office buildings and even in automobiles, Zaid said.

"From our understanding, it's a handheld device that can be easily hidden. I'm not aware of the government ever having caught anyone in the act of deploying the energy weapon. No device has been captured," Zaid.

Holding the powerful accountable

According to Zaid, to date there are only a few members of Congress on Capitol Hill who have stepped up to the plate to advocate for targeted U.S. Citizens who are victims of Havana Syndrome. Among those elected officials who have taken an interest in pursuing justice is Sen. Johnson, Zaid said, who noted he, along with Republican Sen. Marco Rubio and Democrat U.S. Sen. Jeanne Shaheen, have been meeting with constituents and members of the intelligence community to investigate and hold those accountable.

Johnson said Shaheen was his ranking member when he was on the Senate Foreign Relations Committee and Rubio is co-chair of the Senate Intelligence Committee.

Johnson again expressed his frustration over getting answers about Havana Syndrome, regarding his own health, the health of his constituents and other Americans who may have fallen victim to Havana Syndrome.

"Getting information out of the Federal government is like pulling teeth. They simply do not provide it," Johnson said.

Johnson said that Havana Syndrome is only one example of a government cover-up, citing other examples such as a lab leak being one of the most likely ways the coronavirus spread.

"My guess is this has happened time and time again with the Federal government being involved in things, not working out too well, then using all of the power of the federal government to cover it up, and they have awesome powers of covering things up."

The Wisconsin Law Journal reached out to officials at the State Department and the NIH. The NIH deferred questions to the State Department. A comment was not immediately available from the State Department prior to publication.

Wisconsin sues Amazon for illegally maintaining monopoly power



The Amazon logo is displayed at a Best Buy store in Pittsburgh. The Federal Trade Commission's long-awaited antitrust case is the agency's most aggressive move yet to tame the market power of Amazon, a company that's become synonymous with online shopping and fast deliveries. (AP File Photo/Gene J. Puskar)

Steve Schuster

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Wisconsin Attorney General Josh Kaul has joined the Federal Trade Commission and 16 state attorneys general in suing Amazon, alleging that the online retail and technology company is a monopolist that uses a set of interlocking anticompetitive and unfair strategies to illegally maintain its monopoly power.

The FTC and its state partners say Amazon's actions allow it to stop rivals and sellers from lowering prices, degrade quality for shoppers, overcharge sellers, stifle innovation and prevent rivals from fairly competing against Amazon.

"This case seeks to protect fair competition and to hold Amazon accountable for the harm it has allegedly caused to businesses and consumers," said Kaul. "Wisconsin DOJ is committed to protecting Wisconsin's pocketbooks, including by taking action when a company with monopoly power blocks competition, leading to higher prices for customers. We look forward to continuing to work with the FTC and this bipartisan group of Attorneys General's offices."

According to the complaint obtained by the Wisconsin Law Journal, Amazon allegedly violates the law not because it is big, but because it engages in a course of exclusionary conduct that prevents current competitors from growing and new competitors from emerging. By stifling competition on price, product selection, quality and by preventing its current or future rivals from attracting a critical mass of shoppers and sellers, Amazon ensures that no current or future rival can threaten its dominance.

Amazon's far-reaching schemes, according to Kaul, impact hundreds of billions of dollars in retail sales every year, touch hundreds of thousands of products sold by businesses big and small and affect over a hundred million shoppers.

"Our complaint lays out how Amazon has used a set of punitive and coercive tactics to unlawfully maintain its monopolies," said FTC Chair Lina M. Khan.

"The complaint sets forth detailed allegations

noting how Amazon is now exploiting its monopoly power to enrich itself while raising prices and degrading service for the tens of millions of American families who shop on its platform and the hundreds of thousands of businesses that rely on Amazon to reach them. Today's lawsuit seeks to hold Amazon to account for these monopolistic practices and restore the lost promise of free and fair competition," Khan added.

Other federal officials say the illegal conduct has caused the American public to overpay for items.

"We're bringing this case because Amazon's illegal conduct has stifled competition across a huge swath of the online economy. Amazon is a monopolist that uses its power to hike prices on American shoppers and charge sky-high fees on hundreds of thousands of online sellers," said John Newman, deputy director of the FTC's Bureau of Competition.

"Seldom in the history of U.S. antitrust law has one case had the potential to do so much good for so many people," Newman added.

The FTC and states allege Amazon's anticompetitive conduct occurs in two markets — the online superstore market that serves shoppers and the market for online marketplace services purchased by sellers. These tactics include:

Anti-discounting measures that punish sellers and deter other online retailers from offering prices lower than Amazon, keeping prices higher for products across the internet. For example, if Amazon discovers that a seller is offering lower-priced goods elsewhere, Amazon can bury discounting sellers so far down in Amazon's search results that they become effectively invisible.

Conditioning sellers' ability to obtain "Prime" eligibility for their products — a virtual necessity for doing business on Amazon — on sellers using Amazon's costly fulfillment service, which has made it substantially more expensive for sellers on Amazon to also offer their products on other platforms. This unlawful coercion has in turn limited competitors' ability to effectively compete against Amazon.

Officials say Amazon's illegal, exclusionary conduct makes it impossible for competitors to gain a foothold. With its amassed power across both the online superstore market and online marketplace services market, Amazon extracts enormous monopoly rents from everyone within its reach. This includes:

Degrading the customer experience by replacing relevant, organic search results with paid advertisements — and deliberately increasing junk ads that worsen search quality and frustrate both shoppers seeking products and sellers who are promised a return on their advertising purchase.

Biasing Amazon's search results to preference Amazon's own products over ones that Amazon knows are of better quality.

Charging costly fees on the hundreds of thousands of sellers that currently have no choice but to rely on Amazon to stay in business. These fees range from a monthly fee sellers must pay for each item sold, to advertising fees that have become virtually necessary for sellers to do business. Combined, all these fees force many sellers to pay close to 50% of their total revenues to Amazon. These fees harm not only sellers but also shoppers, who pay increased prices for thousands of products sold on or off Amazon.

The FTC and states are seeking a permanent injunction in federal court that would prohibit Amazon from engaging in its alleged unlawful conduct and pry loose Amazon's monopolistic control to restore competition.

In addition to Wisconsin, Connecticut, Delaware, Maine, Maryland, Massachusetts, Michigan, Minnesota, New Jersey, New Hampshire, New Mexico, Nevada, New York, Oklahoma, Oregon, Pennsylvania, and Rhode Island joined the FTC's lawsuit. The Commission vote to authorize staff to file for a permanent injunction and other equitable relief in the U.S. District Court for the Western District of Washington was 3-0.

Wisconsin's Assistant Attorney General for Antitrust, Gwendolyn Lindsay Cooley, is representing the State of Wisconsin.

Chicago's Trump Tower sued for failed compliance with environmental laws

Steve Schuster

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Illinois Attorney General Kwame Raoul has amended a lawsuit his office filed in 2018 against Trump International Hotel & Tower, known as Trump Tower.

According to the amended complaint obtained by the Wisconsin Law Journal, the downtown Chicago property known as Trump Tower has allegedly continued to break environmental laws through what authorities say is a "significant underreporting" of the average daily volume of water it discharges into the Chicago River, in violation of environmental laws and Trump Tower's National Pollutant Discharge Elimination System (NPDES) permit.

"Even after the state of Illinois took steps to hold Trump Tower accountable for violations of state and federal environmental laws, violations have continued – underscoring a disregard for the laws and regulations that are in place to protect our waterways and aquatic life," Raoul said.

"I am committed to enforcing our environmental laws and ensuring that all entities are held accountable for violations of those laws," Raoul added.

In 2018, the Illinois Attorney General's office filed a lawsuit against Trump Tower alleging violations of both the Illinois Environmental Protection Act and Illinois Pollution Control Board regulations. The lawsuit stated Trump Tower failed to obtain the necessary permit and submit information monthly to the Illinois Environmental Protection Agency (IEPA), as required by the Clean Water Act, to demonstrate compliance with federal regulations relating to the building's operation of a cooling water intake system.

Also in 2018, the Sierra Club and Friends of the Chicago River filed an intervening lawsuit against Trump Tower regarding continuing violations of the Clean Water Act and Public Nuisance.

According to Illinois officials, Raoul's office and the parties later entered into an agreed interim order that required Trump Tower to follow the terms of its expired NPDES permit



Illinois Attorney General Kwame Raoul is suing the owners of Trump Tower in Chicago over what the AG says are continued violations of environmental laws. (Staff photo by Steve Schuster)

and report the average daily volume of heated water it discharges into the Chicago River monthly. Trump Tower had been submitting the monthly discharge monitoring reports (DMR) since 2013, as required by its first NPDES permit, authorities noted.

While Raoul's lawsuit was pending, an expert witness for the Sierra Club and Friends of the Chicago River examined raw data provided by Trump Tower during discovery and compared it to the DMR data. The comparison showed a "significant discrepancy" between the flow data recorded by the building's automated system and the DMR data Trump Tower reported to the IEPA, prompting the Attorney General's office, as well as the Sierra Club and Friends of the Chicago River, to file amended lawsuits. Attorney General Raoul's lawsuit continues to seek to prevent further violations of state environmental laws, as well as civil penalties.

Raoul's lawsuit is based on a referral from the Illinois Environmental Protection Agency.

Previously, in 2012, the Illinois Attorney General's office filed a complaint with the Illinois Pollution Control Board alleging that Trump Tower was releasing heated water into the Chicago River without an NPDES permit.

The matter was settled, and Trump Tower was ordered to obtain an NPDES permit, pay a fine and comply with environmental laws. The building sought a modified NPDES permit in 2013 after initially misreporting the amount of water being withdrawn and discharged into the Chicago River each day.

According to authorities, Trump Tower, located along the Chicago River, operates a cooling water intake system capable of pulling more than 20 million gallons of water in from the river per day to cool the building's heating, ventilation and air conditioning system. Due to the amount of water the building takes in daily, federal law requires extensive studies of Chicago River fish populations and the impact of the building's water intake system.

The Clean Water Act regulates cooling water intake structures because they can pull large volumes of fish into a building's cooling system. Fish and other aquatic organisms can also get trapped against intake screens.

Supervising Attorney Elizabeth Dubats, Senior Assistant Attorney General Christopher Grant and Assistant Attorneys General Rebecca Kanz and Molly Kordas are handling the case for Raoul's Environmental Bureau.



The role of lawyers is no laughing matter

Q. What’s the difference between a bad lawyer and a good lawyer?

A. A bad lawyer makes your case drag on for years. A good lawyer makes it last even longer.

We’ve all heard lawyer jokes. In fact, they pre-date Shakespeare’s era. We find humor until we find ourselves in need of one. The assistance of a lawyer is crucial for major life events, such as divorce, adoption, purchasing real estate, death, crime, serious accidents, starting a business and bankruptcy.

According to the U.S. Census Bureau, as of 2020, a significant portion of our residents – 11.8% – lived below the poverty line. These individuals lack the financial resources to secure legal representation when they encounter legal issues. Pro Bono services help bridge this gap, ensuring everyone has a fair chance in the legal system.

Defining Pro Bono

Pro bono is a Latin phrase meaning “for the public good.” Pro bono work involves legal services provided free of charge or at a reduced fee to individuals and organizations in need. It’s the legal profession’s commitment to ensuring access to justice for all, regardless of financial means.

Strengthening Communities

Beyond individual cases, pro bono work has a ripple effect that strengthens communities across Wisconsin for families with limited resources. Those who are less fortunate such as children, domestic and sexual violence survivors, the elderly, homeless, immigrants, people



Dean R. Dietrich is president of the State Bar of Wisconsin. He is with the law firm of Weld Riley S.C., Wausau.

with disabilities, veterans, and workers all benefit from pro bono work completed by lawyers.

The Legal Profession’s Commitment

In 2022, 298 Wisconsin lawyers voluntarily committed a minimum of 50 hours of their time – 14,800 hours in total – to the tune of \$3.7 million in value.

Yet we also know there are unmet legal needs in the Badger State, and we are encouraging lawyers and law students to volunteer their time. Volunteering perpetuates a cycle of generosity and ensures that access to justice is not just a wish, it’s the cornerstone of our legal system.

Where to Turn

If you need legal assistance and you meet income qualifications, there are a number of resources available to you:

The State Bar of Wisconsin offers a number of free and reduced fee legal services.

Wisconsin Free Legal Answers is a virtual legal advice clinic for civil (noncriminal) legal questions at no cost.

The Wisconsin State Law Library offers an extensive listing of legal resources by county.

Conclusion

Lawyer jokes may evoke laughter, but the role of lawyers in our lives is no laughing matter. When life-altering events require legal expertise, we depend on lawyers to guide us through complex and challenging situations. Pro Bono work bridges the gap and ensures that every person in our diverse community has a fair shot in the legal system.

Pro Bono Week was Oct. 22-28. Hopefully it was a time to recognize and thank lawyers who champion pro bono work to ensure justice for all.

“Volunteering perpetuates a cycle of generosity and ensures that access to justice is not just a wish, it’s the cornerstone of our legal system.”



RECUSALS RESULT IN TIES

Sports, being highly sensitive to public opinion, has greatly reduced the number of ties. Football games have overtime. Golf has extra holes. Hockey and soccer (well, some soccer games) have shootouts.

Even baseball, the last sport to adjust to a modern temperament, now has a “free” runner at second base in extra innings so the teams can get to a resolution faster. While I suppose some may argue that a tie might be better than losing, it is certainly not more meaningful.

Apparently, however, the Wisconsin Supreme Court has not gotten the message that people don’t like ties (not that I haven’t tried – this is at least the second time I’ve written about this issue). Most recently two cases released on the same day, Oct. 10, 2023, resulted in a 3-3 vote. In one, *State v. McBride*, 2021AP311, the result is that the decision of the Court of Appeals is “affirmed by an equally divided court.”

In the other case, *State v. Seaton*, 2021AP 1399, the result was for the court to vacate its acceptance of certification and remand the matter to the Court of Appeals. In both cases, the tie was due to the new Justice, Janet Protasiewicz, not participating, undoubtedly because she was not on the bench at the time of oral argument.

The problem is that this is not a victimless crime (OK, calling it a “crime” is a bit melodramatic). Having argued several times before the Wisconsin Supreme Court, I can tell you it is a majestic experience (with one exception, but that is another story!)

Preparation is crucial.

Besides the hours and hours of drafting and revising briefs, good lawyers practice arguments and spend substantial time preparing potential answers. Then, there is the emotional energy of reliving the arguments and waiting for the decision. All to find out there will be no decision? What a waste! And that isn’t even considering the time wasted by the court itself in reading the brief and conducting oral arguments.

Moreover, it is a waste for which there is an easy cure. First, it’s not clear why Justice Protasiewicz could not bring herself up to speed by reading the briefs and listening to the recordings (or read the transcripts) of the oral arguments. True, it would mean that she could not pose questions or her own, but I’m not sure if in the history of appellate courts a judicial mind has ever been changed due to the answer to a question posed by that justice. Perhaps that has happened,

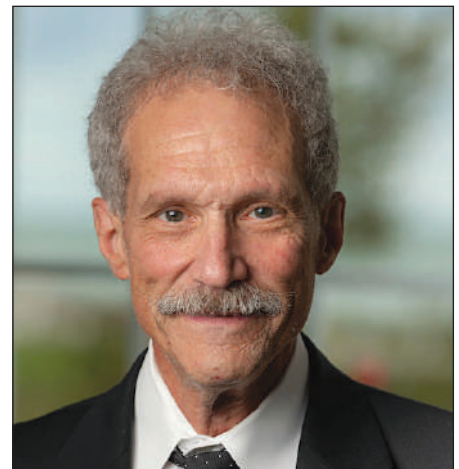


The Wisconsin Supreme Court recently released two cases that ended in 3-3 ties because Justice Janet Protasiewicz did not participate. (AP File Photo/Morry Gash)

but that would be a small risk to avoid the waste of a tie vote.

Second, many states allow a lower court justice to be selected on a rotating basis to avoid a tie vote. It is beyond my understanding why the Wisconsin court system has rejected that approach. It can’t be for a lack of bathrooms as a male justice would be pretty much by himself.

This is not the first time I’ve written about this issue: “Kissing Your Sister: There Should be No Ties in Litigation.” (Wisconsin Law Journal November, 2021). In that article, I quoted Judge Don R. Willett of the United States Court of Appeals, Fifth Circuit, who wrote “Game seven of the World Series would never end in a dismal tie. But America’s other national pastime — suing people — can end that way ... [S]talemates, while infrequent, subverts the fundamental — and institutional — purpose of a supreme court: to be supreme and to speak supremely. ... All that time, money, and energy—by the litigants and by the Court itself — with nothing to show for it.”



Gregg Herman is a neutral arbitrator and mediator at JAMS located in its Milwaukee office, specializing in resolution of family law disputes. A past chair of the ABA Family Law Section, Herman is a certified family law mediator, a senior Family Law trial Specialist by NBTA and an adjunct professor at Marquette Law School. He can be reached at gherman@loebherman.com or GHerman@jamsadr.com.

Blake Gross tapped as Ashland County district attorney

Blake Gross has been appointed to serve as the Ashland County district attorney. The appointment fills a vacancy created by District Attorney David Meany's resignation. Gross will serve for the remainder of the unexpired term that ends in January 2025.



Blake Gross

Gross is a sole practitioner based in Ashland, representing a broad range of clients in federal, state and Tribal courts. He began his legal career in Las Vegas as a litigator on behalf of residential developers, commercial developers and insurance companies. In 2018, he returned to Ashland to raise his family and began working at a small law firm before starting his own practice. His current practice has included criminal defense, civil litigation, family law and general counsel services for Tribally designated housing entities.

Gross lives in Ashland with his family and is a graduate of Northland College and the William S. Boyd School of Law at the University of Nevada, Las Vegas. He is currently the president of the Northland College Alumni Association Board of Directors, is an ex officio member of the Northland College Board of Trustees, and serves on the board of directors for Prentice House Inc.



Christopher Strohbehn (from left), Russell Karnes and Samantha Bailey

Strohbehn, Karnes, Bailey join Mallery s.c.

Milwaukee-based Mallery s.c. has announced attorneys Christopher L. Strohbehn, Russell J. Karnes and Samantha S. Bailey have joined the firm.

Strohbehn has practiced for more than 20 years across the state of Wisconsin. He represents all types of clients, from individuals to small businesses, to large national corporations.

He has authored numerous articles and has presented at numerous seminars in the State of Wisconsin as it relates to personal injury litigation and property tax appeals.

Karnes has substantial trial and appellate experience and has a diverse civil litigation practice focused on real estate, property tax assessment appeals, contract and business disputes, quiet title actions, foreclosure and title insurance litigation, misrepresentation claims, collection actions, and municipal law. Karnes assists clients in their business, estate planning and real estate transactions. Recently, Karnes was elected to the State Bar Board of Governors and works as a volunteer in the Marquette Volunteer Legal Clinic.

Bailey is admitted to practice throughout the

state of Wisconsin and the federal court system. She is involved in a wide range of civil litigation cases and does both plaintiff and defense work. She also serves her community through various pro bono work including work with Sojourner Family Peace Center's domestic violence intervention services.

Previously, Strohbehn, Karnes and Bailey practiced together at another downtown Milwaukee law firm.

Chojnacki, Cooley join Meissner Tierney Fisher & Nichols



Alyssa Chojnacki



Brian Cooley

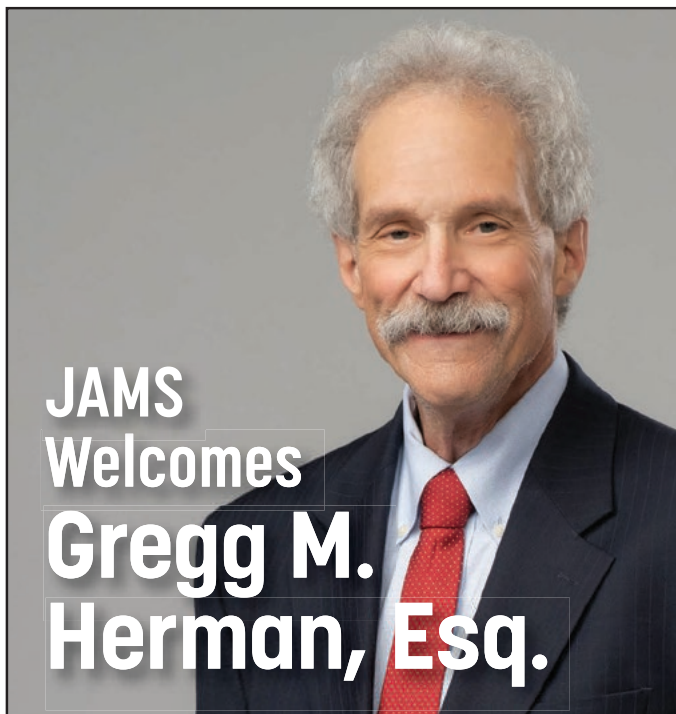
Alyssa Chojnacki and Brian Cooley have joined Meissner Tierney Fisher & Nichols S.C.

Chojnacki works in the firm's litigation practice group, while Cooley has joined the transactional practice group.

Prior to joining the firm, Chojnacki worked as an associate in Madison in the areas of general liability and insurance coverage.

Previously, Cooley served as a law clerk. He now advises clients in the areas of business organization, business and corporate transactions, mergers and acquisitions, and real estate.

Cooley graduated from Marquette University Law School in 2023.



JAMS Welcomes Gregg M. Herman, Esq.

"In Family Law, paying careful attention to the clients' needs and minimizing conflict are essential to maintaining relationships."

Mr. Herman brings 38 years of family law experience to the JAMS panel in Wisconsin. A full-time family law practitioner since 1984, he is a board-certified senior specialist in family law trial advocacy by the National Board of Trial Advocacy. He has substantial experience as an advocate and neutral in **all kinds of family law cases**, including those involving allocation of parental responsibilities and parenting time; distribution of assets and debts; prenuptial and postnuptial agreements; valuations of businesses; maintenance and child support; marital and nonmarital property issues; and allocation of family debts. Mr. Herman serves in person and remotely as a **mediator and arbitrator**.

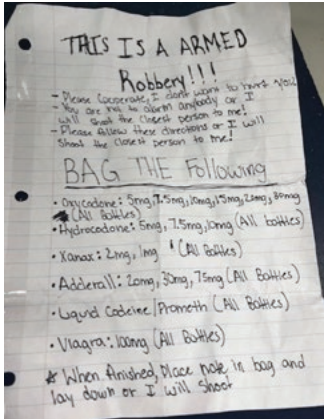
Visit jamsadr.com/gregg-herman or contact Case Manager Hayley Prager at hprager@jamsadr.com or 314.944-5054.



Local Solutions. Global Reach.®



CVS robber demanded Viagra



Orlando Police evidence photo.

An armed robber in the Sunshine State may not be seeing the sun anytime soon after a CVS robbery took an unusual turn.



Thomas Mues

robbery.”

Police say Thomas Mues admitted to traveling to Orlando from Jacksonville to carry out the plan and also confessed to another robbery in Central Florida.

According to Orlando Police, he is facing charges for robbery, trafficking and possession charges.

According to the robbery note provided by authorities, Mues also demanded Oxycodone, Hydrocodone, Xanax, Adderall and liquid codeine.

“Pharmacy employees say the suspect handed them a note indicating he had a gun and would shoot them if he was not provided the pills listed,”

Orlando Police said, “The suspect armed with this note detailing a long list of very specific demands was quickly arrested by Orlando Police. On October 20th, 2023 at about 6 p.m., officers responded to a CVS in the 4300 block of Curry Ford Road for a commercial

Orlando Police said.

“Officers arrived on the scene as the suspect ... was walking out of the store. After a short foot pursuit, (he) was apprehended and was still holding the stolen narcotics and his written note,” police added.

✉ Steve Schuster, sschuster@wislawjournal.com

Artist who submitted empty frames as artwork is appealing court ruling to repay the cash

COPENHAGEN, Denmark (AP) — A Danish artist who was given a pile of cash by a museum in northern Denmark to create a piece for its exhibition on labor conditions two years ago submitted two empty canvases — titled “Take the Money and Run.” The exhibit caused a stir.

A Danish court ruled in October that Jens Haaning has to repay \$69,894 to Kunsten Museum in Aalborg for having violated his contract. His lawyer, Peter Schønning, said that the contemporary artist is appealing the ruling and declined further comment.

The museum had commissioned Haaning in 2021 to recreate two of his earlier pieces featuring bank notes attached to canvases representing the average annual wage in Denmark and Austria.

Instead, he submitted two empty canvases for the exhibition, entitled “Work It Out,” said the artwork represented his current work situation and kept the money.

In its Sept. 18 ruling, the District Court of Copenhagen decided that Haaning can keep \$5,676 from the original amount given to him by the museum, which should constitute an artist’s fee because the exhibition, held from Sept. 24, 2021 to Jan. 16, 2022, went ahead with the empty frames.

The court said that the contract between the museum and Haaning had stated that the cash — the banknotes given to Haaning — would be available during the temporary display of the works, and that it was to be returned afterward.

STATEMENT OF OWNERSHIP, MANAGEMENT AND CIRCULATION

Wisconsin Law Journal; Publication number 000-857; Complete Mailing Address of Known Office of Publication: 225 E. Michigan St., Ste. 300, Milwaukee, WI 53202-4900; the mailing address of Headquarters or General Business Offices of the Publisher (Not printer), Wisconsin Law Journal, 225 E. Michigan St., Ste. 300, Milwaukee, WI 53202-4900; Full Names and Complete Mailing Addresses of Publisher, Editor, and Managing Editor: Joseph Yovino - Associate Publisher, 225 E. Michigan St., Ste. 300, Milwaukee, WI 53202-4900; Editor, Joseph Yovino, 225 E. Michigan St., Ste. 300, Milwaukee, WI 53202-4900; Managing Editor - none.

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Issue Date for Circulation Data Below, July 2023; the average number of copies of each issue during the preceding 12 months Box 15 is: (A) total copies printed 281; (B1) Paid Outside-County Mail Subscriptions 111; (B2) Paid In-County Subscriptions: 94; (B3) Sales through dealers and carriers, street vendors, counter sales: 0; (B4) Other classes mailed USPS: 0; (C) Total Paid Circulation: 205; (D1) Free Distribution by mail, samples complimentary and other free copies: 13; (D2) In-county free distribution: 20; (D3) Other classes mailed Free Distribution: 0; (D4) Free distribution outside the mail: 0; (E) Total Free distribution: 33; (F) Total Distribution: 238; (G) Copies not Distributed: 43; (H) Total: 281; (I) Percent of Paid: 86.13%.

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I certify that all information furnished on this form is true and complete:

(Signed) Joseph Yovino, Associate Publisher

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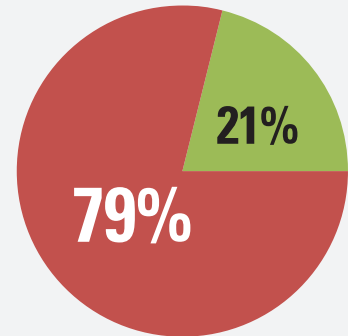


WHAT'S HOT POLL

Should Justice Protasiewicz recuse herself on gerrymandering cases that go before the Wisconsin Supreme Court?

■ No – 79 percent

■ Yes – 21 percent



TOP FIVE TRENDING

1. ‘Convicting a murderer’ rebuttal to ‘Making a Murderer’ filled with rumors, speculation and corner bar gossip, former defense attorney says
2. Liberal Supreme Court justices make sweeping changes to enhance transparency and accountability
3. Havana Syndrome hits CIA, Congress in Wisconsin, Russia takes credit
4. Cancer takes life of Milwaukee attorney Bill Cannon
5. ‘Convicting a murderer’ rebuttal to ‘Making a Murderer’ unveils facts not told by Netflix series



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