



**2012—A YEAR OF GROWTH**



*By William R. Soderstrom,  
Managing Partner*

The year 2012 has been an interesting time at our law firm. We continue to expand both the type of law we practice and the areas in which we practice.

In 2012, our attorneys were involved in legal matters in over a dozen states throughout the U.S. Given the nature of modern business, we expect that assisting clients with legal matters in other states will continue to be a significant part of our practice.

During the last couple of years, we have added four new employees to our practice. For a firm our size,

those additions have been significant. However, we have seen a considerably increased demand for legal services from a number of new corporate clients that we have begun to represent, and we wanted to strengthen our capacity to meet that demand.

Many of those clients were formerly represented by larger law firms; they made the decision that they could receive similar or better legal services from FOS at a cost that better recognized the current economic situation.

FOS added Laurna Jozwiak and Peter White to our corporate, tax and real estate group. Laurna provides multi-faceted support for the group and has been involved

particularly with our trademark practice. Peter, a CPA with prior experience at Deloitte Touche, has joined Al Young and Greg Ricci in strengthening our corporate tax practice and estate planning services.

All three of our tax attorneys are CPAs, who have practiced with national accounting firms prior to joining FOS.

We have also seen an increase in litigation. Accordingly, we have added Matt O'Neill and Jake Manian to our litigation group.

Matt has over 20 years of experience with high level corporate litigation and appeals. Jake has over 5 years of experience in the Milwaukee County District At-

torney's office, prosecuting over 40 felony trials during that time. Jake handles both corporate litigation and criminal matters for us, including white collar charges.

We have also added a west side location for the convenience of our west side clients. This office is located at 13150 Watertown Plank Road, Elm Grove, Wisconsin in the Town Bank building. We are happy to meet with our clients either at that location or at our downtown office.

We would like to thank all of our clients for your continued support and confidence in us. We hope we have earned your trust and confidence, and we look forward to working with you during 2013.

**FOS LAWYERS ARE  
"SUPER"**

FOS congratulates Bruce O'Neill, Matt O'Neill and Ken Barczak for being named Super Lawyers for the 7<sup>th</sup> year in a row. All were formally recognized in the December, 2012 *Super Lawyer* edition of Milwaukee Magazine as top attorneys in Wisconsin for 2012.

An FOS senior partner, Bruce specializes in commercial litigation and family law. He has

achieved favorable results in many high profile lawsuits in his over 40 years of practice. Bruce's practice is national, as he has appeared in trial and appellate state and federal courts throughout the country.

An FOS shareholder, Matt O'Neill focuses his practice on commercial litigation and appellate work, though he also has substantial experience with campaign finance and election law.

He has been involved in

several successful high-profile appeals where the success of the company hung in the balance on appeal.

Of Counsel, Ken Barczak is both an attorney and CPA who has made substantial contributions to the field of trusts and estates law.

Super Lawyer is a rating service that uses independent research and peer nominations/evaluations to choose lawyers from 70+ practice areas statewide.

**IN THE HOLIDAY  
SPIRIT OF GIVING**

In the holiday spirit, and in lieu of holiday cards, FOS is making a donation to Repairers of the Breach, Milwaukee's only daytime homeless shelter and resource center.



## WHERE ARE YOUR OLD INSURANCE POLICIES?



By Michael J.  
Hanrahan

Commercial General Liability ("CGL") insurance policies are usually about two inches thick and are written in a way that might make the IRS Code seem like a dime store paperback. Thus, after such policies have sat on a shelf for a few years without being looked at, business people may have an urge to put them in a storage box and the storage box may eventually be lost or thrown out. This would be a serious mistake for almost any company.

CGL policies typically provide coverage on an "occurrence" basis. Because of this "occurrence"-based coverage, these policies never expire. The policies can continue to provide coverage today for events that took place decades ago. For example, so called toxic tort personal injury claims (e.g. asbestos, silica, benzene, welding fumes, etc.) can be filed in court decades after the alleged exposure occurred. In Wisconsin, as in most states, the statute of limitations on a claim does not begin to run until the claimant "discovers" that he has been harmed. As such, the exposure to a chemical in 1972 which gives rise to cancer in 2012 means that a lawsuit could be filed today against the company that caused the exposure in 1972. Moreover, medical science may discover new causes of

cancer, and as a result, new injury claims may arise. In addition to personal injury claims, environmental claims arising out of chemical leaks, spills and releases could give rise to property damage claims long after events giving rise to the release.

Significantly, the insurance policies from the 1960's to the 1970's have fewer policy exclusions for toxic tort and environmental claims. As such, if a claimant was exposed to an allegedly toxic substance from 1965 to 1995, the policies from the '60's and 70's may provide the best argument for coverage.

Such insurance coverage is valuable not only to pay a settlement or adverse verdict but also to pay for the cost of defense. Plaintiffs' attorneys in toxic tort lawsuits usually name dozens (or even hundreds) of defendants in their lawsuits, often with the flimsiest basis in fact. In such lawsuits, the risk of liability may be non-existent to a particular defendant, but the cost litigating the claim to the point of summary judgment may be tens of thousands of dollars.

For these reasons, maintaining possession of CGL insurance policies is extremely valuable. Moreover, in this day and age of digital record keeping, it is not even necessary for the paper policy to be stored forever.

If you cannot find old policies, all is not lost. Evidence

of a CGL insurance policy can be proven by secondary sources of information. In terms of proving the existence of an old insurance policy, a company can begin by searching old claim files, certificates of insurance, accounting ledgers, and payment information. Such documents can be used to prove that a policy was purchased from a particular insurer for a particular time frame. Also, a company's historical insurance brokers, accountants or corporate attorneys may have documents which prove the existence of CGL policies. Once evidence of the insurers and coverage dates are found, the insurers can be asked to search their files for the missing policies.

While decades-old insurance policies may seem bulky and useless, they can be literally worth their weight in gold. Every company should have a comprehensive plan for recovering and maintaining old policies and preserving policies in the future. Companies should be proactive in securing old insurance policies, instead of waiting for the next toxic tort lawsuit to be filed.

Fox, O'Neill & Shannon has experience in supervising searches for insurance policies and litigating insurance coverage issues in toxic tort and environmental claims. Please let us know if we can assist you in this regard.

### KAREN FOX TROTTERS RUN FOR A CURE



In September, FOS participated in the 2012 Susan G. Komen Race for the Cure, in honor of Karen Fox.

FOS' team, The Karen Fox Trotters, had more than 30 members. We raised \$1,975.00. Our team consisted of FOS employees, clients, friends and family.

Thank you to everyone who participated in and/or supported the FOS team.



By Allan T. Young

Contributions to charities are tax deductible if the substantiation requirements in the Internal Revenue Code are satisfied. The recent case of *Durden v. Commissioner, TC Memo 2012-140*, illustrates what happens when a taxpayer does not strictly comply with the substantiation requirements.

There are two substantiation requirements for cash contributions. First, a taxpayer must keep a cancelled check or other bank record of the contribution. Second, the taxpayer must receive a contemporaneous written acknowledgment of the contribution. The written acknowledgment must indicate the amount of the contribution and must state whether any goods or services were provided to the taxpayer in consideration for the contribution. An acknowledgment is contemporaneous if it is obtained by a taxpayer on or before the earlier of (1) the date a taxpayer files an original return for the year, or (2) the due date (including extensions) for filing the original return for the year.

During 2007, the Durdens

issued a series of checks to their church. The checks totaled \$22,517. The Durdens claimed a \$22,517 charitable contribution deduction on their 2007 federal income tax return.

When the Durdens were audited, they produced copies of their cancelled checks and a letter from their church dated January 10, 2008 which acknowledged receiving contributions from the Durdens totaling \$22,517. The IRS rejected the acknowledgment because it lacked a statement indicating whether any goods or services were provided to the Durdens in consideration for the contributions. The Durdens then obtained a second letter from the church dated June 21, 2009 that included a statement that no goods or services were provided to them.

In the Durdens' tax audit, there was no question as to whether or not the Durdens made the contributions to the church. The only issue was whether they satisfied the substantiation requirements. The Durdens conceded that the original acknowledgment failed to include a statement as to whether goods or services were provided. But when brought to the attention

of the taxpayers, the taxpayers immediately obtained a written acknowledgment that contained the required language.

Nevertheless, the U.S. Tax Court denied the deduction to the taxpayers. It ruled that taxpayers must strictly comply with the substantiation requirements. Substantial compliance is not sufficient. In light of this decision, I expect that IRS auditors will give no leeway to taxpayers when reviewing substantiation of charitable contributions.

When you make charitable contributions, be sure to keep your cancelled checks. Also insist that the charity issue a written acknowledgment that recites that no goods or services were given in consideration for the contribution and obtain the written acknowledgment before you file your tax return for the year. Failure to (1) obtain a written acknowledgment, (2) obtain a written acknowledgment that contains the "magic words," or (3) obtain a written acknowledgment timely, will result in denial of your deduction. Don't let that happen to you!

FOS ON THE MOVE



FOS shareholder Gregory J. Ricci recently spoke on drafting business contracts and negotiating strategies as part of the National Business Institute's Business Contracts A to Z seminar. Also, at the Milwaukee Bar's seminar on LLC Formation he presented on the formation, operation and complex tax issues of LLCs.



FOS shareholder Matt O'Neill moderated the 5th Annual E-Discovery Conference held on November 14, 2012.

The day-long program was sponsored by the Milwaukee Bar Association, the Eastern District of Wisconsin Bar Association and AIM Wisconsin. Matt is past president of the Eastern District of Wisconsin Bar Association.



FOS of counsel Kenneth P. Barczak was a presenter at the 33rd Annual Estate Planning Update held on November 9th. Ken spoke on digital assets and how they affect estate planning. Topics covered included who has the right and responsibility to access digital assets such as online bank accounts and social media programs.

FOS' 50th ANNIVERSARY

2012 marks FOS' 50th anniversary. In 1962, senior partner William F. Fox formed the firm Cahill and Fox. From that point forward Fox worked to put great lawyers together with great clients and great support staff. Fifty years later Fox, O'Neill & Shannon, S.C. remains committed to expertly serving our clients. FOS employees and spouses celebrated our anniversary at a special dinner on November 2, 2012.



Tom Shannon, Bill Fox & Bruce O'Neill



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Fox, O'Neill & Shannon, S.C. provides a wide array of business and personal legal services in areas including corporate services, litigation, estate planning, family law, real estate law, tax planning and employment law. Services are provided to clients throughout Wisconsin and the United States. If you have any questions about these articles or any other legal topics, please call us at (414) 273-3939.

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THE REAL FACTS ABOUT THE FISCAL CLIFF



By Peter J. White

Taxes! Fiscal cliff! Now that the election is over, those buzzwords are a reality not a political ad. The fiscal cliff is a combination of expiring tax provisions and spending cuts to take place in 2013. During his campaign, President Obama discussed tax proposals that would help curb the impact of the fiscal cliff. Below are key expiring tax provisions for individuals and President Obama's related proposals.

Single taxpayers' top two tax brackets are now 33% tax on adjusted gross income

("AGI") of \$178,650 - \$388,350 (\$217,450-\$388,350 at 33% for married filing jointly) and 35% tax on AGI over \$388,350 (same for married filing jointly). The President proposes to increase the top two rates to 36% and 39.6% respectively. He plans to impose the 36% on single taxpayers with AGI greater than \$200,000. For married jointly filing taxpayers, the 36% would be imposed on AGI greater than \$250,000.

Long-term capital gains tax rates are set to expire at the end of 2012. Such gains face a maximum tax rate of 15%. Taxpayers with regular tax rates of 15% or less pay no

tax on that income, while taxpayers with higher rates pay 15%.

The long-term capital gains rates are set to revert to 10% for taxpayers in the 15% bracket and below and 20% for taxpayers in higher tax brackets. President Obama proposes to impose the 20% long-term capital gain rate only on taxpayers in the 36% and 39.6% brackets.

The estate tax is set to revert back to a \$1,000,000 exemption, no portability, and tax rates as high as 60%. In 2012, individuals have a \$5,120,000 exemption for estates. Amounts over the exemption are taxed at 35%.

Portability allows a surviving spouse to add a deceased spouse's unused exemption to his own. President Obama proposes to set the exemption at \$3,500,000, keep portability, and tax anything over the exemption at 45%.

It is still unclear whether Congress will pass any meaningful legislation before the end of the year. Some think a short term fix will be implemented, with a long term plan to occur in 2013. That is not certain.

The FOS tax team has the expertise and experience to help you prepare and plan for the uncertain future that lies ahead.