



## THE "SECRET" LAW

## FOS TOP RANKED



By Michael J. Hanrahan

Imagine that you come into your company's office one morning only to learn that two key sales representatives cleared out their offices the night before and left resignation letters on your desk.

Later that day, you learn that these former employees have gone to work for your biggest competitor, and that they were observed operating their computers and handling disks and detachable hard drives several nights during the preceding week, while they were still your company's employees.

Your company's computers contain numerous complex bid proposals for new business and specific and detailed information regarding existing customer specifications and pricing calculations. You suspect the worst.

What can you do to protect your company?

Regardless of whether the former employees signed non-compete/non-disclosure agreements, you may have rights and remedies under Wisconsin's Uniform Trade Secrets Act, Sec. 134.90, Stats. ("UTSA").

Before pursuing remedies under the UTSA, your company must prove what you intuitively believe--that information was in fact taken.

If it is worth filing a lawsuit over, it is worth engaging a digital forensic investigator to examine computers and other electronic devices to determine what electronic files have been accessed, when, by whom and whether such files were downloaded.

If you determine that electronic files were accessed and downloaded, it is important to know that not all company information is a "trade secret" under the UTSA.

The UTSA defines a "trade secret" as "information, including a formula, pattern, compilation, program, device, method, technique or process" when:

1. The information is valuable, is not generally known and is not readily ascertainable by proper means; and,
2. The information is subject to reasonable measures to guard its secrecy.

A simple list of customers, for example, is not typically a trade secret, because such a list can be developed by other "proper" means.

Yet, files which contain detailed customer information, such as customer preferences, specifications, pricing models, etc., which is not "generally known" and is not "readily ascertainable" can be a trade secret.

In addition to showing that the information is a "trade secret," your company must demonstrate that it took efforts to maintain that information's secrecy.

For example, access to the information should be limited to employees who have a need to know, and such employees should be required to sign a non-

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Fox, O'Neill & Shannon, S.C. has been named a national 2014 Top Ranked Law Firm by American Lawyer Media and Martindale-Hubbell™.

FOS and its top ranking are being highlighted in the special section of Fortune Magazine's 2014 Investor's Guide.

The firm will be honored in the section titled "U.S. Top Ranked Law Firms in Fortune Legal Marketplace."

American Lawyer Media is a leading provider of news and information to the legal industry.

Martindale-Hubbell™ is a national attorney resource, which rates attorneys based on peer review results.

## BRUCE O'NEILL -- 2014 LEADER IN THE LAW



FOS congratulates senior shareholder Bruce O'Neill for being named a 2014 Leader in the Law by the Wisconsin Law Journal.

Bruce was honored as one of Wisconsin's top legal professionals, based on his outstanding leadership, vision and legal expertise, according to the Wisconsin Law Journal.

Bruce received his award at a February 27, 2014 dinner, attended by over 200 people, at the Hilton Milwaukee Civic Center.

In conjunction with this honor, Bruce is being profiled in a special 2014 Leaders in the Law edition of the Wisconsin Law Journal.

Bruce's practice specializes in civil commercial litigation and complex family law matters. He routinely litigates complex federal and state court business trials and "save-the-company" lawsuits.



## QUICK ACTION CAN MAKE ALL THE DIFFERENCE IN OWI CASES



By Jacob A. Manian

You are driving home from a party when suddenly you see the unmistakable lights of a law enforcement vehicle behind you. Next thing you know you're arrested and cited for Operating While Intoxicated (OWI) and/or Operating with a Prohibited Alcohol Concentration (PAC).

This has never happened to you. As reality settles in, so does the stress and the trauma. You begin to worry--how will this affect my life? My job? What do I do now? What will this cost me?

In the worry of the moment, the very strict deadlines imposed on pre-trial procedures in these types of cases can fall through the cracks. Failure to adhere to them, however, will have signifi-

cant consequences and cause you to lose very important rights.

### Jury Trial

If you are cited for OWI or PAC, you have the right to a jury trial, with a jury deciding whether the prosecutor has sufficiently proven that you are guilty of the charged offense(s).

However, you must demand a jury trial in writing and pay the required jury fee within ten (10) days of entering a not guilty plea. If you fail to do so, you lose the right to a jury trial forever.

### Administrative Driver's License Suspension

If you are arrested for OWI and a chemical test of your breath or blood shows that your blood alcohol concentration was above .08, a law enforcement

officer must serve you with notice informing you that your driver's license will be administratively suspended by the Department of Transportation (DOT).

The notice can be served immediately after the test or mailed to you. You have the right to challenge this suspension at a hearing. However, you must request the hearing within ten (10) days after receiving (thirteen (13) days after mailing) the notice.

If you fail to do so, you lose the right to a hearing. Your license will automatically be suspended, even if you are ultimately found not guilty of the OWI and/or PAC offense.

### Finding of Improper Refusal

If you are accused of having refused a chemical test of your

breath or blood following an arrest for OWI, law enforcement must serve you with notice informing you of the DOT's intent to revoke your driver's license.

Like the administrative suspension of your license, you have the right to request a hearing on the alleged refusal, at which you can challenge certain things, such as whether you did in fact refuse a test or whether the law enforcement officer complied with the law.

You must request a hearing on the refusal within ten (10) days of receiving the notice. Failure to properly do so may result in the most severe consequences of all.

If you don't timely request a hearing, the court will find that you improperly refused a chemi-

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## SUMMER INTERNSHIP PROGRAM

FOS will be participating in this summer's Inaugural Summer Internship Program sponsored by the Eastern District of Wisconsin Bar Association.

Under the program, FOS will provide an area high school student with an internship during which the student will experience an inside view of various aspects of the practice of law.

During the six-week internship, interns will perform a variety of tasks, from clerical work, to "shadowing" their attorneys at depositions and to court, to attending guest lectures, to completing reading assignments (including the *Constitution Pre-ambler* and *To Kill a Mockingbird*).

Interns will receive a \$500 sti-

pend for their service.

The Internship Program is an offshoot of the Charles N. Clevert, Jr. Mentoring Program, where young students are paired with and mentored by practicing attorneys during the school year.

FOS shareholders Matt O'Neill and Shannon Allen currently act as mentors.

The programs' goals are to enable students to discover first hand the promise and requirements of a legal career.

As Matt O'Neill commented, "Wouldn't it be great if one of FOS's interns becomes a future Justice of the United States Supreme Court?"

## FOS ON THE MOVE

FOS shareholder **Thomas Shannon** participated on a panel of legal, financial and insurance professionals at a career program presented at St. John's Northwestern Military Academy, Inc.

FOS shareholder **Francis Hughes** has been elected to a second term as president of the St. Thomas More Lawyers Society of Wisconsin.

The Society fosters the professional, intellectual and spiritual growth of its members.

FOS shareholder **Matthew O'Neill** presented on "Ethical Issues between Appellate Counsel and the Client" at the January 31, 2014 "360 Degrees

of Appellate Ethics" seminar held at Marquette University.

The seminar was sponsored by the State Bar of Wisconsin's Appellate Practice Section and the Wisconsin State Public Defender's Office.

Matt also testified at a hearing on election law issues before a Lawyers' Committee on Civil Rights in Minneapolis, Minnesota on February 25, 2014.

FOS attorneys are available to speak on a wide variety of legal topics to both large and small groups. To inquire about topics and availability, please email [info@foslaw.com](mailto:info@foslaw.com) or call 414-273-3939.

## INSURANCE REIMBURSEMENT CHANGES -- DO THEY AFFECT YOU?



By Peter J. White

As you open your first few 2014 paychecks, you notice something strange. Both your compensation and tax withholding have gone up. You think, "Did I get a raise without knowing about it?"

Not really, if you are one of the many employees whose employers reimburse them for health insurance premiums paid by the employees. Rather, your paycheck has been adjusted to account for that insurance premium reimbursement.

In the past, reimbursements for health insurance premiums made by employers have been tax-free to employees. However, begin-

ning January 1 of this year, that is no longer the case. Employees are now beginning to be taxed on these reimbursements.

The Internal Revenue Service and Department of Labor consider these reimbursement plans to be equivalent to a health reimbursement arrangement ("HRA")—a formal employer sponsored plan that employers use to reimburse employees for certain medical expenses.

Under the Affordable Care Act, employers who offer group health plans which include HRA's must not impose any annual or lifetime limits on "essential health benefits." Generally speaking, an HRA which sets annual limits on reimbursements violates this law.

As a result, reimbursements must be added to an employee's gross

compensation and are subject to Social Security and Medicare taxes and federal and state income tax withholding. This is true not only for health insurance reimbursements but also Medicare reimbursements.

Happily, some reimbursements can still be made to employees tax-free.

One example is reimbursements for sums used to pay group health insurance premiums. This scenario typically arises when an employee opts to participate in a spouse's employer's group health plan.

Assuming the spouse's employer's plan meets the Affordable Care Act requirements for group plans, the reimbursement will be tax free, because the HRA is deemed to be "integrated" with

the group plan.

These reimbursement provisions are important to both sides of an employment relationship.

Employers need to understand whether their companies' health plans comply with the new law. Employees need to know what the law's financial impact may have on them.

FOS's attorneys have the knowledge to answer your questions and concerns regarding the new reimbursement requirements.

### TAXES ARE DUE ON APRIL 15th!

Call us for your tax related needs at (414) 273-3939.

#### Quick Action *Continued from page 2*

cal test. From that finding, your license to drive will be revoked, you will be required to comply with an alcohol and drug assessment, and you will be required to install an ignition interlock device (which you blow into to show you are not intoxicated) on every vehicle registered in your name.

But that's not the worst of it. A finding that you improperly refused a chemical test of your breath or blood following an OWI arrest counts as an OWI conviction. Therefore, you could be found not guilty of the OWI offense, but still end up with the equivalent of an OWI conviction on your record, simply because you failed to request a hearing on the alleged refusal within ten (10)

days of receiving the notice.

As this shows, the deadlines imposed on first offense OWI and PAC cases are strict and severe. They can easily be overlooked by someone swirling in the stress of the moment of these charges.

It is critical that someone arrested for OWI or PAC, especially a first offense, contact an attorney immediately. FOS's attorneys know how to navigate the OWI/PAC system correctly, efficiently and confidentially.

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#### The "Secret" Law *Continued from page 1*

disclosure agreement before being given the information.

If your company can show that the former employees took information that meets the definition of a "trade secret," it can file a lawsuit and seek an injunction prohibiting the former employees and their new employer from possessing and using the trade secret information. If the trade secrets have already been used in a way that harms your company, you can also seek monetary damages under the UTSA.

To effectively use the UTSA, a company must understand the law and plan ahead. If it appears that trade secrets have been taken, a company should act immediately to preserve electronic evidence and inter-

view any individuals who may have information.

FOS's attorneys have extensive experience in trade secret counseling and litigation. By taking the time to consider trade secret issues now, your company may avoid significant harm in the future.

### WHO'S WHO?

FOS shareholder **Diane Sломowitz** has been recognized as a legal "Who's Who" by Continental Publishing.

Her recognition is based on referral sources, organizations' recommendations, and Continental's research team.

Diane concentrates her practice on appellate briefing, legal research and legal writing.



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New Wisconsin Trust Code

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NEW WISCONSIN TRUST CODE



By Allan T. Young

On December 13, 2013, Governor Walker signed into law a new Trust Code for Wisconsin. The Trust Code sets forth the statutory rules for administering trusts.

Interestingly, most of the statutory rules can be overridden in the trust agreement. That allows great flexibility in drafting trust agreements.

To give all affected parties sufficient time to understand the impact of the new Trust Code, it will not be effective until July 1, 2014.

The new law applies to all trusts in existence on that date and all

trusts created after that date.

Some of the more important provisions of the new Trust Code are:

**Decanting.** Do you have an irrevocable trust and would like to change one or more of its provisions? That will now be possible. If certain conditions are satisfied, a trustee may create a new trust agreement with different provisions and transfer the property of the old trust to the new trust. This is known as "decanting."

**Nonjudicial and Judicial Modifications.** The Trust Code provides additional ways to modify a trust agreement. The terms of an irrevocable trust can now be changed without court approval if the Settlor (the person who established the trust) and all ben-

eficiaries consent. If the Settlor's consent cannot be obtained (perhaps the Settlor is deceased), a court is authorized to modify an irrevocable trust if circumstances have changed and the modification will further the purpose of the trust.

**Directed Trusts.** A trust may now authorize a third party to direct the trustee to make investments for the trust. In effect, this allows the Settlor to split the duties that otherwise are the responsibility of the trustee.

**Trust Protector.** A Settlor may now authorize a third party to perform various acts such as consenting to or vetoing distributions to a beneficiary, amending the trust agreement, adding a new beneficiary or removing and replacing a trustee.

**Trustees of Life Insurance Trusts.** Trustees no longer have a duty to determine whether a life insurance policy owned by the trust is a proper investment. The change applies to all life insurance trusts executed on or after July 1, 2014. It also applies to existing life insurance trusts if the trustee provides a notice to the beneficiaries.

**Pet Trusts.** Trusts to care for pets after the death of the pet's owner are now specifically authorized.

The new Trust Code creates new planning opportunities, and FOS's tax and estate planning attorneys are proficient in it.

If you have questions about how the new law affects you, please give your FOS attorney a call.