



Editor: Diane Slomowitz

### COURT RESTRICTS NON-SOLICITATION AGREEMENTS



By: Laurna Kinnel

FOS's Fall 2017 newsletter discussed the potential impact on employee non-solicitation agreements of the then-pending Wisconsin Supreme Court case, *The Manitowoc Company v. Lanning*.

The potential is now the reality.

On January 19, 2018, the Court decided *Lanning*, 2018 WI 6.

The Court held that a contractual provision restricting a former employee's solicitation of employees to leave that employer is subject to

the same standards as non-compete agreements under Wis. Stat. § 103.465.

Under the statute, a provision in restraint of trade may only be enforced if it is "reasonably necessary to protect the employer and reasonable as to time, geography, and type of conduct covered."

The Court also held that a provision which restricts the solicitation of all company employees (including, for example, janitors), is not necessary for the protection of the employer, is unreasonable, and so is unenforceable.

"Without a specified territory or class of employees,

the provision restricts Lanning's conduct as to all employees of Manitowoc Company everywhere."

2018 WI 6 at ¶ 59.

*Lanning* should have employees celebrating – and some employers worried.

Many employers routinely incorporate non-solicitation provisions into employment, separation and severance agreements.

Non-solicitation provisions often appear alongside non-compete provisions, which prohibit former employees from working for a competitor or soliciting customers/accounts whom

they serviced during their employment.

Taken together, these provisions are intended to protect the employer against a former employee's poaching the employer's clients, customers, or employees – making enforceability a critical issue.

Under *Lanning*, broad non-solicitation provisions will no longer protect an employer, because the courts will not enforce them.

And Wisconsin courts will not modify - known as "blue pencil"- unduly broad

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### KOUTNIK ADVANCES TO FOS SHAREHOLDER



FOS congratulates attorney **Michael G. Koutnik** on being elected as a firm shareholder.

Mike's practice focuses on real estate, transactional, and corporate law.

In 2017, Mike was named to the list of Super Lawyer Rising Stars.

Mike was also named a 2017 "Up and Coming" lawyer by the *Wisconsin Law Journal*.

To read the *Law Journal's* profile and video of Mike, go to <http://www.foslaw.com/news-views/koutnik-up-and-coming-lawyer>.

Mike received his law degree from Marquette University Law School, cum laude.

### FOS ON THE MOVE

FOS associate **Bailey Larsen** will participate in a panel discussion on taxation at the University of Wisconsin—Whitewater on March 15, 2018.

FOS shareholder **Matthew O'Neill**, along with FOS shareholder **Michael Koutnik**, will give a presentation on the issue of cyberfraud at the March 19, 2018 meeting of the Apartment Association of Southeastern Wisconsin.



## TAX FRAUD INVESTIGATION? YES, YOU COULD BE A TARGET!



By: Jacob Manian

Most people hate filing taxes. We do our best to complete the forms and pay our taxes with accuracy, if not precision.

Even when we don't, the worst we expect is an audit.

We don't expect that our returns could land us in the middle of a criminal tax fraud investigation.

Prosecutors and IRS Criminal Investigative Division (CID) agents enjoy enormous power in conducting criminal tax fraud investigations.

Government authorities investigating crimes such as securities, bank or mortgage fraud examine relevant tax filings, hoping to uncover evidence of an underlying

crime.

In fact, many federal investigations that do not initially target tax impropriety may result in a tax fraud indictment.

For example, reporting of income from a source (not known to you) under investigation can cause investigators to suspect that you or your business were complicit in criminal activity.

Also, if you fail to report income from a source being investigated, you or your business can end up in the crosshairs of a tax fraud investigation.

Because tax returns are filed annually, bad reporting decisions can compound the problem year after year, leading to many uncertainties.

If you or your business suddenly begin reporting income that previously

went unreported, are you now admitting to a crime as to the previously unreported income?

If you or your business continue to fail to report certain income, are you digging yourself into a potential criminal hole?

Add to this the fact that CID agents are notoriously aggressive when conducting tax fraud investigations.

Several agents will often descend on a business in the middle of the workday, or show up at an individual's home late at night, armed with a subpoena and rapid-fire questions.

If this happens to you, call your lawyer, not your accountant.

There is generally no accountant-client confidentiality privilege.

Agents also can obtain rec-

ords, from your accountant, that help make a case against you.

If you are notified of an audit, or have been or might be contacted by a government agent, contact an experienced white-collar criminal defense attorney.

Don't navigate the minefield of a potential federal criminal investigation on your own.

Contact your FOS attorney before you land in criminal hot water.

### MADDENTE 2 OPPONENTS 0

FOS congratulates associate **Lauren Maddente** on:

- Completing her second trial; and
- Continuing her string of victories!

*Non-Solicitation (Continued from page 1)*

language, but instead will declare the entire provision void.

New non-solicitation provisions should be carefully drafted to comply with Wis. Stat. § 103.465.

Every employment situation is unique, of course. Nonetheless, non-solicitation agreements should be tailored to the employer's particular business interests (spelling out those interests),

and be limited to an employee's working territory and customers.

Employers should also review existing agreements to see whether they comply with *Lanning* and Wis. Stat. § 103.465.

FOS's attorneys can draft or review such provisions, together with an agreement's non-compete and non-disclosure provisions, to evaluate their enforceability.

### TOM SHANNON: A LEGAL LEADER



FOS congratulates shareholder

**Thomas P. Shannon** for being hon-

ored as a 2018 Leader in the Law by the *Wisconsin Law Journal*.

Tom was recognized as one of Wisconsin's top legal professionals based on his outstanding leadership, vi-

sion, legal expertise and community involvement, according to the *Wisconsin Law Journal*.

Tom received his award, at a dinner at the Pfister Hotel. To see Tom's *Wisconsin Law Journal* profile and video, go to <http://foslaw.com/attorneys/thomas-p-shannon/>.

## NEW LAW LIMITS LOCAL DISCRETION IN CONDITIONAL USE PROCESS



By: *Lauren Maddente*

Maybe you want to open a coffee shop down the street. The area, however, may not be zoned for coffee shops.

You've hesitated because you would need special zoning approval through a conditional use permit ("CUP"), which allows a landowner to use land in a way not otherwise permitted under traditional zoning.

Now may be the time to apply. New Wisconsin Act 67 may make it easier to obtain a CUP, by limiting local governments' grip on the CUP through its ability to deny applications.

Before Act 67, local governments maintained vast discretion to determine whom, and under what circumstances, a CUP would be granted, even where all technical requirements were met.

The Act changes this. If an applicant meets local ordinance requirements, the county *shall* (i.e., must) grant the CUP. Approval is required even if the applicant only agrees to meet the requirements at some future date.

The Act also requires that local ordinance CUP conditions and requirements be "reasonable" and, if possible, "measurable."

These new provisions are intended to limit local gov-

ernments' discretion to deny a CUP that otherwise meets the permitting requirements.

To ground CUP decisions on objective criteria, Act 67 newly defines what constitutes the "substantial evidence" upon which local governments rely on in determining whether to grant a permit.

"Substantial evidence" means "facts and information, other than merely personal preferences or speculation, directly pertaining to the requirements and conditions."

This definition is important, because it requires that a CUP determination be based on directly relevant facts, not

speculation or personal preferences.

Act 67 was a reaction to the Wisconsin Supreme Court decision in *All Energy v. Trempealeau County*, which approved the denial, after citizen complaints, of a CUP for a non-metallic mineral mining business.

Now it will take more than citizen complaints to prevent a technically complying landowner from obtaining a CUP.

Even under the new law, the CUP process is complicated. If you are contemplating a CUP petition, contact FOS attorneys for guidance.

## ALS MOVIE NIGHT FUNDRAISER TO HONOR BRUCE O'NEILL



By: *Matt O'Neill*

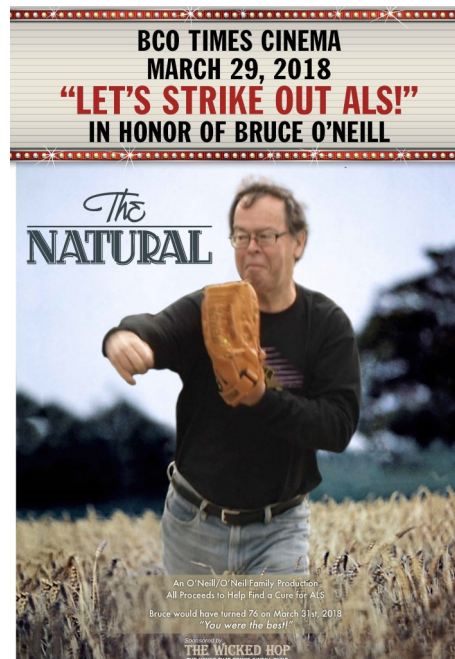
We lost our partner and my father, Bruce O'Neill, to ALS on September 3, 2016. In his honor, the extended O'Neill family is hosting an annual movie-night fundraiser at the Times Cinema in Milwaukee.

Last year we screened *Field of Dreams*, and raised \$10,000 to fight ALS and to help others suffering with the awful disease.

On March 29, we will be showing *The Natural*, one of Bruce's all-time favorites.

The story of Roy Hobbs is eternal—a farm boy, who makes his own bat from a lightning-stricken tree, who then gets shot, and ends up in the majors. I'm welling up already. And, it continues the tradition of a movie closing with a father and son playing catch.

Please come out and join us for this joyous event to honor one of the best lawyers and people who ever lived.



- WHO**  
Everyone
- WHAT**  
The Natural
- WHEN**  
March 29, 2018
- WHERE**  
Times Cinema  
5906 W. Vliet
- WHY**  
To honor Bruce O'Neill and help find the cure for ALS



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Address label

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HOW DO THE NEW INDIVIDUAL TAX CHANGES AFFECT YOU?



By: Bailey Larsen

Like him or hate him, President Trump recently passed his first major legislation while in office with the tax reform bill passing through the senate in a 51-48 vote.

The Tax Cuts and Jobs Act ("Tax Act") substantially reduced the corporate tax rate, and made significant changes to individual taxes.

Here are some of the most

impactful changes to individual taxes for 2018.

The rates of the seven tax brackets were slightly reduced to 12%, 22%, 24%, 32%, 35%, and 37%.

While the standard deduction was roughly doubled, personal exemptions were completely removed.

The standard deduction plus exemptions for a family of three totaled \$24,850 in 2017, and will total \$24,000 in 2018. A family of five's deductions in 2017 totaled \$32,950, but will only total \$24,000 in 2018.

The child tax credit doubles from \$1,000 to \$2,000 per child.

If you itemize deductions, you can deduct mortgage interest paid on mortgage debt of up to \$750,000, down from \$1 million in 2017. Interest paid on home equity debt is no longer deductible.

When itemizing deductions, the aggregate deduction for state and local income, sales, and property taxes is limited to \$10,000.

This deduction was previously unlimited, and its con-

straint will be staggeringly felt by taxpayers in high tax states and localities.

Taxpayers can now deduct 20% of their pass-through income from sole-proprietorships, LLCs, partnerships, and S Corporations.

Phase-outs and other limitations apply, but to oversimplify, if you own a small business and it generates \$100,000 of net income in 2018, you may be able to deduct \$20,000.

Your FOS tax attorney can help guide you through these and other tax changes.