



A SUCCESSFUL AND MEANINGFUL FOS YEAR



By Bill Soderstrom

2018 has been a great year at FOS. The economic boom has generated an enormous amount of activity here, particularly in our corporate, tax and real estate groups. We have been challenged at times, but nonetheless have kept up with the work.

**Mike Koutnik** was made a partner this year. Mike mainly provides services in our corporate and real estate practices.

**Bailey Larsen**, after giving birth to her adorable ba-

by Decker last year, was named by the *Wisconsin Law Journal* to the 2018 Up and Coming Lawyers list. Bailey's primary practices are in corporate, tax and estate planning.

We have also added to our young attorneys with the hiring of **Robert Ollman**. Robert is a 2018 graduate of Marquette Law School, and is one more of our attorneys who played college sports (**Bill Fox** ran track at Williams College, Bailey was a scholarship soccer player at UWM, and **Jake Manian** played basketball at Carroll University). Robert trumped all those by playing safety on two national championship football teams at North Dakota state.

My college athletic career was, um, somewhat limited.

I will be stepping down as managing partner of FOS at the end of this year. I have been the managing partner since 2002, so it's probably time to put me in mothballs.

One thing I have realized is that the friendship, camaradery, loyalty and common sense of the attorneys and staff at FOS is extraordinary, and always has been. That has had a whole lot to do with our amazing continued existence (56 years this year!).

**Fran Hughes** will become managing partner on January 1. Fran is not only a tremendous lawyer but has leadership skills in spades -

so he is well positioned to correct all my mistakes.

For myself, I will continue to do what I have been doing for 40 years here-practicing law. I should be getting tired of this, but for whatever reason I am not. Having a great bunch of clients, and friends I have made over the years in practicing, helps considerably. And in truth, the tremendous infusion of young attorneys at FOS has made this a very fun and emotionally rewarding place for an old guy like me to practice.

FOS LAWYERS ARE SUPER!

FOS congratulates FOS shareholder **Matt O'Neill** and FOS of-counsel **Ken Barczak** for being named to the list of 2018 Super Lawyers. Matt was named to the Super Lawyers Wisconsin "Top 50" and Milwaukee "Top 25" lists.

FOS also congratulates shareholders **Laurina Kinne** and **Mike Koutnik** for being named Super Lawyers Rising Stars.

All four are formally recognized in the December 2018 Super Lawyer edition of *Milwaukee Magazine*.

This is Matt and Ken's thirteenth and Laurina and Mike's second year being honored.

FOS ON THE MOVE

FOS associate **Bailey Larsen** will present "Tax Reduction and Trusts" and "Grantor Trusts" at the December 19, 2018 National Business Institute seminar "Trusts From A to Z."

FOS shareholder **Matt O'Neill**, at Pinnacle's "Trending Topics in Business Litigation 2018" seminar, presented "Wisconsin's New Rules of Civil Procedure."

*In the holiday spirit, in lieu of holiday cards, FOS is making a donation to Despensa de la Paz food pantry.*

## SUPREME COURT CLARIFIES EMPLOYER KNOWLEDGE REQUIREMENT REGARDING DISABLED EMPLOYEES



By Robert Ollman, Jr.

Your employee, Billy, frequently leaves his work station during business hours to go outside for fresh air.

Billy does this even though he knows that, under company policy, an employee who is absent from his/her desk (other than for work purposes, designated breaks and lunch) may be terminated.

When you confront Billy regarding his absences, he pulls from his pocket a letter from his doctor.

The letter states that Billy has disability X.

The letter states nothing about the disability's impact on Billy's work or any accommodations which the

employer should make.

Later that day, right before a big deadline, Billy again goes outside, staying there for a very long time.

You don't know why Billy is leaving his desk, but you do know he is repeatedly violating company policy.

So you fire him.

If it turns out that Billy's disability caused him to need to go outside for fresh air, can Billy successfully sue you, his employer, for disability discrimination under the Wisconsin Fair Employment Act (WFEA)?

Probably not unless Billy advised you, as his employer, that his disability would require Billy's repeated outside access.

Under standards recently confirmed by the Wisconsin Supreme Court, Billy must prove that you knew

both that Billy was disabled, and that the disability required Billy to go outside. *Wisconsin Bell v. Labor and Industry Review Commission* ("LIRC").

Disability discrimination claimants, such as Billy, often charge the employer with refusing to or improperly accommodating the employee.

*Wisconsin Bell* recognizes that an employer cannot be expected to accommodate a disabled employee if it doesn't know what conduct it is supposed to accommodate.

*Wisconsin Bell* will help many employers, because it puts the burden on the employee to provide evidence that the employer knew the disability caused the employee's conduct.

Before *Wisconsin Bell*, LIRC, an administrative body, could infer that the

employer knew the disability caused the employee's conduct, simply because the employer knew the employee was disabled and fired the employee.

For Billy to have complied with the Supreme Court's standard, Billy should have at least given you, his employer, medical evidence (i.e., a letter from his treating physician) specifically *making the connection* between Billy's disability and his conduct.

A doctor's note which describes a disability, but not the disability's resulting conduct, is insufficient.

As this article shows, disability and other discrimination issues are often frustratingly complex.

FOS's attorneys can help guide you through *Wisconsin Bell* and other issues under the discrimination laws.

### LAW DOGS ON THE LOOSE!



FOS attorneys' furry friends took over the office during FOS's annual Doggy Day on October 5th, 2018. From L to R, Matt O'Neill with Fergie, Bailey Larsen with Tootsie, Diane Slomowitz with Jake, and Bill Soderstrom doing double dog duty with Mattie & Ty. Woof to all!

### CHINESE TARIFFS - ANY WAY AROUND THEM?



By Bailey Larsen

In today's global market, virtually all businesses import goods in one form or another, primarily from China.

Whether it be the component parts incorporated into final products or the equipment used to create those

products, the goods that companies are importing from China are cutting deeper into their pocket-books at a significantly higher rate under the Trump Administration's new tariff system.

The most significant tariffs apply an additional 25% tax on a reported \$200 billion worth of products

*Tariffs, cont. on page 3*

## DIVORCED? MOVING? MAKE SURE YOUR CHILD CAN COME, TOO



By *Laurna Kinnel*

You did the hard work.

You negotiated a placement schedule in your divorce that works for you, your ex, and serves your child’s best interests.

Now, you’re faced with a work restructuring, a promotion, or a life-changing job offer in your dream city.

Can you move? Can your ex stop you?

What about your child’s placement schedule?

Many may be surprised that, if your placement schedule gives both parents periods of physi-

cal placement (as most do) the court cannot stop *you* from moving.

The court, however, may stop you from relocating *your child with you*.

If you were divorced *before April 2018*, your divorce judgment will state what happens if you wish to relocate your child’s residence to another state, or more than 150 miles away from the other parent.

For divorces *after April 5, 2018*, the statutes concerning “Relocating a Child’s Residence” have changed.

These changes modify both the required legal procedures and what a parent must establish before he/she can relocate with a child.

Some major changes include:

- Requiring the party wanting to move to file a motion with the court, specifying where, when and why the move is occurring, and a proposed new placement schedule if the move is approved;
- Clearly applying the statute to paternity actions, as well as divorces;
- Decreasing the triggering move distance to 100 miles, down from 150 miles, from the other parent;
- Focusing on the move’s distance in

miles, versus in or out of state; and

- Requiring an initial hearing within 30 days of filing a motion to move.

Relocation proceedings can be complicated, and require the help of an experienced family law attorney.

They involve fact-specific issues, including when the last placement order was entered, how significantly the relocation would affect the placement schedule, whether the non-moving parent has significantly exercised his/her current placement, and how the change will affect the child.

Contact your FOS attorney if you, or your ex, is proposing to relocate.

*Tariffs, cont. from page 2*

entering the United States from China.

These tariffs have left many companies scrambling to determine whether they are going to eat these additional costs, pass them on to the products’ ultimate consumers, or find a way around them.

The good news is that two legal options exist which, if properly applied, may provide companies (and consumers) relief from the high tariff bite.

One option is to create a For-

eign Trade Zone (FTZ).

In an FTZ, no duties or tariffs are assessed on imported goods that are then exported outside the country, whether they maintain the same character or are used in manufacturing a new product.

Another option that could alleviate some of the financial pain caused by the Chinese tariffs is altering the importation process enough to change the imported product’s country of origin. Each imported product’s tariff is assessed based on the

product’s country of origin; therefore, with a new country of origin comes a new tariff assessment.

Some companies and news outlets refer to this process as “transshipping.” Whether transshipping is legally possible requires an in-depth analysis of the entire process and path an imported good takes to reach its final U.S. destination.

Transshipping can be a legal modification of a product’s country of origin. However, depending on the

facts, transshipping can also be an illegal masking of a product’s true country of origin, which could subject the importer to significant U.S. civil and criminal penalties.

These are complicated issues, which should not be undertaken without the counsel of an experienced and knowledgeable attorney and accountant.

To discuss more about how your company can avoid or reduce tariffs, contact your FOS attorney today.



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IN THIS ISSUE

Page 1 A Successful Year/ FOS Lawyers/FOS On the Move

Page 3 Moving? Make Sure Your Child Can Come

Page 2 Disabled Employees/Dogs/ Chinese Tariffs

Page 4 Fraudulent Transfers

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FRAUDULENT TRANSFERS - KNOW WHEN TO SUE



By Lauren Maddente

Wisconsin law bars a fraudulent transfer action that is not commenced within one year after a claimant "could reasonably have discovered" ...what, exactly?

Does the clock start ticking when the creditor could reasonably discover "the transfer?"

Or when the creditor could reasonably discover that the transfer was fraudulent?

The Wisconsin Court of Appeals recently concluded that the clock does not start until the creditor reasonably could have discovered that a transfer was fraudulent, even if the

creditor by then already knew of the transfer itself.

In *Official Committee of Un-Secured Creditors of Great Lakes Quick Lube LP v. Theisen*, certain creditors of Great Lakes Quick Lube challenged as fraudulent two transfers made by the debtor when it bought its business from Great Lakes.

The sellers argued that the creditor's claim was time-barred, claiming the limitations period began when the creditor could have reasonably discovered the transfer.

The court said "no," holding that the limitations period began when the fraudulent

nature of the transfer could reasonably have been discovered.

What does this mean for creditors? Potentially, more time.

Even if a court decides that a creditor could reasonably have learned of a challenged transfer, the limitations period will depend on when the creditor could reasonably have discovered the fraud.

If you are a creditor, you may have a little more time than you thought to bring an action under Wisconsin's Fraudulent Transfer Act.

A debtor, faced with a creditor's lawsuit or judgment, will sometimes transfer property to a spouse, affiliated business or other third-party, and then claim "poverty" to avoid paying the debt.

Wisconsin's Fraudulent Transfer Act provides remedies for such defrauded creditors.

Those remedies, however, don't last forever.