



Editor: Diane Slomowitz

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### MY CUSTOMER FILED BANKRUPTCY! NOW WHAT?



By Robert Ollman

Without any warning, you receive a notice from a bankruptcy court that a customer who owes you thousands of dollars has filed for bankruptcy.

You've heard about companies going bankrupt, of course, but you've never been in the middle of one.

What should you know?

The notice should tell you what type of bankruptcy your customer filed. If it filed a Chapter 11 bankruptcy, it likely wants to reorganize, arranging for some

payments to its creditors, continuing its business in some form.

If your customer filed a Chapter 7 bankruptcy, it will probably liquidate its property and dissolve its business.

You have more of a chance of recovery under a Chapter 11 than a Chapter 7.

Regardless of the type of bankruptcy, a bankruptcy estate is created upon the filing of the bankruptcy petition and an automatic stay, which shields the debtor from virtually all acts and proceedings to enforce a pre-petition debt, secured or unsecured, is triggered.

To take action against the debtor regarding pre-petition

debts or litigation, a creditor must first make a successful motion in the bankruptcy to obtain relief from the stay.

If you delivered product to a debtor within 45 days before the bankruptcy, you may, within certain deadlines, issue a demand for "reclamation" to retake the goods, despite the automatic stay.

This only applies, however, to goods still possessed by the debtor and not subject to a security interest.

After the demand, you still have to obtain relief from the stay to take any action.

If you don't issue a reclamation claim, you may still be able to obtain a priority

claim for the value of goods delivered to the debtor within 20 days of the petition date.

It is always important for a creditor to prepare and file, with the bankruptcy court, a proof of claim which details and provides documentation for the amounts claimed owed.

The bankruptcy court will set a deadline for the filing of claims.

A creditor may or may not receive notice of the deadline, so it is important to regularly check the court docket or file a request for

*Continued on page 3*

### HUGHES NAMED MANAGING SHAREHOLDER



shareholder **William R. Soderstrom**, who acted as Managing Shareholder from 2002 to 2017.

Fran counsels large and small businesses in all aspects of their operations, including operational matters, employment issues, real estate transactions, creditors' rights, contract negotiations, private placements and acquisitions.

Fox, O'Neill & Shannon, S.C. shareholder **Francis J. Hughes** has been named Managing Shareholder of the firm. In 2017 and 2018, Fran acted as Co-Managing Shareholder with FOS

### MADDENTE - A KOMEN WINNER!



FOS congratulates associate **Lauren Maddente** for receiving the Susan G. Komen Wisconsin Rookie of the Year award. Lauren is Volunteer and Entertainment Co-Chair for the annual More Than Pink Walk.

The award is given to a first-year volunteer who is especially positive, motivated and enthusiastic for the cause.



## PASS-THROUGH TAX BREAK FOR WISCONSIN



By Allan Young

The federal Tax Cut and Jobs Act caps an individual's deduction for state income taxes and property taxes.

The cap is \$10,000. The change is effective for 2018.

In December, Wisconsin enacted legislation to help owners of S corporations and partnerships get around the cap.

The new law allows a pass-through entity to elect to have Wisconsin income tax imposed directly on the entity.

If the election is made, the pass-through entity pays Wisconsin income tax on its income. The owners then do not report the income on their individual Wisconsin

tax returns.

Because the pass-through entity pays the tax, it can deduct the payment on its federal income tax return. That deduction then flows through to the owners by reducing the entity's federal ordinary income.

Thus, the owners enjoy an indirect deduction for the state income taxes paid.

The tax rate paid by the entity is 7.9%. That's slightly higher than the top rate on individuals of 7.65%.

However, owners are still ahead by receiving the deduction for the state taxes paid. The only credit that a pass-through entity may claim is the credit for taxes paid to another state.

The election is made on a year by year basis. A pass-through entity can pay tax one year and pass through

income to owners the next.

For S corporations, the election is first available for 2018. For partnerships, it is first available for 2019.

The election is not for everyone.

A manufacturing company should not make the election. If it does, it will lose the Wisconsin Manufacturing Credit.

Others that may not benefit are companies where owners have a net operating loss or other individual tax attribute that will be lost if the election is made.

For more information, consult your FOS attorney.

### TAX TIME LOOMS!

Monday, April 15th is 2019's tax filing deadline. File timely to avoid penalties and interest.



FOS was honored as a finalist in two categories of the *Shepherd Express's* "Best of Milwaukee" 2018 Competition.

FOS was named in the Best Contract Attorney category. FOS was also named in the Best Family Law Firm category.

Thank you to all who voted.

## ALS MOVIE NIGHT FUNDRAISER TO HONOR O'NEILL/O'NEIL



By Matt O'Neill

We lost our partner and my father, Bruce O'Neill, to ALS on September 3, 2016.

Peppy O'Neil, Bruce's beloved wife with the almost identical last name, left us November 17, 2018. In their honor, the extended O'Neill/O'Neil family host an annual

movie-night ALS fundraiser at the Times Cinema in Milwaukee.

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

On March 28, we will show *Secretariat*, another of Bruce's all-time favorites.

Please join us for this joyous event to honor two of the best people who ever lived.



### WHO

Everyone

### WHAT

Secretariat

### WHEN

March 28, 2019

### WHERE

Times Cinema, 5906 W. Vliet

### WHY

To honor Bruce and Peppy and help find the cure for ALS

## MCDONALD'S LEFT HUNGRY IN BIG MAC TRADEMARK



By *Lauren Maddente*

“Use it or lose it,” the saying goes.

As McDonald's recently learned as to its Big Mac burgers, that quote is more than theoretical when applied to protecting registered trademarks.

You may have seen that the European Union Intellectual Property Office canceled McDonald's trademark for its Big Macs.

Is that because McDonald's no longer sells Big Macs?

Of course not. Then, why?

McDonald's trademark was cancelled because the E.U. found that McDonald's failed to provide objective evidence that the trademark was being used in commerce.

While U.S. and E.U. law differ in other respects, both require that trademark owners provide to the government substantial evidence that the trademark is actively used in commerce.

Failure to do so can result in the mark being cancelled and the loss of trademark rights.

Instead of submitting direct, objective evidence of use, McDonald's submitted primarily affidavits containing McDonald's officers' statements about the trademark's use in commerce, including references to sales figures and menu listings.

Though we all know Big Macs are sold and eaten throughout the world, the E.U. Office surprisingly found that McDonald's submitted no evidence that its advertising actually led to the sale of Big Macs.

It also found that no evidence was submitted that those Big Macs contained in trademarked packaging were actually offered for sale, much less sold.

This was true, even for a product as widely produced, sold and consumed as a Big Mac.

McDonald's is appealing its cancellation, and likely will eventually submit proper, objective evidence to obtain reinstatement of its registration.

A U.S. trademark registrant must file a “declaration of continued use” during the year after the fifth anniversary of registration.

This declaration must be supported by objective evidence that the mark continues to be actively used in commerce.

As McDonald's learned the hard way, evidence of continued use is required no matter how “famous” a trademarked product may be.

So, if you own a trademark, be sure to timely and fully submit sufficient evidence of use to maintain your mark.

If you have questions about creating or protecting a trademark, contact FOS.

*Bankruptcy, continued from page 1*

notices with the bankruptcy court.

A proof of claim, however, does not end a creditor's obligations.

For example, the debtor may seek to recover from a creditor all payments made by the debtor to the creditor within 90 days before the bankruptcy - “preference” payments.

While defenses may exist to preference recovery, it is not uncommon for a creditor to

recover only a small percentage of its debt and still be faced with a demand to pay substantial preference payments to the debtor.

As unfair as this seems, it reflects Congress' desire to keep all creditors on a level playing field. Preference claims try to avoid targeted pre-bankruptcy payments to favored creditors.

For more information, contact your FOS attorney.

### FOS EXTENDS CONDOLENCES

FOS extends its sympathies to the family and friends of Milwaukee Police Officer Matthew Rittner.

Rittner was killed in the line of duty on February 6, 2019.

Rittner was a U.S. Marine and served two tours in Iraq.

He is survived by his wife and young son.

### MANIAN NAMED TO HONOR ROLL

FOS shareholder **Jacob Manian** was named to the State of Wisconsin 2018 *Pro Bono* Honor Society.

The certification is given to an attorney who has performed at least 50 qualifying *pro bono* legal services during the past calendar year.

FOS commends Jake for providing services for those in need.



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**IN THIS ISSUE**

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**Page 1** Bankruptcy/Hughes/  
Maddente

**Page 3** Trademarks/  
Condolences/Manian Honored

**Page 2** Tax Break/ "Best Of"  
Honor/Movie Night

**Page 4** Job Posting Problems

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## HELP WANTED: IS YOUR JOB POSTING A PROBLEM?

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*By Laurina  
Kinnel*

You've got an opening at your business, and you are looking for the perfect new employee for an entry-level position.

You hone your description of required skills, perfectly describe what makes your business unique, and work to target the ad at the perfect audience to make sure the right candidate sees the opening.

Sounds like the best way to get the job filled fast, right?

Maybe not, if the candidates you target are in too narrow of a category, effectively excluding older applicants.

In recent months, a variety of employer targeting practices have come under scrutiny for potential age discrimination issues.

These include recruiting exclusively on college campuses, narrowing what demographics (i.e., ages) see ads for jobs through targeted advertisements on social media or other platforms, and even capping the maximum years of acceptable experience of a candidate.

The claim from disappointed applicants? That these and

similar practices discriminate against older workers. The Older Workers Benefit Protection Act prohibits discrimination against employees who are age 40 or over.

The law's protections apply equally to hiring, employment and termination decisions, and make age discrimination unlawful.

Some rejected applicants have brought lawsuits against employers, alleging that businesses are engaging in discriminatory behavior by preventing older workers from seeing job postings, or weeding out candidates considered "overqualified" based on their number of years of experience.

While far from slam dunk arguments, these cases raise interesting questions for employers seeking to fill positions.

The last thing any business wants when it lands its newest employee is to spend time responding to complaints from individuals who were not hired and, in some cases, never even applied for the job.

If you have questions about the language or practices used to recruit new candidates for your business, don't hesitate to contact your FOS attorney. We can help you avoid unintended "help wanted" headaches.