



Editor: Diane Slomowitz



A YEAR OF STEADY PROGRESS AND GROWTH



By Francis Hughes

2023 was an active year for FOS and our clients.

During an exciting year filled with new hires and attorney recognitions, FOS reaffirmed its focus on our main priority—providing high quality legal services for our clients.

While inflation remained high, worker shortages continued, and supply costs increased, our corporate clients similarly reaffirmed their focus on starting, maintaining, expanding, and, as appropriate, selling

their business operations.

When clients started new businesses, FOS prepared their organizational documents.

When clients made agreements with vendors and customers, FOS drafted their contracts and terms and conditions.

When clients bought or sold real estate, FOS ensured clear title and appropriate deeds.

When clients expanded operations by acquiring other businesses, FOS prepared asset purchase agreements, engaged in due diligence, and oversaw critical closings.

And when clients transitioned ownership of their businesses to younger generations of family, or third-parties, FOS shepherded these transactions to successful conclusions.

FOS also provided estate planning services for existing and new clients.

Our attorneys drafted wills and trusts, health care and financial powers of attorney, account beneficiary forms, and other related documents.

When the unfortunate need arose, we helped administer the assets of bereaved individuals' deceased family members.

The firm's litigation practice members engaged in a steady stream of civil matters and criminal investigations.

In all litigation matters, efficient practicality, rather than expensive overtrial, was the watchword.

In addition, FOS continued to maintain clients' important trademark registrations, counsel clients on sensitive employment matters, and engage in diverse contract reviews and negotiations.

In September, FOS welcomed Attorney **Kelly Gorman** to its business groups. As expected, Kelly has already provided valuable sup-

*Progress and Growth, cont. on pg. 2*

OLIVIA HANSEN JOINS FOS



Fox, O'Neill & Shannon, S.C. welcomes attorney **Olivia Hansen** as the firm's new associate. Olivia provides services within the firm's taxation and business groups.

Olivia earned her J.D. from Marquette University Law School.

Olivia also studied at the University of Copenhagen's *Faculty of Law* program in Copenhagen, Denmark.

She is a member of the *Association for Women Lawyers* and the *Business Law Society*. Olivia also served as a staffer for *Marquette Intellectual Property & Innovation Law Review*.

FOS looks forward to Olivia's continued contributions to our firm and clients!

KAREN NIMZ - UNSUNG HERO



Karen more than satisfies both criteria.

Karen exemplifies the best qualities of a professional through her steadfast work, work ethic, quality work for the firm's attorneys and clients, and unflappable and always positive personality.

Karen will receive her award at a December 13, 2023 luncheon at Milwaukee's Grain Exchange building.

FOS is happy to reveal its secret hero, Karen Nimz. Unsung no more!

FOS congratulates legal assistant **Karen Nimz** on being named an Unsung Hero by the *Wisconsin Law Journal*.

This award recognizes and celebrates someone whose tremendous work is not sufficiently recognized or who does not clamor for recognition.



## RESEARCH EXPENSE TAX CHANGES FOR WISCONSIN BUSINESSES



By *Olivia Hansen*

The 2022 tax year left businesses and taxpayers grappling to understand “updates” to Internal Revenue Code Section 174’s treatment of research and development expenses.

Among the federal changes to Section 174, businesses can no longer take tax deductions for research and development (R&D) expenses.

Instead, taxpayers must capitalize the expenses and amortize them over five years (15 years for a foreign corporation).

With no *de minimis* exception for capitalizing R&D expenses, taxpayers must ensure they are identifying and tracking all

expenses related to R&D to have the most accurate tax filing.

This federal change has complicated businesses’ planning for future years regarding both amortizations and continued research investments. To further complicate the issue, not all states codified amended Section 174 into state tax law, thus allowing businesses and taxpayers to continue to deduct the expenses at the state and local tax level.

Wisconsin, for example, has clearly stated it does not have rolling conformity with the federal changes to amended Section 174.

This means different tax treatments for Wisconsin taxpayers at the state and federal levels.

To complicate matters even

more, Wisconsin has amended its tax laws to increase the amount of refundable R&D tax credits.

Since 2021, 15% of the credit has been refundable.

Based on legislation enacted in July 2023, for the tax year starting on or after January 1, 2024, that percentage increases to 25%.

To calculate the refundable portion of the R&D credit, the taxpayer must use the lesser of 25% of the current-year credit or the unused credit amount, after subtracting the current-year credit to offset tax liability.

The increased refundable credit percentage is available for individuals, partners, S corporations, LLC members, and corporations.

Wisconsin legislators hope

that increasing the percentage of the credit that is refundable will give greater incentives to Wisconsin businesses and taxpayers to continue critical R&D spending in Wisconsin.

As businesses work to adapt to these changes, Wisconsin’s legislature may continue to amend the state’s tax laws regarding R&D expenses, likely in ways more favorable to taxpayers.

With continued changes in R&D tax treatment, it is vital for taxpayers to plan and track such expenses.

This will ensure the filing of accurate returns and the application of the highest level of credit for which they are eligible.

*Progress and Growth, cont. from pg. 1*  
port in several commercial transactions.

FOS also welcomed Attorney **Olivia Hansen** who, like Kelly, has provided valuable input, this time for the firm’s taxation and business groups.

As our motto states, “Our clients come first.”

All clients, and all matters, big and small.

That motto extends beyond providing legal services re-

quested by our clients, to timely informing clients regarding relevant developing legal issues.

To that end, FOS continues to issue Client Alerts regarding important legal issues via social media posts, emails, and on our website, [foslaw.com](https://foslaw.com).

A complete collection of Client Alerts and other timely and informative articles can be found at <https://foslaw.com/news-views/>.

The firm also continues to publish our quarterly regular newsletter, *FOS News*, and our biannual estate planning

newsletter, *The EP Express*. A complete collection of our newsletters can be found at <https://foslaw.com/news-views/newsletters/>.

To support FOS’s continued efficient provision of services, our business manager, **Jason Koehler**, oversaw the firm’s implementation of heightened security programs designed to enhance the security and privacy of firm and client information.

The firm is also in the process of streamlining its data programs to enhance administrative efficiencies for

the benefit of all clients.

As 2023 progressed, FOS, its staff, and its attorneys achieved multiple recognitions.

Shareholders **Matthew O’Neill** and **Jacob Manian** and of-counsel **Ken Barczak** were named to the list of Super Lawyers.

Shareholders **Mike Koutnik**, **Laurina Kinnel**, and **Lauren Maddente** were named to the list of Super Lawyers Rising Stars.

*Progress and Growth, cont. on pg. 3*



## COURT CLARIFIES DECEPTIVE TRADE PRACTICES ACT'S REACH



By Kelly Gorman

Wisconsin's Deceptive Trade Practices Act, Wis. Stat. §100.18 (the Act), protects consumers from untrue, deceptive, or misleading advertisements or representations in the sale of goods and services to the public.

For businesses based in Wisconsin but providing goods or services in other states, one important question is whether the Act only covers practices in Wisconsin or extends to those in other states.

A July 23, 2023 Wisconsin Court of Appeals decision, *State v. Talyansky*, answered this question by holding that the Act can apply to misrepresentations made by a Wisconsin business to a consumer

outside Wisconsin.

The issue in *Talyansky* was the meaning of the term "in this state" in the Act's general prohibition from making misrepresentations to the public regarding a good or service, "in this state."

Beginning in 2015, many complaints were made against Talyansky's company for fraudulent misrepresentations in online marketing and product sales, including from outside Wisconsin.

The trial court held that the statutory provision at issue did not apply to misrepresentations made by a Wisconsin business to a consumer outside Wisconsin.

The court of appeals reversed, concluding that the Act could apply and be enforced against Wisconsin businesses making misrepresentations to custom-

ers outside the state.

The court reasoned that the statutory provision focuses on the conduct of the Wisconsin advertiser, not the out-of-state consumer.

The court noted that the Act does not specify where the customer must reside, and so does not mandate that the customer reside or operate in Wisconsin.

The court concluded that its ruling did not contravene any constitutional provision, including the dormant commerce clause.

The court also clarified that pecuniary loss need not be proved for government enforcement actions for violations of the Act.

A petition for review is pending before the Wisconsin Supreme Court challenging

the Court of Appeals decision. Such petitions are not commonly granted.

Unless the Wisconsin Supreme Court accepts review and reverses the Court of Appeals, Wisconsin businesses should pay just as much attention to their statements to customers and potential customers outside of Wisconsin as in the state.

This is particularly true since the Act provides for a successful plaintiff's recovery of twice the amount of pecuniary loss and attorney's fees for a violation.

Contact your FOS attorney for guidance regarding the Act, its geographical reach, and its potential impact on representations regarding your business' products or services.

*Progress and Growth, cont. from pg. 2*

We also congratulated FOS shareholders **Kinnel** (business organizations, corporate law, family law, mergers and acquisitions, and trademark law), **Koutnik** (business organizations, corporate law, land use and zoning law, and real estate law), **Maddente** (business organizations and corporate law), **Manian** (general, white collar, and DUI/DWI criminal defense), and **O'Neill** (appellate practice, arbitration, commercial litigation, and corporate law) for being included in the 30<sup>th</sup> edition of *The Best Lawyers in America*®.

Shareholder **O'Neill** achieved the ultimate honor of being named "Top 10 Influential Commercial Litigation Lawyers to Watch in Wisconsin" by *Business Today*.

Shareholder **Manian**, for his part, received the Martin Hanson Advocates Prize from the Wisconsin Association of Criminal Defense Lawyers, an honor only awarded to an attorney who obtains an acquittal in a criminal murder trial.

And this month, FOS will celebrate legal assistant **Karen Nimz** as she is honored by the *Wisconsin Law Journal* as an Unsung Hero (not unsung to FOS; we have

long lauded Karen's professionalism, grace under fire, and collegiality).

While we are grateful for these recognitions, our attorneys and staff do not act for awards or commendations.

We do so to serve you – our clients – and the community.

FOS, for example, engaged in a food drive to benefit Feeding America.

In memory of the late, great FOS shareholder **Bruce O'Neill**, Bruce's son **Matt O'Neill** spearheaded the annual movie night at The Times Cinema, with proceeds benefitting the ALS Foundation.

As always, we end 2023 grateful for your trust in FOS, our attorneys, and staff.

We look forward to continuing our partnership with you in 2024.

Call, Zoom, email, or text us. We're here for you.

### QUESTIONS?

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**IN THIS ISSUE**

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- Page 1 A Year of Steady Progress; Hansen Joins FOS; Nimz Unsung Hero**
  - Page 2 Research Expense Tax Changes For Wisconsin Businesses**
  - Page 3 Court Clarifies Deceptive Trade Practices Act's Reach**
  - Page 4 CTA Deadline Almost Here**
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**READY, SET... CTA DEADLINE IS ALMOST HERE**



*By Lauren Maddente*

This newsletter has previously described the beneficial ownership reporting requirements business entities must follow under the federal Corporate Transparency Act ("CTA") beginning January 1, 2024.

<https://foslaw.com/wp-content/uploads/2023/01/Winter-2022-Client-Newsletter.pdf>; <https://foslaw.com/wp-content/uploads/2023/05/FOS-Newsletter-2023-Spring.pdf>

The CTA requires businesses to report on their benefi-

cial owners—individuals with substantial company control or who own at least a 25% equity interest.

Companies required to report must provide a beneficial owner's legal name, birth date, address, and unique verification number.

Updated information must be reported within 30 days of any changes.

Although exceptions exist, the current default assumption for all entities should be that reporting is required.

Businesses should prepare now to meet the approaching compliance deadlines.

Entities formed on or after January 1, 2024, and before

January 1, 2025, must file initial reports within 90 days of formation, an extension from the initial 30 days.

Entities formed before January 1, 2024 have until January 1, 2025 to comply.

Entities formed on or after January 1, 2025 will have 30 days after formation to file.

Even companies having until 2025 to report should act now in order to establish internal policies and procedures to assist with reporting and to gather information regarding beneficial owners.

Delaying compliance will not be a viable option.

Companies should review corporate governance docu-

ments to ensure operating agreements or bylaws establish reporting obligations guidelines for designating beneficial owners, gathering (when and by whom) required information, designating those responsible for reporting, and updating required information.

Creating clear procedures for the reporting process now will ease the transition and make reporting efforts more manageable.

FOS is advising you and your business of these serious reporting requirements so that you can take proper steps to comply with the law.