



Editor: Diane Slomowitz

KNOW YOUR COMMERCIAL LEASE



By Michael
Koutnik

Leases for commercial space have received renewed focus as businesses continue to navigate changes to work environments since Covid-19.

When negotiating a commercial lease, a critical aspect is the rent structure.

Base Rent. Base rent is the primary cost for occupying the space, typically calculated on a per-square-foot basis.

When negotiating, it is important to verify how square footage is measured.

For example, measuring based on usable versus rentable space can make a significant difference.

Also, consider negotiating for rent abatement (a free rent period), especially if the space requires improvements before move-in.

A tenant should further focus on how increases to base rent are calculated.

Increases are often as simple as a fixed percentage increase each year.

However, increase formulas can be more complex, including variables such as the Consumer Price Index.

In those cases, the inputs

and formula must be clearly stated to avoid unexpected surprises.

Additional Rent. Beyond base rent, a commercial lease will also address how “additional rent,” typically for a property’s operating expenses, are paid.

On one end of the spectrum is a “Gross” lease, where a landlord pays most or all operating expenses.

While common in a residential lease, this is uncommon in a commercial setting.

On the other end of the spectrum is a “Triple Net” or “NNN” lease, where the tenant pays its proportionate share of most expenses, such

as property taxes, utilities, repairs/replacements, insurance, and maintenance.

Between these two ends are forms of a “modified Gross” or “modified NNN” lease, where costs are allocated between the parties.

So, a lower base rent may be offset by higher pass-through expenses in a net lease structure.

Negotiating Additional Rent. Since some components of additional rent can fluctuate significantly from year to year, key negotiating points include:

- **Caps on Increases:** Tenants can sometimes negotiate limits on how

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FOS—BEST LAWYERS

FOS shareholders **Matt O'Neill, Laurina Kinnel, Michael Koutnik, Jake Manian, Lauren Maddente, Mark Andres,** and of-counsel **Ken Barczak,** have been named to the 32nd edition of *The Best Lawyers in America*®.

Matt was named in appellate practice, arbitration, commercial litigation, and corporate law, and Laurina in business organizations, corporate law, mergers and acquisitions, and trademark.

Mike was named in business organizations, land use and zoning law, mergers and acquisitions, and real estate, and Jake in criminal defense: general practice, criminal defense: white collar, and DUI/DWI defense.

Lauren was named in business organizations, commercial litigation, and corporate law.

Ken and Mark were both named in trusts and estates.

LAUREN MADDENTE LEADS AWL



women lawyers and the promotion of women’s interests in the legal field.

In addition to organizing a wide variety of professional development and community building opportunities, AWL hosts continuing legal education programs, luncheons, meetups, and other networking and social events.

Before becoming AWL’s President, Maddente held many AWL board and com-

DIRECTORS, cont. on pg. 2

FOS shareholder **Lauren Maddente** has been elected the new President of the Association for Women Lawyers (AWL).

AWL is dedicated to the professional development of



DOES WISCONSIN'S FAIR DEALERSHIP LAW APPLY TO YOUR COMPANY?



By *Lauren
Maddente*

Many companies “represent” manufacturers and/or distributors, ultimately selling their products to consumers.

Often, these companies make significant investments of time, labor, money, and goodwill in branding, inventory, training, and developing and maintaining a customer base.

An abrupt and/or unjustified termination of this relationship can be devastating.

Wisconsin’s Fair Dealership Law (“WFDL”) was designed to protect many such businesses.

It prohibits a “grantor” (one granting a dealership) from terminating, canceling, failing to renew, or substantially changing the competitive circumstances of a dealership agreement without good cause, notice, and an opportunity to cure.

Remedies for wrongful termination include injunctive relief and monetary damages.

A threshold issue is whether a business can establish that it constitutes a statutory “dealership” under the law.

Generally, a “dealership” requires:

- 1) “A contract or agreement, either express or implied, whether oral or written;”
- 2) Under which a person or wholesaler “is granted the right to sell or distribute goods or services, or use a trade name, trademark, service mark, logotype, advertising or other commercial symbol...;” and
- 3) A “community of interest” exists in the business selling or distributing the goods or services.

Much litigation has focused on the “community of interest” requirement.

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much certain expenses included in additional rent can increase annually.

- **Audit Rights:** Tenants should be able to review the landlord’s expense statements to ensure accuracy and transparency.
- **Exclusions:** Understanding which costs are expressly excluded from additional rent can give tenants peace of mind.

Big-ticket items, like a landlord’s capital expenditures, should be specifically addressed so that a tenant understands its exposure due to an expensive repair or replacement.

O’NEILL ALS BENEFIT

FOS shareholder Matt O’Neill once again spearheaded O’Neill Movie Night in memory of the late, great Bruce O’Neill.

Bruce, a preeminent litigator and FOS founder and shareholder, died of ALS well before his time.

This year’s movie was “The Bad News Bears”.

Contributions in Bruce’s name can be made at <https://www.als.org/>.

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mittee positions.

These include Director of Membership, Secretary, Director of Special Events, Director of Programs, and most recently, President-Elect.

Of her new role, Maddente stated, “I am excited to lead this organization, working side by side with an incredible and dedicated board, particularly as we roll out AWL’s new strategic plan.”

Lauren continued, “Despite its name, AWL is open to

all legal professionals. We welcome all to our networking, educational and charitable opportunities, which benefit the legal field and the community as a whole.”

FOS congratulates Lauren and is certain she will lead the organization with the professionalism with which she services her clients.

A list of AWL events and activities is located at <https://www.associationforwomenlawyers.org/>.

NATIONWIDE INJUNCTIONS: A THING OF THE PAST?



By Laura
Kinne

Most cases, as purely private disputes, only impact their named parties.

Some cases, however, like those challenging the validity of a statute or executive order, can go beyond the parties to potentially impact the public at large.

Particularly in recent years, some federal courts have issued injunctions prohibiting the enforcement of invalid agency regulations or executive orders nationwide, well beyond a case's parties.

Those days may be over.

On June 27, 2025, the U.S.

Supreme Court in *Trump v. CASA, Inc.* invalidated most federal nationwide injunctions.

In a 6-3 decision, Justice Amy Coney Barrett wrote that federal courts lack the statutory authority to broadly enjoin executive orders for those beyond a case's litigants.

The decision means that the federal courts cannot, for example, prohibit the government from enforcing an executive order or agency regulation against everyone in the country.

The three dissenting justices decried the decision as one that "disregards basic principles of equity as well as the long history of injunctive relief granted to nonparties."

Critics worry that the ruling opens the door for the executive branch to continue to apply an unlawful order against everyone except a case's parties.

The decision's supporters, on the other hand, argue that universal injunctions are a recent innovation with historically dubious roots.

The court's ruling arose in one of three cases whose lower courts issued nationwide injunctions against President Trump's highly publicized executive order redefining the scope of birthright citizenship.

The decision, however, did not substantively address the citizenship issue.

Legal commentators have noted that attorneys chal-

lenging executive actions will now get more creative.

More class actions and state lawsuits will be used to seek to broadly prevent or stop the implementation or enforcement of all allegedly invalid rules or orders.

Litigation will also likely increase generally.

After all, nonparties can no longer assume a favorable ruling for a similarly-situated party will apply to them.

Further, the ruling could bring additional headaches for businesses operating in different states since conflicting rulings could be issued in different parts of the country.

Your FOS attorney can help you navigate the unfolding implications of this ruling.

DEALERSHIP, cont. from pg. 2

The basic factors a court considers in determining whether a community of interest exists include:

- 1) The length of the parties' relationship;
- 2) The extent and nature of the obligations imposed on the parties in their contract;
- 3) The percentage of time or revenue the "dealer" devotes to the "grantor's" products/services;
- 4) The percentage of gross proceeds or profits the "dealer" derives from the "grantor's" products/services;
- 5) The extent and nature of the "grantor's" grant of territory to the "dealer;"
- 6) The extent and nature of the "dealer's" uses of the "grantor's" proprietary marks;
- 7) The extent and nature of the alleged dealer's financial investment in inventory, facilities, and goodwill of the alleged "dealership;"
- 8) The "dealer's" personnel devoted to the "dealership;"
- 9) The amount the "dealer" spends on advertising the "grantor's" products/services; and,
- 10) Any supplementary services by the "dealer" to "grantor's" consumers.

While these factors may appear clear and simple, their application can be confusing, depending on the facts and various courts' sometimes contradictory conclusions.

If you are a "grantor" or "dealer," or are confused whether the WFDL applies to your company, FOS can guide you through the law and its application.

If appropriate, our attorneys can assist in reviewing and revising dealership contracts, advising on prospective dealer terminations, and preparing and responding to termination notices.



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I HEAR YOU KNOCKING, BUT CAN YOU COME IN?



By Jacob Manian

You awake in the middle of the night to pounding at your front door.

Groggy but heart racing, you shuffle down the hall towards a bright light and a shadowy figure in a uniform.

"Police!" "Open Up!"

What do you do?

What are your rights?

Recent attacks involving assailants disguised as law enforcement have rightly given pause as to whether a badge and uniform are enough to accurately confirm the authority of one claiming

to be a law enforcement officer.

To make matters more confusing, sometimes law enforcement officers, to avoid detection, will park their vehicles around the corner and out of sight of an individual's residence or business.

This can raise additional questions whether the persons pounding on your door are really who they say they are.

Unless a judge gives special permission for entry without knocking and identification, police will typically announce themselves if they have a warrant.

On the other hand, if a judge does grant a "No Knock" warrant, you'll know it

when officers barge into your house or business.

In all circumstances, you are within your rights to request identification and see any documentation such as a warrant.

You can also call your local police district to confirm whether officers have in fact been dispatched to your residence or business.

Ideally, law enforcement will be able to give sufficient identification and information to confirm they are legitimate.

Sometimes, however, officers can become aggressive if a homeowner or business owner delays opening the door by asking questions.

If they don't have a warrant, officers will occasionally

threaten to get one and break down your door.

You are absolutely within your rights to make them get a warrant.

Unfortunately, because each situation depends on its specific facts, there is no one-size-fits-all answer to whether you must admit purported law enforcement officers, especially when you cannot think of any reason for their presence.

Ultimately, there could be no right, wrong, or easy answer, and you may have to simply make the best decision you can under the circumstances.

To be proactive and understand your rights in more detail, contact your FOS attorney.