



Editor: Diane Slomowitz

VISIT FOS'S REVAMPED WEBSITE

This issue of FOS NEWS is timed to coincide with the launch of FOS's newly revamped website, located at www.foslaw.com.

Incorporating your comments and suggestions, FOS's attorneys and staff have worked diligently over the past months to create an attractive, easy to navigate, interactive website which gives you the information you want the way you want it.

The website now features FOS's attorneys' legal blogs, providing timely practical analyses of legal developments. The website's "News and Views" section further contains links to attorneys' articles and presentations on various legal subjects.

Please take a moment to click on the FOS site, www.foslaw.com. The website is a companion to FOS's LinkedIn and Facebook pages. We welcome your comments and feedback.

AFFORDABLE CARE ACT CREATES A NEW PROTECTED CLASS



By Michael G. Koutnik

Recently, a new, less obvious protected class was added by the Affordable Care Act ("ACA") -- health care subsidy recipients. The ACA created a new section of the Fair Labor Standards Act (FLSA) to protect employees from employer retaliation for receiving an ACA subsidy or tax-credit.

Race. Gender. Religion.

With the 2014 mid-term elections, it is easy to think of these terms in the context of mudslinging political ads.

However, in the employer-employee context, these terms represent "protected classes." As an employment-at-will state, the general rule is that a Wisconsin employer can discharge an employee for good cause, bad cause, or no cause.

Protected classes are an exception to this general at-will rule (for example, an employee cannot be discharged because of his or her race).

The new law also protects whistleblowers who report, to the employer or government, a perceived violation of Title I of the ACA (which provides for the subsidies/credits), or who participate in an investigation into a perceived violation.

In light of the new law, employers would be well-served by updating their employment policies to reflect the new protections offered to employees who

receive subsidies/tax credits or report perceived violations of the ACA.

It may also be appropriate for employers to consider adding new procedures, such as limiting who knows whether an employee accepts subsidies under the ACA.

If the decision to terminate an employee is made by a person who has no knowledge of the employee's decision to accept a subsidy, the employee will have difficulty arguing that the termination was in retaliation for accepting such subsidy.

Another option is to maintain procedures for employee complaints related to the ACA.

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FOS LAWYERS ARE SUPER

FOS congratulates FOS shareholders **Bruce O'Neill, Matt O'Neill,** and **Shannon Allen,** and FOS of-counsel **Ken Barczak,** for being named Super Lawyers.

All four are formally recognized in the December, 2014 *Super Lawyer* edition of *Milwaukee Magazine* as top Wisconsin 2014 business litigation attorneys.

This is the ninth year in which Bruce, Matt and Ken have achieved this honor, and the second year for Shannon.

Super Lawyer is a rating service that uses independent research and peer nominations/evaluations to select lawyers from more than 70 practice areas statewide.

IN THE SPIRIT OF GIVING

In lieu of holiday cards, FOS is making a donation to Despensa de la Paz food pantry, the site of FOS's service day.





TRUST BUT VERIFY—DOUBLE CHECK YOUR COMPANY’S FINANCIAL ACCOUNTS



By Diane Slomowitz

For many small businesses, trust is key. After all, employees may have been with the company from Day 1.

With that trust, an employer may assign a “loyal” employee to manage the company’s books, giving the employee check signing authority to boot. “We’re family. What could happen?”

Embezzlement, that’s what.

While employee thefts happen in all companies, small busi-

nesses’ informal procedures make them especially subject to embezzlements.

A rogue employee with financial authority and/or check writing capacity can write or forge company checks to himself or his creditors. If his duties include reconciling company bank statements, he can mask that theft by “approving” them.

Once the embezzlement is discovered, the employee will likely have spent the money. You may then turn to your company’s bank for repayment of the improperly cashed checks.

Bank customers have a legal duty to review bank statements “with reasonable promptness” to find unauthorized checks. A bank agreement may impose a specific time limit for customer notification.

If the bank is not notified of an unauthorized check within 30 days of a statement’s receipt, a bank acting in good faith may not be responsible for later unauthorized checks by the same wrongdoer.

It gets worse. Claims against a bank are totally barred if no notice is given within one year after the statement is made available.

Without a few basic safeguards, your company could have no remedy for employee thefts.

For example, cross-check financial, accounting and check-writing duties amongst multiple employees.

And have an owner or high-level officer review and reconcile monthly bank statements as soon as they are issued or come online.

FOS can help you put proper procedures in place to ensure that your company’s funds stay with the company, not an errant employee.

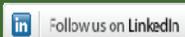
Affordable Care Act

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These should complement the employer’s existing mechanisms for other employment issues, such as health benefits and work conditions.

FOS’s attorneys can help employers draft and maintain their employment policies, including as to ACA. Such policies can minimize employers’ risk of discrimination and/or retaliation claims by employees.

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LAWYERS HELP PROTECT THE INTEGRITY OF ELECTIONS



By Matthew W. O’Neill

Wisconsin elections are open and fair.

And believe it or not, part of the reason is the work of lawyers working as poll observers.

For the past 10 years, I have been involved in Voter Protection efforts.

I have trained thousands of attorneys about how polling places should work, who can and can’t vote, how same-day registration works, how ab-

sentee ballots are counted, and how to help disabled voters.

Prior to major elections, representatives from both political parties meet with election officials and law enforcement officers to map out plans to address any problems that might arise on election day.

During the election, lawyers for both sides spend the entire day observing polling places.

When problems arise, they work to fix them, always with the shared goal of ensuring that every eligible voter gets to cast a ballot that is counted.

There are issues, to be sure: machine breakdowns, confusion about the proper proof of residence, rejected ballots, and the like.

Occasionally major issues crop up.

A bomb scare forced the move of an entire polling place in Madison one year; absentee ballots were almost delivered too late to be counted in another.

On these occasions, the lawyers worked together with election officials to fix the

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THE RETURN OF COMMERCIAL REAL ESTATE



By William R. Soderstrom

One of the interesting things about practicing real estate law over a period of decades is you get to experience firsthand the various business cycles that make or break business markets.

In the early 80's, with interest rates in double digits and the economy in recession, the commercial real estate market here was in a state of collapse.

But, of course, it recovered.

By 2006, commercial real estate had become red hot, with deals happening so fast the banks and title companies couldn't keep up with all the activity.

And then, the Crash.

Suddenly banks stopped lending, builders stopped building, buyers became scarce, and prices tumbled.

Our own fabled M&I Bank had to be sold, under a crushing burden of bad loans made to Arizona and Florida builders.

The commercial real estate world was bleak; there were now too many brokers for the deals that were available, title companies had a fraction of their previous work, and it was impossible to sell except at bottom feeder prices.

At FOS, our commercial real estate practice, a big part of what we do, just dried up.

A few transactions occurred, but most of our time was being spent dealing with problems our existing clients had with banks as a result of the downturn, and negotiating

workouts for our real estate clients.

The last thing business owners had on their minds was taking on debt to expand into new quarters, or build a new headquarters. The perceived risk was simply too great.

And when everyone was sure that commercial real estate would be done, perhaps for a decade, 2014 arrived.

Suddenly the title companies were frantically trying to complete deals and inventory became harder to find.

At our firm, we had almost a dozen commercial real estate closings in October alone.

The progress of the US economy, pent up demand, and low interest rates had combined to create a perfect storm.

My mentor, Bill Fox, told

me when I joined the firm that practicing law would be a humbling experience.

He meant that the demands are difficult, the problems are complicated, and coming to good solutions for clients would challenge me daily.

He, of course, was right.

And one of the humbling experiences has been dealing with the evaporation of one of your practice areas one day, and the explosion of it the next.

(But let me be clear—having lived through both, the explosion is much better than the evaporation.)

QUESTIONS?

CALL US
414-273-3939

OR EMAIL US
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Integrity of Elections

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problem.

On November 4, 2014, over 2.4 million people cast ballots in Wisconsin.

The major problems were machine malfunctions, not enough poll workers, and polling places running out of registration forms and ballots.

All were fixed — the technicians got the machines going again, the municipalities dispatched more poll workers,

and extra ballots and forms were delivered.

The lawyers were there to make sure all of this happened.

So the next time you hear, "Let's kill all the lawyers," remember that it might make voting a little more difficult.

FOS MENTORS YOUTH

FOS shareholder **Laurna Jozwiak** and associate **Jacob Manian** are participating in the 2014-2015 Charles N. Clevert, Jr. Mentoring Program.

FOS ON THE MOVE

FOS shareholder **Mike Hanrahan** has completed his third three-year term as Red Cross board member.

In addition to his board duties, Mike also served as Treasurer and Finance Committee Chair during the past five years.

Mike currently tutors children at the Oliver Wendell Holmes School under the Milwaukee Rotary Club's Partners in Education program.

FOS shareholder and St. Thomas More Lawyers Society President **Fran Hughes** was the master of ceremonies at the Society's October 9, 2014 Red Mass Dinner, held at Milwaukee's University Club.

FOS shareholder **Matt O'Neill** was honored by the Eastern District of Wisconsin for his *pro bono* work at an October 16, 2014 luncheon hosted by the Eastern District of Wisconsin Bar Association.



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FOS ATTORNEYS TOP RATED!!

KOMEN RUN

Seven FOS shareholders have been named 2014 Top Rated Lawyers by American Lawyer Media (ALM) and Martindale-Hubbell™.



Tom Shannon has been honored in the real estate specialty.



Fran Hughes has been honored in the real estate specialty.



Mike Hanrahan has been honored in the labor and employment law specialty.



Bill Soderstrom has been honored in the mergers and acquisitions specialty.



Matt O'Neill has been honored as a commercial litigator.



Al Young has been honored in the taxation specialty.



Greg Ricci has been honored in the taxation specialty.

The Top Rated Lawyer awards are given to attorneys with the highest peer ratings for legal ability and ethical standards in various legal specialties.

FOS's attorneys' awards are

highlighted in the 2014 Top Rated Lawyers™ sections of *The American Lawyer*, *The National Law Journal*, and *Corporate Counsel* publications.

Tom, Fran, Mike, Bill and Matt were previously honored as Top Rated Lawyers for the year 2013.

American Lawyer Media is a leading provider of news and information to the legal industry.

Martindale-Hubbell™ is a national attorney resource, which rates attorneys based on peer review results.



FOS's team, the "Karen Fox Trotters," participated in the September 21, 2014 Susan G. Komen Run/Walk.

The event raised research funds to develop treatments and the eventual cure of breast cancer.

FOS's "Karen Fox Trotters" team is named in honor and memory of Karen Fox.