

Legal NEWSLETTER

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THE CORPORATE TRANSPARENCY ACT

By Attorney David James

Do you own a small business? Are you a member of an LLC or a shareholder in a closely held company? (A closely held company has a limited number of shareholders and is often a private company that does not trade publicly). If so, you should be aware of the Corporate Transparency Act (CTA). This law was passed by Congress on January 1, 2021, because, according to the legislative history, "malign actors seek to conceal their ownership of corporations, limited liability companies, or other similar entities in the United States to facilitate illicit activity, including money laundering, the financing of terrorism, proliferation financing, serious tax fraud, human and drug trafficking, counterfeiting, piracy, securities (continued on back page)

This publication is not intended to provide legal advice, but rather insight and awareness into legal issues that we feel could be useful to our clients and friends. Actual resolution of legal issues depends upon many factors, including variations of facts and state and federal laws.



FIRM NEWS



“Through my years of service on the Board of Directors, I’ve learned that the United Way carefully studies the community to pinpoint our most pressing needs and identifies the programs that will be most effective at meeting those needs. Supporting the United Way means our donations will have the greatest possible impact on those who need it most.”

2023 Campaign Co-Drive Chair: Amy Eddy

We collected donations for Project Fresh Start. This United Way program serves over 1200 students in Portage County.



AOB was honored to receive the Providing Hope award at the 2023 Walk For Hope.

Lawyers where you live.

IS THAT DAMAGE TO YOUR VEHICLE LESS THAN \$1,000

By Attorney Bradley Yanke

For those who may have been involved in a non-injury minor car accident, you may have heard from the other driver or bystander, “that damage is under \$1000, no need to get the police involved.” A recent Wisconsin Court of Appeals decision, *County of Monroe v. Kling*, albeit unpublished, shows that it is better to be safe than sorry.

Wisconsin law states that if the operator of a motor vehicle is involved in an accident resulting in total damage to property owned by any one person to an apparent extent of \$1,000 or more, the operator must immediately notify law enforcement of the accident by the quickest means of communication. Wis. Stat. § 346.70(1). Unsurprisingly, the rub is what is “apparent extent?”

In *County of Monroe v. Kling*, Mr. Kling was heading home from work when he veered to the side of the road, hit a mailbox, overcorrected his steering, and drove into a ditch. Kling was unharmed, and he was assisted at the scene by several bystanders. Kling could not drive his vehicle out of the ditch, as the tires had popped off their rims and the vehicle had grounded out in the mud. One of the bystanders asked Kling if he had contacted law enforcement; Kling had not. The bystander called law enforcement as Kling received a ride home. After Kling returned home, he called law enforcement and a tow truck driver, and he contacted the owner of the mailbox and offered to replace it. Kling’s call to law enforcement was 34 minutes after the bystander’s call.

At the repair shop, Kling’s tires were reattached to the rims and inflated, the car checked for leaks, but no estimate was made for any bodywork. Kling picked



it up two days later. Law enforcement issued Kling a traffic citation in violation of § Wis. Stat. 346.70(1). Kling contested the ticket at a bench trial, focusing his defense that it was not apparent to him that his vehicle has sustained at least \$1,000 of damage.

The responding officer was the State’s sole witness on the extent of the damage to Kling’s vehicle, playing portions of his body camera. The video showed an intact vehicle, no leaking fluids, and the only visible damage was deflated tires, and the passenger side panel appeared to have some damage and some bumper trim had fallen off. According to the officer, “that’s way over the threshold of \$1,000.”

Kling presented evidence that the cost to tow and remount the wheels was \$200.45, and he replaced the bumper a few years earlier and it had cost him about \$500. He presented an eBay listing for a comparable bumper for \$146.91. He did not provide any estimate for repairing the side panel. The trial court credited the officer’s testimony and said it was confident that the total damage was much more than \$1,000. Kling appealed.

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fraud, financial fraud, and acts of foreign corruption, harming the national security interests of the United States and allies of the United States.”

The CTA requires the Financial Crimes Enforcement Network (FinCEN), an agency of the U.S. Department of the Treasury, to establish and maintain a database of beneficial owners of entities in the United States. Final regulations were issued on September 30, 2022, and the law will take effect on January 1, 2024. The law provides 23 exemptions from the new reporting requirements, mostly for already heavily regulated companies such as banks, insurance companies, publicly traded companies and credit unions. Typical charitable organizations that qualify under 501(c) of the Internal Revenue Code are also exempt. Most other entities, whether foreign or domestic, will need to report certain information about the beneficial owners and applicants of the entity unless they have at least 20 full-time employees, filed a United States income tax return in the previous year demonstrating \$5 million in gross receipts or sales, and has an operating presence with a physical office within the United States.

For those entities that are not exempt, they will need to file applicable reports that include information about the person who formed the entity (known as the “applicant”) and each “beneficial owner” of the entity. By statute, minors, nominees (e.g. custodians), employees acting on behalf of a company, future owners through inheritance, and creditors are exempt from being listed as beneficial owners. The reporting company must report the full legal name, date of birth, current residential or business street address, and a unique identifying number with a copy of the underlying document (e.g. driver’s license number and copy of the driver’s license) for each beneficial owner and applicant. Alternatively, individuals may submit the required information directly to FinCEN and be issued a unique FinCEN identifier that can be used by the reporting company to identify the person.

Reporting requirements start January 1, 2024. Please make an appointment with one of our experienced business attorneys for any questions you have about whether your closely held business entity must report under the CTA. ♦

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The Appellate Court’s decision hinged on the undefined term of “apparent.” Per the Court, the term apparent means damage that is visible and obvious, regardless of whether later inspection reveals more. Any damage that would require specialized training or expertise to identify is not apparent. Also, “apparent” means at the accident scene, and while the factfinder can consider after-the-fact estimates or receipts, they are not directed toward the disposition of the case. Crucially, the Court held that Wis. Stat. § 346.70(1) is a strict liability statute that does not require proof of subjective intent; “apparent extent” is an objective person test.

As such, the Court held: “I conclude that an operator of a vehicle must report an accident when it would be obvious to a reasonable person in the operator’s position, at the time of the accident, that the total costs of repairing the visible damage to any one person’s property to as good of a condition as before the accident equals or exceeds \$1,000.”

The Court of Appeals upheld the Trial Court’s ruling, focusing on the damage to the side panel pushing the total cost above \$1,000 and crediting the responding officer’s testimony and opinion. It is important to point out that this is not a published decision and cannot be cited for authority; also considering that Mr. Kling was unrepresented at the Trial and Appellate Courts, it would not be a good case to make established law. That said, there can be little doubt that the various charging authorities have knowledge of this decision. The next time you scrape a pole in a parking lot or get into a fender bender, to avoid a citation, it is best to call the authorities. ♦



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