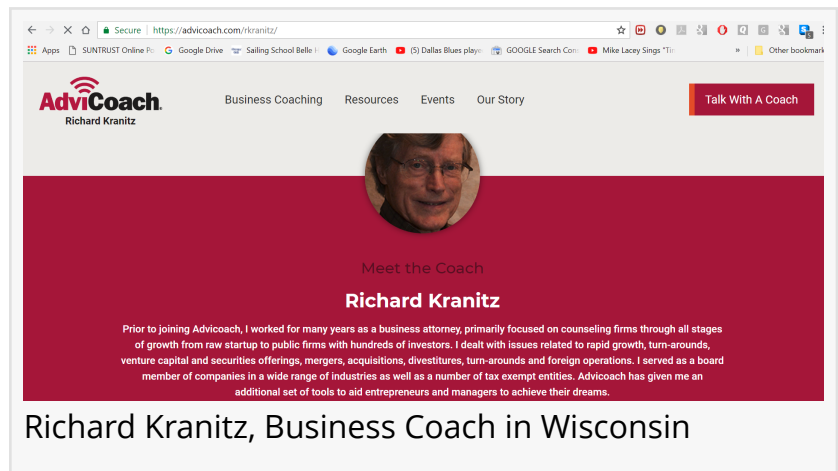


Veteran business law attorney, Richard A. Kranitz, Esq., comments on Manitowoc Company v. Lanning

The recent decision from the Supreme Court of Wisconsin addresses the enforceability of non-solicitation of employees provision, reviewed by Richard A. Kranitz

GRAFTON, WISCONSIN, UNITED STATES, January 7, 2019 /EINPresswire.com/ -- In his newest published article, business lawyer and coach [Richard A. Kranitz](#) reviews the Wisconsin Supreme Court case of Manitowoc Company v. Lanning, which has important implications for employment agreements. The full article is available on the blog of [Richard Kranitz](#) at <https://richardkranitzblog.blogspot.com/>



The defendant John Lanning worked for the Manitowoc Company (hereinafter “Manitowoc”) for 25 years as a chief engineer of its construction crane division, starting in 1985. In 2008, Lanning signed an employment agreement with Manitowoc that contained a non-solicitation of employees provision. The non-solicitation provision prohibits Lanning from “soliciting, inducing, or encouraging any Manitowoc Company employee to terminate his or her employment with Manitowoc Company or to accept employment with a competitor, supplier, or customer of Manitowoc Company” for a period of two years after Lanning’s termination.

“

the case serves as a cautionary tale for practitioners drafting restrictive provisions in employment contracts as well as employers who wish to utilize such provisions”
Richard A. Kranitz, business attorney

Lanning quit his job at Manitowoc on January 6, 2010 and became the director of engineering at SANY America, a


competitor of Manitowoc. Manitowoc claimed that Lanning subsequently violated the non-solicitation provision on numerous occasions. “For example, Manitowoc Company asserts that Lanning communicated with at least nine Manitowoc Company employees about potential employment opportunities at SANY, took one Manitowoc Company employee out to lunch in connection with SANY recruitment efforts, took another Manitowoc Company employee on a tour of a SANY crane manufacturing plant in China, and participated in a third Manitowoc Company employee’s job interview with SANY.”

First, the Wisconsin Supreme Court addressed whether Wisconsin Statute § 103.465, pertaining to restrictive covenants in employment contracts, applies to the non-solicitation provision in Lanning’s employment contract. The statute provides that “any covenant’ described in § 103.465 imposing an ‘unreasonable restraint is illegal’ even as to any part of the covenant that would be a reasonable restraint”. Manitowoc argued that section 103.465 does not apply to the non-

solicitation provision because it is not a non-compete provision, rather non-solicitation. The Court, however, noted that “[t]ime and again, the case law has focused on the effect of the provision of an employment agreement rather than its label to determine whether it constitutes a restraint of trade governed by Wis. Stat. § 103.465”. Further, “[w]hether a particular agreement constitutes a restraint of trade is based not upon how the agreement is labeled but upon the effect of the agreement on employees and competition”. Therefore, because “[t]he effect of Lanning's non-solicitation provision is to prevent Lanning and a Manitowoc Company competitor from competing fully with Manitowoc Company in the labor pool by soliciting Manitowoc Company employees”, the provision did fall under the scope of section 103.465.

The Court then addressed whether the non-solicitation provision met the requirements of the statute. The Court noted that the provision prohibits Lanning from soliciting any employee of Manitowoc, which numbers over 13,000 worldwide. “The non-solicitation provision contains no limitations based upon the nature of the employee's position within Manitowoc Company. No limitations are based upon Lanning's personal familiarity with or influence over a particular employee. There is no limit based upon the geographical location in which the employee works.” The Court noted that while an employer may have a protectable interest in “retaining top-level employees, employees who have special skills or special knowledge important to the employer's business, or employees who have skills that are difficult to replace”, it does not have a protectable interest in retaining all employees. Therefore, the Court upheld the lower appellate decision striking down the non-solicitation provision as unenforceable.

[Mr. Kranitz](#) notes that the case serves as a cautionary tale for practitioners



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About Richard Kranitz
As an attorney, I did corporate, securities and tax planning for corporations, partnerships, joint ventures, limited liability companies, multi-unit enterprises, and a variety of different non-profit entities. In addition, I counseled their owners and executives in compensation planning, estate plans, and asset protection. Early in my career I gained experience as a law clerk to a federal judge and in 10 years of corporate litigation. Besides extensive legal experience, I am experienced in various phases of business in many industries:
 ☐ Business Research and Analysis; Due Diligence Investigations

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As an attorney, I did corporate, securities and tax planning for corporations, partnerships, joint ventures, limited liability companies, multi-unit enterprises, and a variety of different non-profit entities. In addition, I counseled their owners and executives in

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drafting restrictive provisions in employment contracts as well as employers who wish to utilize such provisions. The case is Manitowoc Company v. Lanning, Case No. 2015AP1530.

About Richard A. Kranitz

Richard Kranitz is an experienced attorney and business consultant in the areas of corporate, securities and tax planning for corporations, partnerships, joint ventures, limited liability companies, multi-unit enterprises, and a variety of different non-profit entities. In addition, he has counseled their owners and executives in compensation planning, estate plans, and asset protection.

References

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