

KREKELER LAW REPORT



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HAPPY BIRTHDAY, AMERICA

Happy Independence Day to all of you. After the Founding Fathers declared independence from Great Britain, they spent a great deal of debate in ratifying the Constitution. In Article I, they gave Congress the power to make laws about bankruptcy.

These discussions about the Constitution were published in 85 essays known as The Federalist Papers. Both Courts and historians look to The Federalist Papers when trying to determine what the drafters of our Constitution intended.

The primary reference to bankruptcy comes in Essay #42, written by James Madison, and includes the following sentence:

“The power of establishing uniform laws of bankruptcy is so intimately connected with the regulation of commerce, and will prevent so many frauds where the

parties or their property may lie or be removed into different States, that the expediency of it seems not likely to be drawn into question.”

Madison’s comments made two main points. The first is that bankruptcy is so connected to interstate commerce that the federal government must have the power to create a uniform set of bankruptcy laws. The second point is that a uniform national bankruptcy law would prevent fraud by not permitting debtors to hide themselves or their assets in other states.

Madison and the other Founding Fathers have many times over been proven to be correct in their assessment of bankruptcy and the benefits it provides our society. Just a thought as we celebrate this Independence Day.

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PAYING A DISPUTED DEBT COULD PREVENT YOU FROM WINNING THE DISPUTE

A client came to me about a dispute over an auto repair. He had received a bill for over \$2,500, but disputed either authorizing the repair or agreeing to pay for it. He needed his vehicle, though, and was going to pay the invoice so he could recover the vehicle.

I cautioned him not to do so until we had first made a protest about that payment.

I made that caution because of a legal concept known as the Voluntary Payment Doctrine. Wisconsin has long adopted this doctrine, which says that anyone wishing to challenge the validity or legality of a bill for payment has the obligation to make that challenge either before voluntarily making payment, or at the same time. "A person cannot recover money that he or she has voluntarily paid with full knowledge of all the facts."

Wisconsin courts have cited two main reasons for the voluntary payment doctrine. The first is a commercial consideration, in that the doctrine permits a business that has received payment for services or

goods to rely upon those funds and to be able to use them. The second reason cited is that the doctrine promotes settlement of disputes without litigation. This is because the party not wishing to pay must provide notice to the creditor. The creditor then has an opportunity to correct the dispute before the matter goes to suit.

The "voluntary" aspect of the voluntary payment doctrine means that the doctrine will not apply if the payment was made under fraud, duress, or some form of threat. An example used by one Wisconsin court is the payment of cable services. Payment of the cable bill because the cable provider threatened to terminate the service for nonpayment is not a "voluntary" payment. For a payment to be voluntary, the person paying must do so "without protest as to its correctness or legality."

We sent an appropriate protest of payment for our client with the disputed auto repair bill. Be sure you carefully protest any disputed invoices before you pay them, or you could end up falling victim to the voluntary payment doctrine.

WIMBLEDON'S BORIS BECKER AND BRITISH BANKRUPTCY

The Championships, Wimbledon, is the oldest tennis tournament in the world. It is widely held as the most prestigious. This year it runs from June 25 through July 15.

The youngest winner of the men's title, Boris Becker of Germany, was only 17 years old when he took the 1985 Championships. Now a TV analyst, Becker was in the news this month for being declared bankrupt by London's Bankruptcy Court, which happens to be located only 8 miles from the Wimbledon site.

Becker could point to a lot of issues that ultimately led to a court finding him bankrupt. His marriage in the 1990s fell apart after an affair with a model. That affair led to a child, and millions of dollars owed to his wife and his paramour.

Becker was also convicted of tax evasion and was forced to pay millions in fines. Poor property invest-

ments also contributed to his financial woes. The last straw was a 2015 judgment owed to a London banking company.

The bankruptcy case is ongoing, with Becker hoping to refinance his home to satisfy the 2015 judgment, but the Court will appoint a Trustee to sell assets to pay creditors.

Bankruptcies and debt relief cases in England and Wales have skyrocketed. In 1987 there were about 24,000 individual insolvencies. In the 10 years following, that number mushroomed to over 106,000. By 2010, it was over 135,000.

That volume went down a bit as Britain slowly recovered from the recession, but it is still on a pace of about 100,000 per year, more than 4 times the number of cases seen 20 years ago.

DO YOU WANT A LOAN?

6 Items Your Banker May Ask For

Getting a bank loan is not always easy. It was certainly easier during the early years of this century, before the 2008 recession.

Lenders look for certain information, and that information may vary from borrower to borrower. You must be ready to present a credible and complete package to get approved.

You should know how much money you need and what you need it for. Be prepared to explain how you intend to repay the loan.

You should also know your credit history and score. Federal law allows you to receive one free credit report each year from each of the three major credit reporting agencies. You can obtain these through the FTC website, www.annualcreditreport.com.

To find out what sort of documents you should have ready for your banker, we turned to our good friend, Kevin J. Mahaney. Mahaney is Vice President and Business Relationship Manager at the State Bank of Cross Plains. He has over 20 years' experience in banking, with prior experience as a credit manager and financial analyst. We have personally watched him put loans and deals together.

Mahaney identified the following as items which almost every business borrower should have available:

1. Last 2 years Tax Returns, both personal and business. If your current return is not yet completed, get it done, as the bank will want the most current information available.

2. Year-to-Date Interim Financial Statements for the business. These would include a balance sheet and income statement. A comparison to the prior year would also be helpful. Be prepared to explain your inventory values and Accounts Receivable balances.
3. Account Receivable Reports. This report is more helpful if it is aged, showing how long receivables have been on the books. Inform your banker about your terms of sale so they can build an understanding of your cash flow cycle.
4. Account Payable Schedule. This shows the creditors and the amounts owed.
5. Pipeline Report of Sales Activity. This, in effect, is a cash flow projection. A 1-year projection is good. A 2-year projection is better.

Having these documents and information ready when you meet with your banker can facilitate and speed up the process. As with most things in life, the earlier you begin the process, the better your chances of success.

Mahaney also recommends that you have a business plan. Most people do not, but having a business plan, even a short one, demonstrates that you have given significant consideration to your business and its future.

We fully agree. The legendary UCLA basketball coach, John Wooden, is quoted as saying, "Failing to plan is planning to fail."



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WHERE'S KREKELER ?

Our firm is pleased to announce that shareholder Kristin Sederholm has been elected to the board of the Bankruptcy, Insolvency, and Creditors' Rights (or "BICR") section of the State Bar of Wisconsin. Kris's 3-year term on the board begins in July.

Kris joins associate Ryan Blay, who was elected to the board in 2015, and shareholder David Krekeler, who is a past-chair of the section and emeritus board member.

The firm's involvement in the section does not end there. Non-board members are welcome and encouraged to participate in board committees and events. Associate Jennifer Schank is a member of the board's technology committee, and associate Eliza Reyes is a member of the planning committee for the section's annual Kohler Bankruptcy Retreat. Her committee is currently planning next March's Kohler conference.

The BICR section seeks to inform its members about developments in bankruptcy and collection law and to serve the judiciary and the public. Specifically, members work on developing the law, increasing communication between practitioners, and improving the standards of the profession.



JUDGMENT INTEREST RATE INCREASES JULY 1

The interest rate applicable to judgments in Wisconsin is 1% plus the prime interest in effect on January 1 and July 1 of each year, as reported in the Federal Reserve Statistical Release H. 15. That rate increases July 1, 2017 to 5.25%.

If a judgment is entered on or before June 30, the interest rate will be that which was in effect on January 1 of that year. If a judgment is entered after June 30, the interest rate will be that in effect on July 1.

The interest rate remains in effect from the date of entry of judgment until the judgment is paid.

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If you ask for it – we will write it!

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