

KREKELER LAW REPORT



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FEBRUARY BRINGS OUT CUPID, LOVE, AND DATING WEBSITES

When True Beginnings first began in 2003, it provided a successful online dating service with revenues of almost \$100 million, with over 40 million customers meeting new love interests via the internet. However, True Beginnings happy “beginning” in the online dating world soon came to an end when it filed for Chapter 11 bankruptcy relief in Texas. When the breakup occurred, True Beginnings wanted to sell most of its assets to PlentyOfFish, but Texas Attorney General Grey Abbott was concerned over the amount of personal data from customers that would be given to PlentyOfFish without permission. When the sale fell through, True Beginnings eventually had its Chapter 11 plan confirmed but is no longer in the matchmaking business.



FriendFinder is another networking service that specializes in online dating, social networking, and adult entertainment. Just like True Beginnings, FriendFinder could not pay the \$44.5 million in debt that was due come mid-2010. Eventually in 2013, FriendFinder filed for Chapter 11 bankruptcy after not turning a net profit since 2008. Much later, in 2016, FriendFinder sold its rights to the Penthouse brand which was later acquired by a new company. Unfortunately, FriendFinder also reported a security breach in 2016 after the confidentiality of over 400 million accounts in the database were breached. Although dating apps are gaining mainstream attention and popularity all through the United States, there are still risks with sharing your personal information to these online services, but it may be worth it for many if they get their one shot at true love.



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In This Issue

- **February Brings out Cupid, Love, and Dating Websites**
- **Student Loans are Being Extended... Perhaps Beyond the Grave**
- **College Savings Plan**
- **Why Lawyers Spend so Much Time on Conferences**
- **Update on Dean Foods**
- **Can a Debtor get a Third-Party Release from Debt?**
- **Unreal Legal- Trial by Combat... In 2020?**
- **Where is Krekeler?**

STUDENT LOANS ARE BEING EXTENDED... PERHAPS BEYOND THE GRAVE



Student loans are a regular topic in the news and in this newsletter. We have talked about how much is owed and by how many people, and the various plans that can be utilized to deal with student loans. Now lenders are trying something new.

For federal student loans there are various programs that can be tied to income or by which loans can even be forgiven over time. There are no such programs for private student loans. With these loans we must negotiate. One way to make these loans more affordable for borrowers is to extend their maturities.

Julie Chinnock is 50 years old and recently got a new payment plan for her approximately \$250,000 of student loans. The new plan stretches out the maturities to 2083. This should lower Julie's payments, but it seems highly unlikely that the loans will ever be repaid.

COLLEGE SAVINGS PLAN

Now is probably not the time to begin thinking about how to fund this year's college costs. But we can be thinking about next year or future years. Some people even start investing pre-birth.

Among the most popular ways to save for college are 529 College Savings Plans. Each state sponsors a plan that allows money, usually invested in mutual funds, to grow tax-deferred for college. Wisconsin's plan is known as EdVest.

Wisconsin allows a state tax deduction on contributions. The limit for 2020 is \$3,340 per year, per beneficiary.

Funds withdrawn from the EdVest plan may be taken tax free, so long as those monies are used for qualified higher education expenses. Such expenses include tuition and room and board.

More details on EdVest plans can be found at edvest.com.

EdVest monies, or any college savings plan investments, offer other benefits when it comes to asset protection. Monies in an EdVest account are exempt and protected from claims of creditors. They cannot be reached and liquidated by a bankruptcy trustee, either.

The amount which can be so protected can be significant. The statute providing for the exemption does not set a cap on the amount which may be contributed and protected. EdVest itself limits contributions to \$505,000 per beneficiary.

This EdVest protection is available to Wisconsin residents.

WHY LAWYERS SPEND SO MUCH TIME ON CONFERENCES

I was out of the office a lot last week – three out of five days. I was at conferences, rendering me unable to make and return many calls or respond to emails. I was also unable to bill any of my time, which cuts into my bottom line.

But conferences and continuing education are important. Despite all the lawyer jokes we hear; lawyers provide valuable services in very complex and emotional areas of our lives.

Our firm does a lot of Chapter 13 bankruptcy work. Chapter 13 is often used to stop foreclosures and save homes, or to keep a car from repossession. It is a legal action that will last three to five years.

People can file a do-it-yourself Chapter 13. But the rules and processes are complex and the success rate for people proceeding without a lawyer are not very good.

"More than half are dismissed within three months of filing, and more than 80% are gone within six months," So reports both the American Bankruptcy Institute (August 2017) and the Federal Judicial Center.

Statistics like that are why we continue to spend our time at conferences for which we cannot bill.

UPDATE ON DEAN FOODS

We previously wrote about Dean Foods' decision to file Chapter 11 bankruptcy this past November ([November 2019 Newsletter](#)). Recently, it was announced that Dairy Farmers of America would be purchasing 44 of Dean's processing facilities and other assets for \$425 Million.

The purchase agreement, if approved by the bankruptcy court, would make the Dairy Farmers of America a stalking horse bidder. This means other offers may be submitted, but the bid submitted by Dairy Farms of America will act as a reserve bid and maximize the value of the assets to avoid low bids.

CAN A DEBTOR GET A THIRD-PARTY RELEASE FROM DEBTS?

In bankruptcy circles this has been a hot topic for the last several years. The general rule is that the bankruptcy stay and any discharge received protects only the debtor.

For example, say you guaranteed your child's vehicle purchase loan. The child encounters difficulties and the car is repossessed, leaving a substantial unpaid deficiency. Unable to pay, your child files bankruptcy. Your hope is that the bankruptcy will release you from your guaranty.

In the Zersenk case here in the Western District of Wisconsin the Court said that "the debtor cannot unilaterally extinguish the co-debtor's liability without full payment of the debt."

But exceptions do exist and are being exploited by debtors. The 3rd Circuit, which encompasses Delaware, New Jersey, and Pennsylvania, recently upheld the power of a bankruptcy court to grant non-consensual releases of third parties.

We have had some success in obtaining such releases, but only when warranted by the circumstances. The 3rd Circuit said that "we are not broadly sanctioning the permissibility of non-consensual third-party releases in

bankruptcy reorganization plans."

That has been our experience, as well, in that courts are reluctant to extend bankruptcy relief to those who have not filed for bankruptcy.

This does not mean that third parties cannot be released, only that it is quite difficult.



TRIAL BY COMBAT...IN 2020?

In these modern times, many seem to have developed a fondness for medieval and renaissance life. This fascination has led to a man in Iowa to request his divorce judge allow him to face his ex-wife's attorney in a trial by combat. The man claimed that his ex-wife and her attorney had destroyed him legally, so he wanted a chance to defend himself "on the field of battle where he can render their souls from their corporal bodies."

Even though trial by combat is not banned in the United States, the consequences of this means of trial can lead to serious bodily injuries and even death. It will be unlikely for the Judge to grant the man's request and they will have to settle the issues of property tax and custody.

If you are also wondering what the judge and attorney have wondered, the man claims to have no history of mental instability and is purely meeting the opposing attorney's absurdity with his own.



WHERE'S KREKELER?

MARDI GRAS CELEBRATION!

For the past few years, Krekeler Strother SC takes the time to celebrate Mardi Gras. This term translates to "Fat Tuesday" and is a New Orleans tradition started in the late 1600's.

The staff brings in classic Mardi Gras dishes including red beans and rice, muffuletta sandwich, and a King Cake complete with a fève (baby figurine). Whomever ends up with the baby in their slice is in charge of providing the next year's King Cake.



CONFERENCE AT KOHLER

Attorneys David Krekeler, Kris Sederholm, John Driscoll, and Michelle Angell will attend the BICR conference in Kohler, WI this month. The conference is held annually and gives attorneys throughout Wisconsin updates on bankruptcy, insolvent, and creditors' rights. See the article on page 2 (**Why Lawyers Spend so Much Time on Conferences**) for why we take the time to go to these events.

Speaking Engagements

If you would like information on any of the topics, David would love to discuss them over coffee and a bagel- his treat. Contact him at jdkrek@ks-lawfirm.com.



Have a question? Idea for a future article?

If you ask for it – we will write it!

E-mail Charlotte Pettit at cpettit@ks-lawfirm.com

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