

# KREKELER LAW REPORT



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## CORONA VIRUS AND BANKRUPTCY

Corona Virus, or COVID-19, is already having an economic impact in our country. Stores, businesses and institutions are closing, which will result in less income for owners and employees alike. For some there will be no income.

This situation is in some way similar to a devastating natural disaster, such as a hurricane. We know from past experience that economic hardships created by these natural disasters can be alleviated by bankruptcy.

We also know that the spike in bankruptcies will trail the natural disaster event by a number of months. See my Newsletter article Hurricanes Batter Coasts and Budgets in [Krekeler Law Report- September 2017](#).

Corona virus will almost certainly have the same effect. The questions at this time are what will the breadth and depth of the economic hardship turn out to be.

We have already taken steps to protect our clients and our employees to the extent that we have the ability to do so. We are notifying past and present clients of measures they should consider taking to preserve and protect resources. We are also advising them of steps they might take if they begin to suffer a loss of income or profits.

Being prepared and aware will help some of these businesses survive when they might not otherwise have done so. If you would like information about preparation for an economic downturn, please let us know. We have been through downturns before and will help our clients get through this one as well.



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# LIABILITY FOR SLIPS AND FALLS ON ICE



Although Spring is almost upon us, slip and falls on ice and snow are still at a higher risk. Who is liable? This depends on where you fall. If you fall in a parking lot or on a sidewalk, you should know that property owners have a duty to exercise reasonable care when it comes to maintaining these areas. The duty of care requires property owners to promptly remove snow and ice to reduce risk of falls or injuries. The question is whether the property owner's conduct was reasonable considering all the circumstances. But remember, you also have a duty to exercise reasonable care when walking in an area you know, or should reasonably expect, is snowy or icy. Your own negligence could have an effect on any recovery in a potential lawsuit.

Keep in mind that the jurisdiction in which the slip and fall accident occurs will also affect any recovery. What might be reasonable in Wisconsin is not necessarily reasonable in Florida. Also, some rules apply in some states and not others. For instance, Illinois has a "natural accumulation rule", which usually relieves a property owner from liability in connection with the natural accumulation of snow and ice. That is, as long as the property owner did not interfere with or alter the accumulation, and as long as no abnormal danger exists, the property owner will likely not be held liable.

Wisconsin also has a "natural accumulation rule" but it bars suits only against governmental entities for damages sustained by reason of an accumulation of snow and ice upon any bridge or roadway, unless the accumulation existed for three weeks. If you fall on governmental property, there are special rules that might affect your

case. Governmental immunity might affect your ability to sue or obtain a recovery. In most cases in Wisconsin you must file a notice with the governmental unit within 120 days and serve it upon the Wisconsin Attorney General by certified mail.

If you are the victim of a slip and fall on ice or snow, contact our office to assist in obtaining a just settlement.

## SLOW FORECLOSING LENDER MAY LOSE RIGHTS

We recently came upon a case in which a mortgage borrower had not made a payment in over 15 years. The lender had taken no action to collect, nor to foreclose its mortgage lien.

When action finally was brought, the borrower asserted that the lender had lost its right to enforce the mortgage.

By that time the note was no longer enforceable. Wisconsin has a six-year statute of limitations on enforcement of a note.

The lender did still have rights to enforce the mortgage, however.

The borrower's defense was an equitable doctrine known as laches. Laches may be asserted against a party that delays making a claim, causing that party to lose its right to the claim.

Laches has three elements that must be proven, as follows:

1. Unreasonable delay by the party asserting the claim
2. Lack of knowledge or agreement by the party asserting the laches defense
3. The delay must have prejudiced the party asserting laches

These elements do not arise very often, but it is important for litigators to be aware of this potential defense. We have included this in our litigation defense checklist, so we never overlook it.

Sometimes it is the little things that differentiate lawyers and outcomes. In fact, it is almost always the little things that make the difference.

# TRANSFERS AND SUCCESSOR LIABILITY

We deal with a lot of transactions in which a business is transferring its assets. These can be tricky, as creditors may try to assert that the purchaser should be liable for any claims against a selling entity.

The general rule in Wisconsin is that a company can sell or transfer its assets to another company without the purchaser becoming liable for the debts and liabilities of the transferring company. This rule is designed to promote commerce. There are, however, four exceptions to the rule which the Wisconsin Supreme Court has noted:

1. Where the purchaser has a duty to assume liability.
2. Where the transaction is really a merger of the purchaser with the seller.
3. Where the purchaser is merely a continuation of the seller.
4. Where the transaction is fraudulent and designed to escape liability for the obligations of the seller.

Exceptions 2 and 3 were recently reviewed and discussed by the Wisconsin Supreme Court.

Exception 2 is sometimes called the *de facto* merger exception. The court stated that the key element for a *de facto* merger was that the transfer of ownership is for stock or other ownership in the successor business rather than for cash.

The court stated that the key element for the mere continuation exception is a common identity of officers, directors and owners in the selling and purchasing of businesses.

These are tricky concepts, so do not simply rely upon this brief article. If you are buying or selling the assets of the business be sure to consult with an attorney experienced in this area of law.

## 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](mailto:jdkrek@ks-lawfirm.com).*

# PIER 1 IMPORTS FILES CHAPTER 11 BANKRUPTCY

Pier 1 Imports, a home décor retailer, faces financial difficulties after a tough holiday season and files Chapter 11 bankruptcy. They announced late last year that they would be closing 450 of their brick and mortar locations including all of their Canadian locations and 6 in Wisconsin.

With the steady decline of sales since 2016 and closing and reopening its online shopping options, there is a lot of ground to be made up.

The company is making plans to operate as usual while searching for a potential buyer. Chapter 11 will allow them to still operate the half of their locations not being closed, as well as online. They are asking the court to set March 23 as the bidding deadline for potential buyers.

# UNREAL



## FLORIDA LAWYER DISBARRED FOR TAKING CLIENT MONEY TO RUN STRIP CLUB

Brett Hartley has been suspended by the Florida Supreme Court for misappropriating client funds. Hartley took monies that belonged to clients and used them to operate his adult night club, called Flash Dancers.

Hartley is also required to reimburse the Florida Bar's client security fund.

No matter what the profession, there are always a few bad apples. And that is the bare-naked truth!

# WHERE'S KREKELER?

Attorneys **John Driscoll**, **Michelle Angell**, **Kristin Sederholm** and David Krekeler attended the 15<sup>th</sup> Annual Retreat of the Bankruptcy, Insolvency, and Creditors' Rights Section of the Wisconsin State Bar. Presentations included extensive discussions of court decisions issued over the past year, consumer bankruptcy issues and methods of detecting financial fraud. It also included taxes and insolvency issues, and the relationship between mental health and depression to bankruptcy. We learned a lot and had a good time doing it.

Attorneys **Michelle Angell**, **Kristin Sederholm** and **David Krekeler** attended a recent seminar on how the fees for Chapter 11 counsel should be evaluated. Those fees must be reasonable and necessary, and should provide material, tangible benefits to the bankruptcy estate. We attend seminars like this to make sure that all of our systems and processes are operating fully for the benefit of our clients.

## NEW ADDITIONS TO THE FIRM!



We are pleased to announce the addition of a new attorney to the Krekeler Strother SC team.

**Attorney Heather Jones** is a consumer law attorney who works primarily on Fair Debt

Collection Practices Act and class action work. She attended UW-Oshkosh and received her juris doctorate from Thomas Jefferson School of Law in San Diego.

Before coming to KS, Heather ran her own solo practice and is the current president of the Outagamie County Bar. She has recently joined the Dane County Bar Association and looks forward to getting involved.

When not engaging in case work, Heather enjoys taking long walks with her dog, Darcy, bike riding with her boyfriend, weightlifting and boating. She is also learning to sail.

Krekeler Strother SC is excited to welcome **Attorney Michelle Angell** to the firm.

Michelle attended The University of Wisconsin and received her juris doctorate from Thomas



School of Law in San Diego, California. She became a member of the Wisconsin State Bar in 2007 and has also been a member of the Bankruptcy, Insolvency, & Creditors' Rights Section for the same amount of time.

Michelle has 12 years of bankruptcy experience and has filed hundreds of bankruptcy cases. She has focused her practice on helping people change their lives for the better. She works hard for her clients to ensure they receive a fair and just outcome to their case.

Michelle works closely with her clients to guide them through the legal process, keeping them fully informed at all times and working with them to establish an enduring financial responsibility and personal independence.

In her free time, Michelle enjoys reading mysteries when she is not on an adventure with her sons.



Have a question? Idea for a future article?  
If you ask for it – we will write it!  
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