

KREKELER LAW REPORT



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STAYING FLEXIBLE IN TIMES OF CRISIS

When your business or your finances are under pressure, there are always measures that can be taken to help. We do this all the time for our clients.

But the COVID-19 pandemic presents an unusual situation. We do not know how long or how severe the outbreak will last. With no horizon to look to, we have a hard time knowing which strategies to employ. Yesterday I spoke with a client for whom we had planned to file a bankruptcy this month. His former business is closed, leaving far too much expensive litigation. His new business has started but will be unable to survive if all of his resources are devoted to litigating claims involving the old business. The old business has also saddled him with debt beyond his ability to pay. Bankruptcy looks like a perfect option to give him a fresh start.

COVID-19 has now decimated his new business. That business is very personal in nature, in the sense that he has hands-on contact with his customers, sometimes even going into their homes. His business is not essential under the terms of the Governor's Orders and must cease most of its activities.

The effects on the new business are devastating. Revenue is drying up and he has no means to pay his employees. We hear on the news about the government relief checks coming, but the details are not clear.

We have no idea when the cease business order will end, nor how his customers will feel about close personal contact even when that order has been lifted. He can expect, however, that many of his customers are suffering financially as well and may find that his service is not one they can afford or wish to spend their discretionary income upon even when his business can open.

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The end result is that we did not file the bankruptcy case. We have elected to remain flexible. In a worst-case scenario, the client will be unable to pay his mortgage, utilities, or the rent for the business. In six weeks, he may well have a great deal more debt than he does today.

So instead of filing bankruptcy we are hoarding cash and aggressively cutting expenses. We are making hard decisions about what to keep and what to let go. We are evaluating options in an environment that is changing daily. We need flexibility.

The client and I will maintain close contact (via social distancing) and will re-evaluate options as often as the changes hit us. I feel fortunate that I have dealt with this sort of situation, although on a much smaller scale, many times before. For example, I have had to help keep businesses alive while waiting for confirmation of a sale or a major loan. I have had to help farmers go on without knowing whether or not they would have the financing for their crop inputs in the spring. We have kept creditors at bay for businesses that were waiting the award of a major contract, which would either make or break their business.

But all of these situations had a reasonably determinable end date. COVID-19, at least so far, does not give us an end date.

For many of our clients, then, the strategy we are employing is to take measures to hold the business together while staying flexible to react. If you have ideas on how businesses, or even individuals, can stay flexible in these times, please share them. Thank you and stay healthy.

BLINDSIDED BY BANKRUPTCY

I recently received some political literature complaining about our economy. This was just before the COVID-19 outbreak resulted in economic devastation. The writer complained that her husband lost his job due to a bankruptcy filing, and implied that it was unfair that they were “blindsided” by the employer.

What she says may well be true, but she offers no solution. If businesses pre-announced their bankruptcy filings, they would almost certainly be forced into bankruptcy sooner. What suppliers will continue to deliver goods, knowing that the purchasing company is about to file bankruptcy? Lenders could stop extending credit and could call loans due, as most commercial loans contain a “deemed insecure” clause. This provision allows the lender to declare default if it reasonably believes that it is not properly secured and will not get paid.

Many of the employees would immediately seek other employment and would not likely inform the struggling business that they were leaving. Without employees how would the struggling business solve its problems?

We know that when employers give notice as required by federal and state law, many employees leave before the 60 days is up.



2ND OPINION

We often get clients who want a 2nd opinion. Examples of why they are seeking another opinion included:

- They were told they made too much money to file bankruptcy.
- They could not successfully reorganize.
- They were told there is no way to save their home.

No lawyer should ever be offended by a client wanting a 2nd opinion. In large law firms the associates' work is routinely received and scrutinized by more senior lawyers. That is standard practice.

It happens with medicine all the time. UW Health even had an ad campaign promising that every patient gets a 2nd opinion. That 2nd opinion provides peace of mind.

In our firm, most of our clients get a 2nd set of eyes looking at their cases. Almost all of my clients do. I meet with my client, setting goals and designing strategies to achieve those goals.

Then staff attorneys, paralegals, and staff carry out that strategy. They keep me informed so I can provide that 2nd set of eyes.

I tell my clients how this works and how it saves them money in the long run. They can contact me anytime and I will know what is going on in their matters, and strategy decisions are always made by them and me.

This does not mean that our other attorneys and even our experienced paralegals have no input. Of course they do. But my clients deserve and get a 2nd opinion as a matter of course.

HOW SOME LAWYERS ARE LIKE PREHISTORIC PEOPLE



Long ago our ancestors hunted and gathered, then learned to control fire, and domesticated cattle. They passed down their knowledge by word-of-mouth, as neither paper nor pen, nor typewriter, nor keyboard had yet been invented.

The stories told changed over time, as no one has the ability of exact recall. The more complicated the story, the more difficult the recall and retelling. This in part explains why many civilizations cherish similar yet different versions of the same story, myth or fable.

Today the world is far more complicated, and the work of lawyers is both complex and detailed. Yet many lawyers still run their practices solely by word-of-mouth. They verbally give an employee instructions on how tasks should be performed. When that employee moves on, the process must be repeated again. And again. And again.

But these are not prehistoric times. We easily have the ability to document the work we do, with instructions so that someone else could later do some or all of that work in the same way we did it.

My firm solves financial problems for businesses and people. A lot of our work is bankruptcy, which is an intense information gathering exercise. Much of that information gathering is the same process for every client. We save lots of time, and save our clients lots of money, by having documented processes and systems for our repetitive tasks.

If a newer lawyer is filing a motion of some type for the first time, we have checklists to help and assist. Sure, we have samples as well, but a checklist is far more comprehensive than having to sift through numerous examples.

We have systems and processes for administrative tasks as well. Standardizing our processes helps us deliver service in the best way every time for every client.

TAX TIPS TO HANDLE THE ECONOMIC IMPACTS OF COVID-19

Many taxpayers will be facing financial challenges as stay-at-home orders continue and even when the economy reopens, many will be reeling back from the impacts of COVID-19. Below are some tips to remember that may provide some financial help and avoiding surprises during tax time next year:

1) Tax Withholdings and Estimated Payments – Whether you are receiving unemployment or having to join the *gig economy* due to a job loss, remember these two things: 1) unemployment income is taxable, so elect some taxes withheld to avoid owing too much when you file your taxes, 2) if a job loss led you to self-employment, do your best to make estimated tax payments quarterly. These payments can be made online for both federal and state taxes.

2) Retirement Account Withdrawals - The CARES Act passed by Congress allows taxpayers who are under 59 ½ to make a withdrawal from a retirement account without incurring the usual 10% penalty. Additionally, this provision in the Act will allow for 3 years to pay any taxes owed on the withdrawal as it is still taxable income. It is still important to check how the withdrawal may affect your retirement planning.

If you filed your taxes prior to the announcement of the July 15 tax deadline and already contributed to an IRA, you may withdraw the retirement contribution without penalty. However, you will need to amend your 2019 tax return to remove the credit claimed.

3) College Tuition and Expenses Refund – If you or your dependent paid for college tuition out of a tax favored account and the school agrees to a refund, try to request them to refund it back to the college savings account. If you receive a check from the school, it must be put back within 50 days of the refund or it will be subject to tax and a 10% penalty.

The key in avoiding tax surprises is: Tax Planning. Before you move money around during this difficult time, feel free to contact us to discuss possible tax implications and how to save on tax liabilities.

Speaking Engagements

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

WHERE'S KREKELER?

WISCONSIN FARM CENTER

David Krekeler met with members of the Farm Center via video conference to discuss farm bankruptcy issues. Some of those issues included Wisconsin exemption laws, Chapter 12 farm reorganizations and the new Small Business Reorganization Act.

The Wisconsin Farm Center provides information and support to Wisconsin's farmers and farm communities. We often call upon the Farm Center to assist our clients with the preparation and analysis of financial information.

Thanks to Jayne Krull and her team for providing valuable services to our farm communities. You can reach them at 1-800-942-2474. We are always happy to help them in any way we can.

If your group would like to schedule a meeting with us to learn about bankruptcy issues for any type of business, please contact us.



Mother's Day was May 10th. We hope you were able to spend time with the favorite mom in your life, either in person or through social distancing.



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

NEW ADDITION TO THE FIRM!



We are excited to introduce the newest addition to our firm: **Attorney May LaRosa!**

May is originally from San Diego, CA. She attended the University of Baltimore, MD where she received her BA in Jurisprudence. She then went to the

Thomas Jefferson School of Law for her JD. She is currently finishing up her LLM in Taxation with one semester to go!

May is a member of the Lawyer's Club of San Diego, the San Diego County Bar Association, and she recently joined the Dane County Bar Association.

Prior to becoming an attorney, May was a licensed tax professional in California working on individual and business tax return. Her passion is advocating for clients facing trouble with government tax agencies.

May and her family are currently enjoying exploring Wisconsin as much as they can. They hope to find new favorite restaurants once businesses are able to reopen and are creating a list of places to visit once the weather gets a little warmer. Having moved from California, it is still jacket weather in their minds. May also loves video games and was able to play test for Microsoft's Xbox during its early years.

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