



Editor: Diane Slomowitz

**YOU CAN'T TOUCH THIS:
COLLEGE SAVINGS ACCOUNTS**



By Michael G. Koutnik

It's a common scenario: a customer refuses to pay, forcing a business to incur legal fees and court costs suing to recover the money owed.

Once a judgment is obtained, the money must be collected, which is often more difficult than obtaining the judgment itself.

One way debtors may seek to avoid collection is by putting money in assets that are exempt from creditors.

Section 815.18 of the Wisconsin Statutes exempts nineteen types of assets, including life insurance and certain retirement accounts, from attack by

creditors.

A January 5, 2015 decision from the federal Seventh Circuit Court of Appeals provides new, pro-debtor, guidance on one of §815.18's potential exemptions, for education savings accounts.

The case involved Leonard Bronk, who was facing bankruptcy from hundreds of thousands of dollars in medical expense debt.

In May of 2009, Bronk funded five EdVest college savings accounts, to benefit his grandchildren, by borrowing nearly \$100,000 against his home. A few months later, he filed for Chapter 7 bankruptcy.

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**FOS FOUNDER WILLIAM FOX 2015
LEADER IN THE LAW**



FOS congratulates firm founder and senior shareholder William Fox for being honored as a 2015 Leader in the Law by the *Wisconsin Law Journal*.

Bill was recognized as one of Wisconsin's top legal professionals based on his outstanding leadership, vision, and legal expertise, according to the *Wisconsin Law Journal*.

Bill will receive his award, along with a video tribute, at a March 18, 2015 dinner at the Pfister Hotel in Milwaukee.

Bill will also be profiled in a special section of the *Wisconsin Law Journal*.

FOS TOP RANKED IN 2015

Fox, O'Neill & Shannon, S.C. has been named a national 2015 Top Ranked Law Firm by American Lawyer Media, in conjunction with *Fortune® Magazine*.

FOS and its award are highlighted in the special section of *Fortune® Magazine's* Special Edition *Investor's Guide 2015*, featuring the "2015 United States Top Ranked Law Firms."

FOS will also be listed in the online editions of Law.com and FOR-TUNE.com.

FOS was previously named a 2014 Top Ranked Law Firm.

American Lawyer Media is a leading provider of news and information to the legal industry.

Martindale-Hubbell™ is a national attorney resource, which rates attorneys based on peer review results.

In addition to the firm's own top ranking, FOS's attorneys have been individually top ranked in multiple specialties, including real estate, employment law, and taxation.

**PROTECT YOUR COLLEGE-AGE
CHILDREN THROUGH HEALTH CARE
POWERS OF ATTORNEY**

For young adults, turning 18 means freedom and independence.

For their parents, it should mean health care powers of attorney.

A health care power of attorney gives a third person (here, usually a parent) the authority to act for the signer if the signer cannot act for himself.

Young adults are notorious for accidental injuries. Without a health care power of attorney, you may not be informed of your child's accident or other health care issue. Even if

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NEW OPPORTUNITY FOR AFTER-TAX RETIREMENT PLAN CONTRIBUTIONS

SEARCH ONLINE COURT RECORDS WITH CARE



By Allan T. Young

Many employer retirement plans now allow participants to make contributions to a Roth 401(k) plan account. These contributions are after-tax contributions, but the earnings are tax-free when distributed.

Before Roth 401(k) plan accounts were allowed, many employer plans allowed participants to make after-tax contributions to the plan and some still do.

While a distribution of the after-tax amount is not taxable, the earnings on the after-tax amounts are taxable.

Distributions are considered to include a pro rata share of both earnings on the account and the after-tax contributions.

For example, if the account balance is \$100,000.00 and

consists of \$80,000.00 of after-tax contributions and \$20,000.00 of earnings, a distribution of \$50,000.00 would carry out \$40,000.00 of tax free after-tax contributions and \$10,000.00 of taxable earnings.

This same pro rata distribution scheme applies if a distribution from a retirement plan was rolled over to multiple IRA's. Each rollover would be treated as having a pro rata portion of the after-tax contributions and the earnings on those contributions.

In September, the IRS issued Notice 2014-54, which is generally effective on January 1, 2015. The Notice provides that all distributions from a retirement plan made at the same time are treated as a single distribution even if they are sent to multiple destinations.

As a result of the Notice, a taxpayer can rollover after-tax contributions to a Roth IRA and rollover the earnings on the after-tax contributions to a traditional IRA. The only requirement is that the rollovers occur at the same time.

The best method to do so is to directly transfer all amounts to the two IRA's on the same day.

The advantage of this technique is that all subsequent earnings on the after tax contributions will be forever tax free as long as the Roth IRA rules are satisfied.

For taxpayers with after-tax contributions in their employer retirement plan accounts, this change offers a significant planning opportunity that should not be overlooked when retiring or changing jobs.



By Diane Sломowitz

Many clients use the Wisconsin circuit court website, known as "CCAP," wcca.wicourts.gov, to obtain information about state civil and criminal court cases.

CCAP information includes a case's parties, judge, a list history, and status.

One using CCAP, however, must be careful to avoid liability by unwittingly using such information for illegal purposes.

For example, a potential employer may not generally discriminate against a job applicant based on an arrest or conviction record. It cannot ask about arrests, other than pending charges.

You Can't Touch This

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During the bankruptcy proceedings, the Bankruptcy Trustee argued that the education account exemption only applied to beneficiaries.

In other words, if one of Bronk's grandchildren filed for bankruptcy, the accounts would be exempt from creditors, but that same protection would not extend to Bronk as the account's owner.

The Seventh Circuit, overturning the lower court, held that

the college savings account exemption applies to both the account beneficiary and owner.

As a result, the account could not be touched by owner Bronk's creditors.

The interpretation of a state statute by a federal court is not binding on Wisconsin state courts.

However, Wisconsin courts will likely look at this decision for guidance as persuasive authority.

Importantly, §815.18 ap-

plies not only to bankruptcy, but to any attempt by a creditor to execute on the assets of a debtor to collect a judgment.

This case highlights why obtaining a judgment against a debtor does not itself guarantee a recovery. It also shows why conferring with a collection recovery attorney can increase your odds of success at recovering the amount of the judgment.

Your FOS attorney stands ready to help you in your collection efforts.

If an employer refuses to hire a qualified applicant because of a conviction, that offense must be substantially related to the particular job's circumstances.

This is just one example of how an employer's innocent CCAP search can unintentionally open a can of worms.

FOS can help you use CCAP information legally, and lessen potential liability.

MAKE SURE THAT YOUR ADVERTISING ISN'T FALSE



By Michael J. Hanrahan

Imagine that you are the owner of a company that sells used manufacturing equipment.

Over the years, you have sold a couple pieces of a certain type of equipment to a company, so when that type of used equipment came into your inventory, you called up the company and told them what you knew about that used equipment, including specifications.

You offered to sell the equipment "as is." The company inspected the equipment and bought it, only to realize later that a specification that you described over the phone was inaccurate.

If this transaction occurred in Wisconsin, you may have

committed "false advertising" under Wisconsin Statute §100.18.

In order to prove false advertising under the statute, a plaintiff must show the following: (1) that defendant made an advertisement to the public relating to the purchase of merchandise; (2) that the advertisement was untrue or deceptive; and, (3) that Plaintiff sustained a monetary loss because of the advertisement. *Tietzworth v. Harley-Davidson*, 270 Wis.2d 146 (2004).

A violation of §100.18 is a particularly serious legal claim, because a successful plaintiff is entitled to an award of compensatory damages and actual attorneys fees.

Can the seller avoid liability by arguing: "This law should only apply to consumer trans-

actions, and this was a business transaction?" No. Section 100.18 does not exclude business transactions from its scope. *Stoughton Trailers v. Henkel Corp.*, 965 F.Supp. 1227, 1236 (W.D. Wis. 1997).

Can liability be avoided by arguing: "I didn't produce an advertisement about that equipment; I just made a phone call and talked about it?" No. A verbal communication can be an "advertisement." *Grube v. Daun*, 173 Wis.2d 30, 57 (1992).

Can liability be avoided by arguing: "I didn't advertise to 'the public' because I just made one call?" No.

One person can constitute "the public." *State v. Automatic Merchandisers*, 64 Wis.2d 659, 664 (1974).

Can liability be avoided by arguing: "I sold the equipment 'as is,' so the responsibility to check out the equipment was on the buyer?" No.

By enacting §100.18, the legislature chose to provide remedies for false advertising that did not exist at common law and allocating risk by contract is "either irrelevant to, or inconsistent with that legislative choice." *Kailin v. Armstrong*, 252 Wis.2d 676, 709 (Ct.App. 2002).

Section 100.18 can be a trap for the unwary seller and a powerful weapon for a wronged buyer.

The takeaway for sellers is to be careful about what you say or write when selling a product.

Contact your FOS attorney if you have any questions about this law.

FOS ON THE MOVE

FOS shareholder **Matt O'Neill** is a judge in the Third Annual Terrance T. Evans Humor and Creativity in the Law Competition, sponsored by the Eastern District of Wisconsin Bar Association. The competition honors the legal wit of the late Seventh Circuit Judge Terrance Evans.

FOS shareholder **Mike Hanrahan** will participate in a fraud prevention/recovery seminar in April, 2015 at the Country Inn and Suites in Brookfield, Wisconsin.

Mike will speak on the legal issues related to financial frauds, such as embezzlement, and the legal avenues to recover monetary losses. The seminar is sponsored by BMO Harris Bank and accounting firm Winter, Kloman, Moter & Repp.

FOS shareholder **Al Young** regularly presents the topic "Estate Planning Potpourri" to public and private groups throughout the state. For more information, call 414 273-3939 or email info@foslaw.com.

Protect Your College-Aged Children
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you are, you may have no say in your child's treatment.

This is particularly frightening for parents with children away at college.

For an 18th birthday present, your child may be nagging you for that car he covets or that vacation she "must have."

Good luck with those.

Whatever else you give your

child, give him or her an extra, very special gift—have your child properly execute an appropriate health care power of attorney.

Then, have your child keep the document with him or her. And keep a copy for yourself in a secure place.

A health care power of attorney is the perfect present for your child, and also a gift for you.

It's cheaper than a car or fancy vacation, and priceless for your peace of mind.



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TAKE A NEW LOOK AT THE MILWAUKEE YMCA



By William R. Soderstrom

For the last 12 months, Mike Koutnik, a real estate associate at FOS, and I have been honored to be assisting the Milwaukee YMCA in a myriad of real estate issues.

The Milwaukee YMCA has been a great force for good in our community for over 150 years. The lives that organization has affected, for the better, are countless. Milwaukee is so much better as a result.

Unfortunately, the Y's ex-

pansion efforts ran squarely into our recent bad economy. The result was a bankruptcy this spring.

The YMCA emerged from bankruptcy at the end of January, 2015, with a cleaned up balance sheet, a leaner structure, and a new mission focusing on the urban Milwaukee community.

Our role was to represent the YMCA in the disposition of certain of its real estate properties.

We were all very pleased that it was successful in selling one location to one

of the most respected charter schools in the area, and four other locations to suburban Ys, which will continue those operations.

As part of that representation, we worked very closely with Julie Tolan, the YMCA's President, and Jack Takerian, its Senior Vice President in Charge of Operations.

Mike and I couldn't help being impressed by the intelligence, expertise, dedication and good cheer the senior YMCA management brought to a difficult situation.

Through their efforts, they have preserved one of the great Milwaukee institutions, and put it on solid footing to influence many more generations of young Milwaukeeans. It was a great result.

There are any number of worthwhile charitable organizations in Milwaukee, doing great work for our community.

However, I would ask you to take a look at the new Milwaukee Y. It could use help now as it revamps and pursues its new mission, which will benefit us all for years to come.