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WFJ Celebrates 75 Years of Relationships!

Earlier this year, Wagner, Falconer & Judd, Ltd. celebrated Alan Falconer's 40 years of service. Now we commemorate another important milestone - our 75th Anniversary.

On **Thursday, October 11, 2007 from 4 p.m. to 7 p.m.**, the firm is hosting an open house in its Minnesota office located at: 1700 IDS Center, 80 South 8th Street, Minneapolis, Minnesota 55402-2113. **You are cordially invited to attend.**

The firm was originally founded by Clarence J. Wagner in 1932 and has grown to 35 attorneys and more than 70 employees. We have offices in Minneapolis, Milwaukee

and La Crosse, Wisconsin.

Although the firm has remained focused on matters involving commercial law and credit/collection matters - especially contract and collection matters in the construction industry - our practice areas have grown. According to Alan Falconer, Chairman:

Over the past 15 years the areas of practice and geographical reach have expanded, to now include personal injury, civil and commercial litigation, business services, general corporate work, family law, criminal law, and estate planning. Our commercial

collection practice involves all 50 states, Canada and Mexico and our business clients are operating in multiple states and countries. We could only have achieved this growth through loyal clients and long standing relationships. Our clients are also our friends and neighbors and we very much appreciate the trust and confidence placed in us.

WFJ is pleased to have achieved 75 years of service and we hope you can set aside this time to help us celebrate.

Minneapolis Office

1700 IDS Center
80 S. 8th Street
Minneapolis, MN
55412

Milwaukee Office

325 North Corporate Drive
Suite 100
Brookfield, WI
53045

La Crosse Office

205 5th Avenue South
Suite 328
La Crosse, WI
54601

Collection Overview: An Attorneys Perspective

In previous articles we addressed the importance of a careful and thorough credit application process, the effective use of pre-suit collection tools, and the litigation process.

But what happens when the attorney for the creditor is successful in obtaining judgment against the debtor? Does that mean the creditor automatically receives the money it is owed? Although

it is possible for a debtor to quickly satisfy a judgment, the more common practice for the debtor is to continue "delay tactics" even after the judgment has been entered. Fortunately, there are post-judgment collection tools available to attorneys to aid in the enforcement of judgments.

Part IV: Post-Judgment Collection Tools

A judgment is the final determination of the rights of the parties in an action or proceeding. If a creditor is successful in a collection suit, a judgment confirms that the debtor owes the creditor a specific sum of money. Unfortunately, the court does not, on its own initiative, force debtors to pay just because a judgment has been entered. However, a creditor's attorney has numerous tools with which he or she may enlist the court's

assistance in collecting on a judgment. Some of these tools include Execution, Garnishment, and post-judgment discovery.

The Judgment:

Upon request, a court administrator will docket the Creditor's judgment. Once this is completed a docketed judgment is a lien on all non-exempt real property then or thereafter owned by the debtor in the county where the judgment is docketed. For a judgment to become a lien on non-exempt real property in a different county, the creditor's attorney must file a transcript of the docketed judgment with the court administrator of that county. Once the judgment is docketed there, it then becomes a lien on all non-exempt real property in that county. In many states, a judgment survives, and the lien continues, for a number of years after its entry. By monitoring the dates carefully a creditor's attorney can often begin an action to renew a judgment for an additional period of time as long as this action is commenced prior to the expiration of the statute of limitations covering judgments.

Execution:

Judgments requiring the payment of money or the delivery of real or personal property are enforced by Execution. There are two kinds of Executions: one against the property of the debtor and the other for the delivery of real or personal property to the judgment creditor. In order to enforce a judgment, in most states the creditor's attorney must first obtain a Writ of Execution. A Writ of Execution is an order of the court directed to the sheriff for the purpose of enforcing the court's judgment. Armed with a Writ of Execution, the county sheriff may then levy on the debtor's personal property, earnings, or funds at a financial institution – to get you paid.

Many states also provide a method for the creditor's attorney to attempt collection by pursuing money owed to the debtor by a third party. In Minnesota this procedure is known as Attorney Summary Execution. When using Attorney Summary Execution, no more than \$10,000.00 may be recovered by a single execution levy. Typically, Attorney Summary Executions are used to levy funds of a judgment debtor that are held on deposit at a financial institution. However, Attorney Summary Executions may also be upon earnings. If you assumed the Attorney Summary Execution procedure is similar to a Garnishment, you are correct.

Garnishment:

Generally, Garnishment is a statutory proceeding that authorizes enforcement of a money judgment against property of the debtor that is held by a third party. The third party is known as the garnishee.

The creditor's attorney may attempt to garnish both earnings and non-earnings. While the exact procedure varies from state to state, each state typically requires the creditor to serve the debtor with a summons, disclosure form, and an exemption notice. Similar to the Attorney Summary Execution, the creditor's attorney may also garnish funds in a financial institution.

In both Attorney Summary Execution and Garnishment procedures, the creditor's attorney has the ability to "seize" the funds of judgment debtors. Often the success of a Sheriff's Levy, Attorney Summary Execution, or Garnishment is dependent upon the quality of the information known about the judgment debtor's assets. Post-judgment discovery may be used by a creditor's attorney to both obtain crucial information concerning a judgment debtor's assets and liabilities,

as well as to compel payment of an outstanding judgment.

Post-Judgment Discovery:

Many states also provide for interrogatories, depositions and other methods of discovery after a judgment is entered so the judgment creditor may obtain information that may assist in collection.

Another post-judgment discovery tool involves obtaining a court order in Supplementary Proceedings. Judgment creditors may apply to the court by affidavit for an order compelling judgment debtors to appear before a court reporter to be examined under oath as to their assets and liabilities. Unlike depositions, a Writ of Execution must be first returned unsatisfied by the sheriff's office before an order in supplementary proceedings will issue. This order essentially has the same effect on a debtor as a Subpoena and Notice of Taking Deposition to compel debtor's testimony and a production of debtor's records. The Minnesota Rules of Civil Procedure allow the District Court to hold the debtor in Contempt of Court for failure to obey a court order in Supplementary Proceedings.

Another method some states allow to discover a judgment debtor's assets and liabilities is through the use of an Order for Disclosure. A judgment creditor's attorney may request an order from the court requiring the debtor to provide the creditor, or creditor's attorney, with information regarding the nature, account, identity of, and location of all the debtor's assets, liabilities, and personal earnings. The creditor's attorney completes a Request for Order for Disclosure and sends it to the court administrator. An Order for Disclosure and a Financial Disclosure Form are then mailed by the District Court Administrator to the debtor. The debtor has a number of days to complete the disclosure form and return it to the creditor or creditor's attorney. The form requires

the disclosure of bank, asset, and place of employment information. Failure to return the completed Financial Disclosure Form within ten days may subject a debtor to Contempt of Court proceedings, similar to cases where the debtor fails to obey a subpoena or order in Supplementary Proceedings.

Post-judgment discovery tools assist a creditor's attorney in determining loca-

tion, nature and type of assets and liabilities. They also will often serve as an effective tool in obtaining payment when the judgment debtor finds itself in Contempt of Court.

Conclusion:

Obtaining a judgment does not always result in immediate payment of a debt. However, post-judgment tools such as

Attorney Summary Execution, Garnishment, Depositions, Interrogatories, Supplemental Proceedings and Orders for Disclosure are available to creditor's attorney to find assets, enforce judgments and encourage payment.

Estate Planning— Why It's Important for Everyone

Perhaps you grew up thinking that having a lawyer draft a "simple will" was all that was needed to make sure your property was properly distributed when you pass away. Unfortunately, today given the complexity of tax laws, the increasing value of many people's estates and the complicated legal issues surrounding health care decisions, a simple will no longer affords many individuals and families with the protection they need. For that reason, many people benefit by organizing an estate plan ahead of time. Although establishing an estate plan can seem overwhelming, a good plan can accomplish many goals that can help address a variety of situations in advance. Here are some examples of situations that can develop and how estate planning helps prevent delay, cost and helps ensure your wishes are carried out.

Understanding the Value of Your Estate. In our busy world many people never take the time to record a complete copy of their assets - everything from real estate to checking accounts to retirement investments to personal property and keepsakes. We often could not accurately detail our net worth. Recording this information is valuable for insurance purposes (it creates a track record of ownership), but is also a vital part of estate planning to ensure your assets are recorded and "counted" against the value of your estate for planning purposes. It also ensures your will and other legal documents arrange to pass the property according to your personal instructions.

Health Care Directives. These documents may be prepared at any time while a person is competent to read and sign them. Often, however, these documents are drafted in connection with creating a will or estate plan. The purpose of having a health care directive is to help you prepare for your own incapacity or incompetence so that any decisions regarding extraordinary life saving measures and nursing home care are dealt with in advance. Without this planning a family might be left to "guess" or piece together what you really want at a time when they may be least capable of making good decisions on your behalf. This was the situation that led to unfortunate litigation and media attention surrounding the Terry Schiavo life support issues - all of which could have been easily prevented.

Tax Planning. Having a good estate plan can help you take advantage of tax laws designed to minimize taxes through a variety of trust vehicles to prevent unnecessary taxes on your estate. There are also portions of the tax code that allow you to make private, charitable donations to an IRS qualified non-profit organization to minimize your tax exposure.

Avoiding Probate Court. Taking an estate through probate court can delay passing on property to your beneficiaries, escalate attorney's fees and probate costs, and provoke divisions and disputes among family and friends when your wishes have not been clearly stated in writing. All of us would agree that

avoiding these problems are worthy goals, but without advance planning, probate court is inevitable.

Avoiding probate court is perhaps even more important when a business is involved. A good estate plan can create an orderly succession of your business and ensure the business continues smoothly upon your death.

Caring & Planning for Others. Through a trust, you can plan in advance to have funds set aside and a trustee to help look after a family member, such as an elderly parent or grandchild, whose life might become more difficult without you. The trust can place constraints around how and when the money may be spent in keeping with your goals and strategies for that person's needs.

Once you have an idea of what you want to accomplish with your estate plan, your attorney can help you chose the appropriate combination of wills, trusts and powers of attorney to accomplish your goals. It is also important to realize that an estate plan is an ongoing commitment and will change as your life changes.

Please contact **Mark Criner** or **Naomi Howland** of Wagner, Falconer & Judd, Ltd. to discuss your situation. We can be reached at 80 South Eighth Street, Minneapolis, Minnesota 55402. 612-339-1421.

WFJ Hosts First Annual Business Symposium

On June 22, 2007 the Business Services Team of WFJ hosted our First Annual Business Symposium at the IDS Center in Minneapolis. We were pleased at the response and are excited to share with you an overview of the day.

The symposium began with Mr. Hugh H. Welsh, former Assistant General Counsel for the New York Port Authority, giving us valuable insights into the lessons learned from September 11, 2001 and the aftermath he experienced. Mr. Welsh was working at his desk nearly 60 floors above the ground when the first plane struck the World Trade Center. Having an evacuation plan in place, he immediately got together with the other people on his floor and they started making their way down the many flights of stairs to the ground level. After departing the building, he and other officials went to a nearby hotel. Shortly after evacuating, the towers collapsed. Mr. Welsh shared inspiring stories from that

day and the days following the disaster as well as relayed to the audience valuable suggestions regarding crisis planning and prevention.

Other presenters focused on proactive actions "in house" employees can take to help prevent problems before they cause disruption and damage to a corporation's image and profitability. Mr. Gary J. Van Domelen, who leads the Business Services Group at WFJ, offered suggestions on how to use "Product Incident Information" to help prevent product liability lawsuits, recalls and negative publicity. Mr. Jonathan Remshak, Senior Corporate Counsel for Konica Minolta Business Solutions, Inc. USA in New Jersey, provided a roadmap for creating successful partnering with outside counsel. Mr. Alan Falconer, Chairman of WFJ, led a panel discussion with Mr. Patrick Middleton, Director of Financial Services with McQuay Air Conditioning; Mr. Richard Rappa, Manager of Credit and

Collections with Greenheck Fan Corporation; and Mr. Patrick Riehl, Former VP Finance with Trane Commercial Systems, on how corporate legal and credit departments add value in today's business climate.

Two other speakers rounded out the forum and added perspective about the changing nature of our courts and the need to work toward a positive work life balance.

We were pleased to have been able to put on such a successful event. Copies of the PowerPoint presentations are available for viewing at www.wfjlt.com.

Look forward to information about next year's program coming soon.

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