

KREKELER LAW REPORT



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PRESIDENTS DAY.....BANKRUPTCY DAY?

by Mark Watson

As we celebrate Presidents Day on February 16, we're reminded that there is no National Bankruptcy Day. If Congress ever decides to commemorate this integral piece of our financial system, February might be a fitting month, as almost 10% of our presidents have filed for bankruptcy protection.

Our third President, Thomas Jefferson, inherited a great deal of debt when his father-in-law John Wayles died in 1774. For the next 50 years, Jefferson carried this obligation which was still over \$100,000 at the time of his death in 1826. He received little relief from the short lived Bankruptcy Act of 1800 and it was mostly his stature in the public eye that kept his creditors at bay.

"Honest Abe" Lincoln, our 16th President, was forced to declare bankruptcy in 1833 as a result of a failed business venture. Without modern debtor protections, his creditors sued him and took his last remaining assets, his horse and surveying gear. He was required to pay back his debts in 17 years, much longer than today's Chapter 13 limits. Today's laws would have allowed him to keep his assets and discharge his debts.

After a tumultuous two terms trying to heal our splintered nation, our 18th President, Ulysses S. Grant returned to private life, where he had failed in almost every venture. He soon was involved in a Wall Street investment firm where his partner, Ferdinand Ward, stole investor money putting Ward in prison and forcing Grant to file bankruptcy in 1884. Supported by the Congress' Bankruptcy Acts of 1841 and 1867, Grants filing was voluntary as the Nation moved to establish the modern concepts of debtor-creditor relations.



In 1893 during his second term as Governor of Ohio, our 25th President, William McKinley, filed for bankruptcy as a result of cosigning a loan for a friend whose business failed during that year's depression. Because of more contemporary views on the subject of debt relief, he was able to extricate himself quickly and consequently won the 1896 Presidential Election by one of the largest popular vote totals in history. And it was his administration that oversaw the Bankruptcy act of 1898, known as the Nelson Act, which is the immediate predecessor to today's Bankruptcy Code.

These men are some of the most popular and influential Presidents in United States history. They served with distinction through some of the most difficult and trying times our country has ever experienced. Because of the options provided by the concept of debt relief, they are remembered for their deeds, not their personal finances. Perhaps it's time to consider a National Bankruptcy Day. In some ways, it's what our country was built on.

Other Political Debtors:

- *Samuel Adams*
- *Daniel Boone*
- *Thomas Paine*
- *Harry Truman*

DOES BANKRUPTCY PROTECT A SPOUSE **WHO DOES NOT FILE?**

A client of mine called last week, quite irate, that a creditor had served his wife with an Order to Appear for a Supplemental Examination. The client had filed bankruptcy and received a discharge, but his wife had not joined in on that filing. He thought that the creditor, who had obtained a judgment prior to the client's bankruptcy filing, should be prohibited from proceeding with this collection activity. He remembered our prior discussion in which I informed him that the bankruptcy discharge would prevent collection activities against him or his assets.

He had forgotten, though, the rest of the discussion. His bankruptcy discharge does not affect the rights of the creditor to collect from third parties and their assets. Because Wisconsin is a community property state, all marital property went into the debtor's bankruptcy estate. All of his property was exempt, and thus reverted back to him upon the conclusion of his case. The creditor is prohibited under the bankruptcy code from seeking to recover from community property, including that acquired after the bankruptcy case.

This discharge injunction does not apply to individual property of the debtor's spouse. For that reason, the creditor can proceed with its examination of the wife and collection of the judgment from her individual assets, if any. In this particular instance, she has no such property. Debtor-Creditor laws are complex, so be sure you have an advocate who fully understands them.



MEDICAL DEBT TROUBLES MANY

More than half of all overdue debt shown on credit reports are medical bills. Nearly 43 million people have delinquent medical debt on their credit reports. For about 15 million people, their only debt in default is medical debt.

More than one study has found that medical bills are the largest single cause of bankruptcy filings. Even excluding those persons obtaining bankruptcy relief, more than 20% of the adult population has problems with healthcare costs.

We know, because many of our clients have had to file bankruptcy due to medical bills. Don't let these problems ruin your financial health, as well as cause a loss to your family. Contact us to discuss the options available for dealing with these problems. These options include not only bankruptcy, but other authorized payment plans and negotiated settlements.

DISCHARGEABLE STUDENT LOAN DEBT IN THE HOUSE

by Mark Watson

On January 22, the ever expanding student loan debt issue in our country again landed at the door of the United States Congress. Maryland Rep. John Delaney has introduced a bill allowing student loan debt to be discharged in a bankruptcy. The Discharge Student Loans in Bankruptcy Act (H.R. 449) seeks to provide relief for individuals facing a financial crisis of which student loan debt is a substantial cause.

Although usually an unsecured debt, student loans are treated differently than any other financial obligation. While most debts are dischargeable, student loans can be discharged only if the debt would “Impose an undue hardship.” Our courts have interpreted this language to be the rough equivalent of the debtor facing an “eternity of hopelessness.” At least in part due to this treatment of student loans in bankruptcy, American student loan debt has surpassed \$1 trillion. The delinquency rate, has outpaced all other consumer debt. Graduates of the Class of 2014, the most indebted class in history, will leave school with an average \$33,000 in student loan debt. And in the last 20 years the number of Bachelor’s degree graduates leaving with student loan debt has increased by 30%.

We have been following student loan legislation for quite a few years, and do not expect this new bill to be enacted. In the meantime, we continue to work on other solutions for clients struggling with student loans. For many people, there are remedies other than bankruptcy.



DID YOU KNOW?

Bankruptcy concepts date back to at least biblical times. The Book of Deuteronomy provides that debts should be cancelled at the end of 7 years.

Deuteronomy 15:1-2

DOES BANKRUPTCY



VALENTINE'S DAY?

by Mark Watson

Happy Valentine's Day! While celebrating Cupid and hearts and love, few people think about how bankruptcy and financial relief tie into Valentine's Day. But fixing financial problems can keep a couple together.

Multiple studies have shown divorce filings rise as much as 40% just after Valentine's Day. Other studies show that the major cause of divorce is financial infidelity. These two phenomena may not be mutually exclusive.

Why February? If your New Year's Resolution was to split from your spouse, it may take you a month to prepare your filing. The promise and amount of a year-end bonus or pay raise can delay a marital decision. Many people don't want to file for divorce during the holiday season and February is their first option. The impending tax season and the inherent benefits of filing singly or jointly can enter in to a decision to split up. And finally, in a rocky relationship, how much effort your spouse puts into February 14th may be the tipping point that decides whether you split or stay together.

There is no good time of year for a marriage to break up. And Valentine's Day, with its hearts, cupids and candies, may be the most poignant time to enter into such an action. We, in the insolvency community, know that financial problems and marital problems often go hand-in-hand. Solving the financial problems sometimes keeps a marriage together.

As we enter this annual time of hearts and flowers, perhaps it's time to take an honest look at you and your spouse's finances. If problems exist, consult with an insolvency professional to see what can be done to alleviate financial stress. It may be the greatest Valentines gift you can give. It may save your marriage.

WHERE'S KREKELER?

David Krekeler is playing a major role in a series of seminars put on by the State Bar of Wisconsin called the "*Business School for Lawyers Roundtable Series*." David will be taking part in the research, material preparation, and presentation on all of the below topics, to attorneys that want to learn more about owning and operating their own firm. We believe that knowledge about business is a major reason why we can help keep businesses in business.

Entrepreneurship: January 20

Business Plans: February 17

Operations: March 17

Financial Management: April 21

Marketing Plans: May 19

Human Resources: June 16

Law Firm Ethics: July 21

The Bankruptcy Insolvency & Creditors Rights (BICR) section, (of which J. David Krekeler is current chair) will be hosting its 10th annual Education/Social Retreat on March 5th and 6th. Our Attorneys and paralegals gather for Judge updates, by both local and national judges, and breakout sessions relating to hot topics in Chapter 7 and 13 Bankruptcy. Continuing Education is a requirement in our firm, so we can always advise our clients on the latest strategies and techniques for dealing with financial problems.

Have a question?

Idea for a future article?

Unsubscribe?

Contact Deanna at dgajewski@ks-lawfirm.com.