

KREKELER LAW REPORT



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Giving Thanks

As Thanksgiving approaches, I am again reminded that the practice of law, and especially our practice, is not just another business. Helping people and businesses solve financial problems, keeping people employed and families protected, and preserving wealth: That is what we do, and I am thankful for the opportunity to help.

I am thankful our founding fathers had the foresight to put bankruptcy into our constitution. Doing so has led to laws which encourage entrepreneurship and innovation. Those laws let good people fail and start over. They provide a fresh start and reduce worry and stress. They enable people to focus on their businesses, their families, and their futures.

So thank you, clients, for sharing your dreams and wishes, and for reminding me of just how important our work is. Thanks to those of you who refer clients, for letting us help, and for your confidence and trust.

I love the work I do and the people I do that work for and with. Thanks to all of you for that. Have a happy, healthy, and prosperous Thanksgiving.



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HOW THE GREAT AMERICAN SMOKEOUT RELATES TO BANKRUPTCY

The Thursday before Thanksgiving is celebrated as the Great American Smokeout Day. On this day, American Cancer Society organizations across the country encourage people to quit smoking, make a plan to quit smoking, or seek out help to quit smoking. In honor of the Great American Smokeout, Krekeler Law is helping to spread the word about the financial risks of smoking.

Besides the steep and rising cost of cigarettes, smoking can create other financial risks, especially for those who already have plenty of other bills to pay. People who are trying to reduce their debts through a Chapter 13 bankruptcy must disclose their budget and demonstrate that they do not have any disposable income left to pay those debts that they are trying to eliminate.

In some instances, creditors have argued that the debtor spends an unreasonable amount on cigarettes or tobacco products. Their position is that the debtor should not be allowed to spend this much on their smoking habit, and should instead have to divert a portion of this amount to the creditors.

In a bankruptcy case from Maine, a creditor argued that debtors should not be allowed to budget anything for smoking because these costs aren't "reasonably necessary" to be used for their support. The judge carefully considered the amounts spent on cigarettes and other activities that might not be "reasonably necessary."



Most courts will allow expenses for activities like take-out food, buying scratch-off lottery tickets, or buying sugary cereal. We schedule these and other costs like a Netflix or Hulu subscription, occasional tickets to a Badgers football game and other fun as "recreation". So long as these costs are reasonable, we don't see much push-back from the trustee or creditors.

The bottom line for the Maine judge was that smoking is legal and the Bankruptcy Code doesn't say you can't smoke. Perhaps if the facts were worse and the debtor spent \$1,000 per month on cigarettes, the judge would find that amount too high and reject the plan. But for now, budgeting a reasonable amount for cigarettes won't stop approval of a repayment plan under Chapter 13.

What's the take-away from this? It's best to be realistic and factor in your true monthly expenses, even if it's for something like smoking. You should not and cannot smoke away all of your income, but a modest habit is going to be looked at the same way as other hobby and non-essential expenses. How much is reasonable? In the Maine case, the Court approved bankruptcy plans where the smokers spent \$136 per month and \$240 per month on cigarettes. That's \$4.50 and \$8 per day, and that was back in 2003. Today these figures would be \$330 to \$582.

Cutting back or quitting smoking in order to free up additional income is not as quick or easy as it sounds. Even when people truly want to try to cut back on their smoking or quit altogether, the uncertainties and struggles involved are often impossible to foresee. We have successfully overcome efforts by trustees and creditors to disallow tobacco expense in our clients' budgets using due process and discrimination arguments, as well as good old common sense.

We of course cannot guaranty results for any particular situation or client. Contact us to discuss your situation with experienced problem solvers.



SERVICEMEMBERS CIVIL RELIEF ACT: Providing Legal Protections for Active Duty Military and National Guard Members

In honor of both Veterans' Day (November 11) and the birthday of the United States Marine Corps (November 10), we are spreading the word on the rights and the legal protections offered to members of our armed forces under the Servicemembers Civil Relief Act (SCRA).

Originally passed at the start of World War II as the Soldier's and Sailor's Civil Relief Act, the Act was meant to protect active duty servicemembers and their families from the civil actions that may be commenced or ongoing while they have limited or no ability to address these issues. The Act applies to all members of the Army, Air Force, Coast Guard, Marine Corps, and Navy, including reservists, who have been called to active duty. The Act also applies to members of the National Guard and the Air National Guard who have been called to active duty. The Act also extends certain protections to the family members of these people.

A few of these protections include:

- Limitations on interest rates charged on loans and credit agreements
- Prohibitions against revoking credit or changing the terms of credit agreements
- Protection from eviction
- Right to terminate residential and car leases when forced to relocate
- Ability to postpone civil and administrative proceedings
- Opportunity to request that judgments entered be removed and cases re-opened

Although the Act is meant to offer help to those who are serving our country, it does not always go into effect automatically. Rather, the servicemember or another person acting on his or her behalf must invoke the rights and protections under the SCRA. If you are called to active duty and want to plan for your leave, have a family member on active duty and need legal assistance, or know a family whose loved one is serving on active duty and want to help them, make sure that you speak to an attorney who understands servicemembers' rights under the SCRA.



Have a question? Idea for a future article?

If you ask for it – we will write it!

Contact Deanna at
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WHERE'S KREKELER ?

The **Volunteer Lawyer's Project (VLP)**. VLP is run by Legal Action of Wisconsin (LAW), is dedicated to providing legal services for low-income Wisconsin residents. VLP is a favorite organization of our firm, and for years Kristin Sederholm and David Krekeler have been donating their time to help train LAW volunteers. This year they again taught a half-day course on Chapter 7 and 13 bankruptcy to train attorney volunteers who take on pro bono bankruptcy cases. The course material of over 100 pages are available to any lawyer willing to donate time and effort to the cause. Kris and David also offer to help on cases, and are willing at any time to meet for coffee and a bagel to discuss bankruptcy. Contact dgajewski@ks-lawfirm.com for your meeting.

Nearly all of our lawyers participated this month in the **Annual Bankruptcy Update** sponsored by the Bankruptcy, Insolvency and Creditors Rights section of the state bar. In addition to an update on the case in Wisconsin and around the country, the presentation focused on issues including how LLCs are treated in bankruptcy and how liability protections are sometimes lost by piercing the corporate veil. David Krekeler is past chair of the BICR section and both Ryan Blay and David serve on its board of directors.

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WE SOLVE FINANCIAL PROBLEMS.

This is an advertisement for legal services. We have been designated by Congress as a debt relief agency and can help people file for relief under the Bankruptcy Code.

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BUYER BEWARE:

Do Not Let

BLACK FRIDAY

Cause You

Bankruptcy Problems

Not only is Black Friday starting earlier and earlier each year, but now we have Cyber Monday, Small Business Saturday, and Green Tuesday (on which shoppers are encouraged to buy "green" or eco-friendly products). The incentives to spend are everywhere this time of year.

Some of the risks associated with this large-scale effort to draw in shoppers are obvious. The credit card debt that remains after all the stores remove their holiday décor and begin the post-season clearance sales can be staggering. What started out as a can't-pass-it-up "this weekend only" bargain may, after high interest rates, charges, and fees are added up, turn out to be a far greater burden. Holiday shopping may even cause some to file bankruptcy. We already know that credit card debt has become one of the leading causes of bankruptcy.

What many people do not know, however, is that the purchases they make at this time of year can get them into trouble even after filing bankruptcy. People may not be able to eliminate the debt on purchases made within 90 days before filing bankruptcy if those purchases were for "luxury goods," or goods not necessary for the support or maintenance of the debtor or a dependent, totaling \$675 or more. Similarly, cash advances totaling \$950 or more within the 70 days prior to filing bankruptcy are presumed not to be dischargeable in bankruptcy.

Waiting until that 91st day to file bankruptcy does put debtors in a much better position, as the presumption is removed. But is not a complete safeguard against the complaints of creditors, as a creditor can still try to argue that the debts should not be discharged in the bankruptcy.

Households with less than \$50,000 annual income plan to spend 23% more this year. Other households expect to spend 4% more than last year (according to global accounting firm PWC.)

Do not let holiday advertising land you in financial distress. If you find yourself stretched thin from the holiday rush, do not simply rush to file bankruptcy. Talk to an experienced consumer finance attorney about your bankruptcy and non-bankruptcy options for obtaining post-holiday relief.