

KREKELER LAW REPORT



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MERRY CHRISTMAS AND HAPPY HOLIDAYS - HERE'S A GIFT CARD!



Over 60% of people in a National Retail Foundation survey request gift cards for their wish lists – that’s more than those who request clothing and accessories, the next most popular request. The top requested gift cards include cards for restaurants, Visa/MasterCard/American Express gift cards, and gift cards for Department Stores.

As of last year, 2/3 of people surveyed purchased at least one gift card. It’s no surprise then that gift card spending is set to reach \$160 billion by next year. Stores love gift cards –for a reason. Recipients will spend nearly 40% more than the face value of their cards when they redeem them.

That is, of course, when the gift cards are redeemed. Consumers lose millions to unspent gift cards each year.

With brick and mortar retail stores struggling, it’s worth considering how bankrupt companies address previously issued gift cards. Toys R Us, for instance, plans to continue operating and has promised to honor its gift cards and loyalty program benefits.

If the store is liquidating, the bankruptcy court may allow claims by holders of gift cards. That is not certain, though. When Radio Shack went through bankruptcy, many holders were left without a chance to redeem, and at least one state Attorney General sought the right to file claims on behalf of his state’s consumers. Even when claims are allowed, they would need to be considered a “priority” (along the lines of certain taxes, domestic support obligations, and past employee wages) in order to receive much of a return against assets.

Priority claims are typically paid in full, and the purchase of a gift card can arguably be considered a “deposit” in connection with the purchase of property or services that went undelivered. If the Bankruptcy Judge agrees with this position, gift card holders who file claims will likely be repaid.

On the other hand, some judges find that gift card purchasers pay and receive what they bargained for – a gift card, and therefore, their transaction is complete. The service was “delivered”. If that’s the case, a gift card holder’s claim is treated as a general unsecured claim. Creditors in this class are lucky to get pennies on the dollar after secured and priority creditors are paid, along with court costs and attorney’s fees.

Years ago, Congress explored a “Gift Card Consumers Protection Act” that would have allowed consumers to redeem gift cards for full value without violating the automatic stay, but that act never made it into law. The moral of the story: use your gift cards promptly.

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STUDENT LOAN COMPLAINTS

For years, there have been lots of complaints about student loans. Most of these complaints concerned private lenders.

But now most complaints are about Federal student loans as opposed to those made by private lenders. The Consumer Financial Protection Bureau (CFPB) monitors all complaints, and received nearly 23,000 complaints in the past year. The CFPB reports a 325% increase in these complaints. This is the first time that complaints about Federal student loan servicing exceeded complaints about private student loans.



The Top 10 complaints identified by the CFPB were as follows:

1. Borrower Communication (18%)
2. Income-Driven Repayment Plan Enrollment (13%)
3. Payment Allocation (11%)
4. Public Service Loan Forgiveness (10%)
5. Payment Processing (10%)
6. Collection Activity (9%)
7. Educational Institution (9%)
8. Recertification (8%)
9. Credit Reporting (7%)
10. Billing Statement (6%)

Who is on the receiving end of most of these complaints? Navient. Navient was formed when Sallie Mae split into two entities in 2014. Sallie Mae serviced federal loans for the US Department of Education – a substantial number of loans.

What has Navient allegedly done wrong? According to a 2017 lawsuit by the CFPB and other complaints lodged against Navient in the last few years, pretty much everything a servicer could do: Failing to properly apply payments on accounts, trying to get borrowers to pay more than they need to, failing to advise borrowers about deadlines to submit paperwork for income-driven and income-based plans, and negatively affecting credit of the disabled and injured veterans. In other words, a lot of those “top 10” complaints above.

Many of our clients have problems with student loans, and we are constantly looking at new ways to help. Student loans are generally not dischargeable in bankruptcy, so resolving these issues requires different approaches.

If you are going to deal with your student loans yourself, consider at least some of the following:

1. Consistently monitor your student loan accounts. If your servicer has online access, sign up (but keep paper statements if you prefer). Also, go to www.annualcreditreport.com to retrieve your three free yearly credit reports.
2. If you can document a grievance, file a complaint with the CFPB at: <https://www.consumerfinance.gov/complaint>.

The Bureau devotes its time to investigating mortgage, student loan, and other creditors. Your complaint could impact change on an individual level or inspire a large-scale suit against the servicer.

If all else fails, come speak with us, especially if you are being sued or a lawsuit is being threatened against you. Federal and state law give you rights and defenses to some of these suits.



UW-OSHKOSH FOOTBALL AND BANKRUPTCY

The University of Wisconsin Badgers football team may have lost a chance to compete for a national championship, but another Wisconsin team was still in the hunt for a title: The University of Wisconsin-Oshkosh.

The Titans of UW-O rely on the University of Wisconsin-Oshkosh Foundation to fund its post-season trip, which typically includes over 100 people and 5 tons of equipment and gear. But the Foundation recently filed for bankruptcy relief due to some investments gone bad.

When a university-affiliated enterprise like the Foundation files for bankruptcy, the pending bankruptcy impacts the organization, its creditors, and also thousands of students and student-athletes.

Mount Union won 43-40, preventing the Titans' return to another title game. But thanks to our bankruptcy laws, the Foundation will likely be able to continue its charitable mission.



WHERE'S KREKELER ?

Jennifer Schank has been awarded Rising Star recognition by Super Lawyers, a well-known National ranking system for Attorneys. To be considered a Rising star you have to be under 40 years old and have been practicing law for less than 10 years. Less than 2.5 % of attorneys nominated are named to the Rising Star List.

Jennifer is our second attorney to be named a Super Lawyer. Ryan Blay was named a Rising Star in Illinois in 2014, a rising star in both Wisconsin and Illinois in 2015 and Super Lawyer in 2016.

J. David Krekeler has again been selected as a Super Lawyer for 2017. This makes him a recipient for over 10 years in a row.

We are incredibly proud that multiple attorneys in our firm are to be considered Super Lawyers!

CHAPTER 13 DEBTOR ALLOWED RETIREMENT SAVINGS INSTEAD OF PAYING CREDITORS

A Miami, Florida court has allowed a Chapter 13 debtor to make voluntary retirement plan contributions totaling \$114,000 over the 5-year Chapter 13 Plan. Creditors will receive only about 10% of that amount.

The retirement contributions are more than 50% higher than what the debtor had been making prior to the bankruptcy filing. The debtor was nearing retirement age, though, and the court found that if the voluntary retirement contributions were not allowed, "the debtor would be deprived of the ability to obtain a fresh start."

This ruling may not reflect the current state of practice here in Wisconsin. Here, contributions during Chapter 13 plans are generally allowed only if the debtor was making them prior to the bankruptcy filing. Still, this new Florida ruling gives us an opportunity to present a new argument to Wisconsin courts.

We study the law so that you do not have to.



HURRICANES ALREADY RESULTING IN MORTGAGE DELINQUENCIES

In September, we wrote about hurricanes and the effect they have on bankruptcy filings. Our conclusion is that disasters such as hurricanes result in increased bankruptcy filings 1-3 years later. The latest news from Florida and Texas supports our opinion.

Before the recent hits by Hurricane Irma in Florida and Harvey in Texas, those states ranked 22nd and 20th respectively in their levels of delinquent mortgage payments. They have already moved up to 5th and 3rd in the country.

In Florida, the number of homeowners who were at least a month delinquent increased by 48% from August to September. In Texas the figure was even higher, with a 67% increase in the areas hit by the hurricane.

Foreclosures generally are a long process, and many people do not take any action until the lender is close to having a sale. All of these statistics support our prediction that both Florida and Texas will see an increase in bankruptcy filings in 1-3 years from now.

IS A CREDIT CARD BUBBLE GROWING?

A friend of mine recently asked me if I thought that the American economy is soon going to face another bubble which might burst like we saw in 2008. While I do not think that we are on the verge of such an occurrence, there are indications that we may be forgetting some of the lessons of the past.

The four largest American banks made more than \$4 Billion in pre-tax income from their credit card businesses in the last reported quarter. Bank of America, Citigroup, Wells Fargo, and JPMorgan Chase reported these profits.

The profits come from an increase in credit card debt owed by Americans. Outstanding credit card debt has now reached a record \$1 Trillion. The number of Americans with at least one credit card is now at its highest level in more than a decade.

The Federal Reserve reported in August that both student loans and motor vehicle loans are at all-time highs.

The actual amount of debt is not necessarily worrisome. Remember, inflation itself makes these numbers grow. What is concerning is that delinquencies for credit card debt are growing, now for the third straight quarter. We have not seen this trend in delinquencies since 2009.

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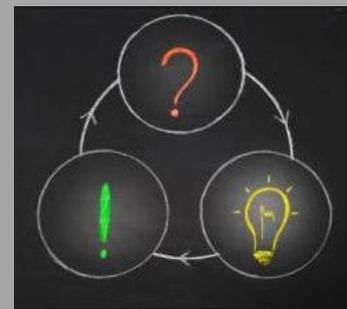
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If you ask for it – we will write it!

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