KREKELER LAW REPORT

DECEMBER 2018 **VOL. 4 NO. 10**

HAPPY AND THRIFTY HOLIDAYS

The 2017 holiday season saw Americans increase their credit card debt at the second fastest rate in 10 years. In fact, it exceeded $900 per person.

But this year's holiday spending is expected to be up more than 4%. The average amount spent will be over $1,000. National Retail Federation President and CEO Matthew Shay says consumer confidence is "near an all-time high, unemployment is the lowest we've seen in decades and take-home wages are up. All of that is reflected in consumers' buying plans."

According to one report by CBS News (Oct. 2, 2018), over 70% of that spending is on family and friends, so we do not want to play Grinch. But all of us should be aware of how easy it is to overspend.

Here are a few tips:

Budget. Decide ahead of time how much you can afford for gifts, holiday travel, and charity. Keep in mind the hidden expenses like wrapping paper and extra food costs when grown kids or extended family visit.

Shop smart. Take advantage of sales not discounts. But don't buy things just because they are on sale. Over the years I have received plenty of gifts I neither need nor use. If you are worried about overspending, shop with cash. Then you cannot spend more than what you budgeted.

Shop early. Last minute buying and shipping usually costs more.

Talk with your family. Maybe everyone would feel better, and have less stress, without exchanging expensive presents. Some families do drawings with other adults, or a drawing for just the kids, or exchange "white elephant" gifts for a laugh.

Be creative. Perfect gifts do not have to cost much. My family had very little money when I was a kid, certainly none for gifts for neighbors and schoolmates. So my mom would bake Boston Brown Bread for our Christmas giving. Wrapped in silver foil and with a red or green string bow, these tasty loaves were always welcomed and appreciated. And making and baking them was a great family tradition.

Make your own family traditions this holiday season. Be smart. Be safe. And happy holidays!

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or email cwenos@ks-lawfirm.com.

In This Issue

MORE COLLEGE CLOSINGS

Education Corp. of America (ECA), a Birmingham, Ala. Company, which runs over 75 campuses across the U.S. and serves 20,000 students, abruptly closed Dec. 5. The reasons why included falling enrollment, financial concerns, and the loss of accreditation. NPR reports ECA also was falling behind on rental payments and facing eviction on some campuses.

The campuses offer "career-focused" diploma and associate's degree programs. If a school closes, students with loans can ask the U.S. Department of Education to cancel those loans, according to Toby Merrill, director of the Project on Predatory Student Lending.

The Federal Student Aid website details criteria to qualify for a closed school discharge. The student must have been at the school when it closed or left 120 days prior to its closing. Additionally, the student must not have been able to transfer credits to another school.

In the cases of federal loans used to attend a school that was misleading or violating certain laws, borrower defense to payment may come into play. A former student applying for this program must show that he or she was defrauded by the institution by illegal means, such as false marketing.

These discharge programs can result in a tax liability to the borrower, because the discharged debt will be treated as taxable income.

How does this affect Wisconsin? No Wisconsin campuses will be closing, but it's interesting to note Kaplan College, which had one Wisconsin location (Milwaukee), sold 38 campuses to ECA in 2015 and 15 locations to Purdue University in 2017.

Colleges and states with campuses that are affected include:

- Brightwood College (California, Texas, Ohio)
- Brightwood Career Institute (Pennsylvania)
- Ecotech Institute (Colorado)
- Golf Academy of America (Arizona)
- Virginia College (Alabama, Florida, Georgia, Louisiana, Mississippi, Oklahoma, Tennessee, Texas, and South Carolina).

If you know anyone affected we will be happy to provide them with free information on utilizing the defense to payment programs.

RETAIL BANKRUPTCIES IN 2018

Sixteen major US retailers have filed for bankruptcy, or decided to liquidate, thus far in 2018 (RetailDive.com, Nov. 20).

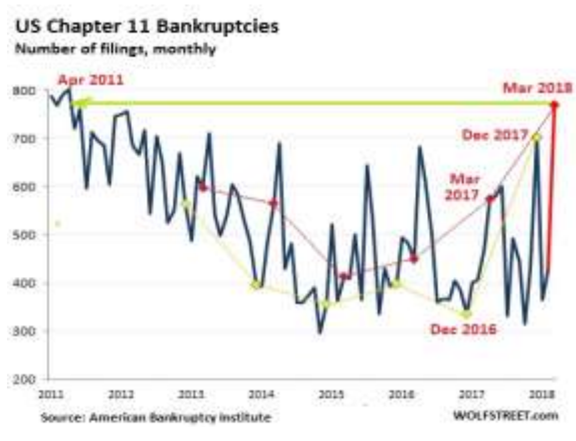
The businesses cite a change in American shopping habits as a principal cause, and may be too deep in debt to revitalize stores or step up their online presence. Mall-based stores and big-box stores are affected the most.

Stores with Wisconsin locations include: David's Bridal, Nine West (shoes), Claire's (jewelry & accessories), The Walking Company (shoes), The Bon-Ton Stores (Boston Store and others), Toys'R'Us, National Stores (discounter), Mattress Firm, and Sears.

The numbers are not as shocking as 2017, which had 50 major retailers file for bankruptcy, the largest number since 2011 (59 were filed that year), according to Fox Business. The circumstances surrounding them can vary, though. In November, Sears asked a court to approve millions in bonuses to executives despite bankruptcy proceedings, to be issued during the next two quarters. In the same time period, two former owners of Toys'R'Us agreed to set up a $20 million severance fund for employees affected by layoffs earlier this year.

Overall, bankruptcies are down from 2017 numbers, but new Chapter 11 bankruptcies spiked 63% from March 2017 to March 2018, according to the American Bankruptcy Institute.

2018's Chapter 11 filings were nicknamed "the brick and mortar meltdown," according to an April 2018 article by WolfStreet.com.



A *SLIM* NEW STUDENT LOAN PROGRAM MAY TRIM THE STUDENT LOAN BURDEN IN BANKRUPTCY

You're eighteen years old, fresh faced and starry eyed, and have to sit down and pick a major that could determine what career options are available to you and what the rest of your life will look like. Fast forward ten years and you may be cursing your decision.

Wage growth has become stagnant while tuition rates continue to increase faster than inflation. Even if you majored in a traditionally strong area such as chemistry, you might be starting out as a lab tech making less than $30,000 a year. At that rate, you will struggle to live your life while making even the minimum required payments on your student loans.

Bankruptcy may sound like the answer. But student loans are almost always not dischargeable.

The best option might be a Chapter 13 filing, as no collection efforts can be made by the creditor while the case is pending. The student loans are treated as nonpriority unsecured debts just like credit cards and medical bills. This means you are not required to pay them off in full through your Chapter 13 repayment plan. The student loans will receive a pro-rata share of the total amount paid to unsecured creditors in your plan. As a result, Chapter 13 bankruptcy can help delay or reduce your monthly student loan obligations during your case.

Under certain circumstances, you may even be able to make student loan payments outside of bankruptcy, but most jurisdictions do not allow this. The Bankruptcy Code requires that all unsecured creditors be treated the same. Paying your student loans and not other unsecured creditors would unfairly discriminate against those other unsecured creditors by reducing the amount they get paid through the bankruptcy. To pay off your student loans in full would require paying all other unsecured creditors, which largely defeats the purpose of filing bankruptcy.

An additional problem often occurs once your Chapter 13 bankruptcy is over, as you must continue to pay the balance on your student loans. Many debtors receive their discharge and are shocked to see that they owe vastly more in student loan debt at the end of their five-year plan than they did before because the interest continued to accrue while the student loan lender could not collect due to the automatic stay.

There are a number of student loan repayment plans that exist for borrowers who are not in default. Unfortunately, these programs are generally un-available while a borrower is going through bankruptcy.

A new program would allow an individual with student loan debt to use an income-driven repayment plan to include student loan payments in the regular Chapter 13 plan. This new plan will be a template that is not required, but if accepted, will treat student loans in a Chapter 13 plan as "non-standard plan provisions" instead of general non-dischargeable unsecured debt. This would allow the trustee to structure the payments to include a larger portion of debtors' student loans.

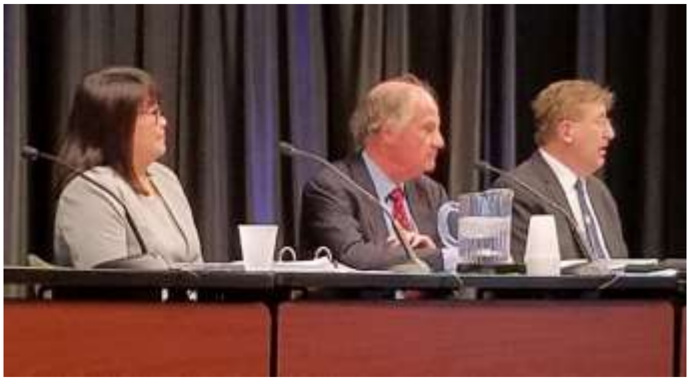
The Student Loan Management Program (SLMM or Slim) plan is only eligible to borrowers who are not in default and the plan will not result in a partial or complete discharge of student loan debt.

The objective of this plan is to prevent the debtor from slipping farther into student loan debt as a result of their Chapter 13 bankruptcy. *Slim* will allow the trustee to include the adequate payments necessary to continue to pay down student loan debt as part of the debtor's Chapter 13 payment plan.

Our own attorney, John Driscoll, is spearheading the initiative to bring *Slim* to the Western District of Wisconsin. He is working with Default Mitigation Management LLC to educate bankruptcy attorneys and judges about the *Slim* program. Attorneys for creditors and debtors will determine agreeable language for the template and the program's usage will be more common. Although this plan will not resolve the debt, it will decrease the likelihood that the debtor is worse off once they receive their discharge.

WHERE'S KREKELER ?

Reyes and Krekeler Speak at Annual Bankruptcy Update for Eastern and Western Districts of Wisconsin. The State Bar of Wisconsin hosts an Annual Bankruptcy Update, attended by most bankruptcy lawyers from all over Wisconsin.



Eliza Reyes, as part of a panel, presented "Case Law Update." She taught the attendees about the latest court decisions.

David Krekeler presented, as part of a panel, "Tips for Successful Workouts." (A workout is essentially a debt restructuring plan).

The Annual Update was a great opportunity to network and allows us to give you – the client – the most up-to-date information for your needs.

Legal Action of Wisconsin names David Krekeler Volunteer Lawyer of the Month. From Legal Action of Wisconsin: This year, Attorney Krekeler committed his firm -- Krekeler Strother, S.C. -- to covering our Madison office's Bankruptcy Clinic where volunteer lawyers help people who are struggling with debt and bankruptcy. Attorneys Ryan Blay, Eliza Reyes, Mike Cerniglia, John Driscoll and David Krekeler staffed the monthly clinics from August through November.

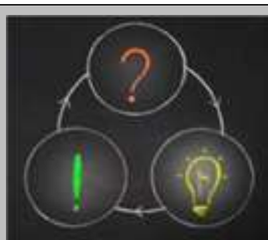
Kristin Hoffschmidt, our Volunteer Lawyers Project (VLP) Madison Office Coordinator, is grateful for their support: "David's enthusiasm and can-do attitude are such a gift to the clients and staff of the VLP!"

David and Kris Sederholm also train volunteer attorneys in Bankruptcy Law for our VLP Fall CLE training each year. They get rave reviews for their in-depth, practical knowledge, and fun antics to maximize attendee participation.

Santa Claus may have eight tiny reindeer and elves…
but only Krekeler Law has a Bankruptcy Gnome!

The Gnome made a guest appearance at the annual training program for volunteer attorneys for the Volunteer Lawyer Project. Questions were answered, particularly about bankruptcy GNOMENCLATURE.

Shown are a number of the volunteer lawyers and our very own Bankruptcy Gnome.



Have a question? Idea for a future article?

If you ask for it – we will write it!

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