KREKELER LAW REPORT

AUGUST 2019 **VOL. 5 NO. 8**

BACK TO SCHOOL AND BACK TO FOOTBALL

School starts this month. College football practice, and even games, have already begun.

These two events usually herald annual polls and rankings. SportsIllustrated.com has put out its list of College Football's Greatest College Towns. Columbia, Missouri, in my home state, was ranked #5. The Big Ten was represented in part by Michigan, with Ann Arbor coming in at #4.

The #1 ranking, the Greatest College Football Town, is our own Madison, Wisconsin, home of the Wisconsin Badgers.

LET'S GO RED!

Find Us on Social Media!

Follow the **Krekeler Strother, S.C.** page for blog and newsletter updates, tips, and firm happenings.

Follow **@jdkrek** on Twitter for firm thoughts and updates.

Positive Experience? Search for **Krekeler Strother, S.C.** and leave us a review!

Comments? Contact Wendy at (608) 310-3405 or email wbaker@ks-lawfirm.com so we can make things right.

In This Issue

"THE DEVIL IS IN THE DETAILS"

We have all heard this old adage. It usually means that general statements or ideas are fine, but we need to look at the detailed particulars in order to fully understand them. In the work we do helping people with debts, this principal arises again and again.

I was reminded of that this week when a creditor objected to how we were treating its debt in a client's Chapter 13 plan. We proposed to pay that creditor only the value of the vehicle which served as its collateral for the loan. The debtor had an $8,000 car but a $14,000 loan. We proposed to pay only the $8,000.

The creditor's objection was that the loan was not old enough to be crammed down. The law requires that a purchase money security interest in a vehicle acquired for personal, family, or household use must have been taken out at least 910 days (2 ½ years) prior to the bankruptcy filing in order to be crammed down.

The social policy behind this requirement is to make sure the debtors cannot purchase vehicles and immediately turn around, file bankruptcy, and pay substantially less than the contract price.

We had relied upon the loan documents provided by our client. The creditor, however, filed documents with the court showing that its loan had been taken out some four months after we had expected. That would put the loan within the 910-day prohibition period and our client would have to pay the whole $14,000 loan balance through the plan.

Fortunately, our lawyer reviewed the documents in great detail. A single word buried in the middle of all the documents tipped the scale. That word was "refinance."

The 910-day prohibition on cram down only applies to purchase money security interests. A purchase money security interest is a lien granted to the creditor financing the purchase of the collateral.

In this case the objecting creditor did not hold a purchase money security interest. Its loan was a refinance, which by definition cannot be a purchase money security interest.

We all breathed a sigh of relief. Our client would save the $6,000 and be able to afford her vehicle. Once again proving that "the devil is in the details."

WHO IS NATIONAL COLLEGIATE LOAN TRUST?

If you have a private student loan, it is likely National Collegiate Student Loan Trust (NCSL) is involved. NCSL is not a lender, servicer or guarantor of your loan. Rather, it is a series of trusts that contain private student loans packaged and sold as investment securities.

Federal student loans originate from the U.S. Department of Education, which lends money to students. Since funds are limited and college is expensive, many students look to banks as a way to make up the shortfall. Originators of the loan can be well known large banks like JP Morgan Chase, Charter One Bank, Bank of America, RBS Citizens, and Union Federal Savings Bank.

Shortly after the Bank lends the money, the loan is transferred to an entity called The National Collegiate Funding LLC. Though each loan is supposedly on some master list, National Collegiate Student Loan Trust is seldom, if ever, willing to provide that list to anyone. Much like the mortgage mess, there's only a limited, if any, paper trail involved in the world of private student loan securitization.

What happens if you're sued by National Collegiate Student Loan Trust? When someone sues for a debt the creditor needs to prove:

- That you took out a loan;
- That the entity suing you owns the loan and the right to collect on the loan; and
- That the amount of money that the entity claims you owe is the proper amount.

Defenses:

1. Can National Collegiate Student Loan Trust prove that you owe the money? It depends on whether they can provide a copy of the promissory note.
2. Does National Collegiate Student Loan Trust own the loan and the right to collect on the loan? It depends on whether they can show that the loan went from the original lender to the Depositor to the Trust.
3. Is the amount they claim to be true and correct? It depends on whether they can show a complete and accurate accounting of how they came to the amount they're claiming.

There are more issues involved in defending a private student loan collection lawsuit brought by National Collegiate Student Loan Trust, but it's usually a good idea to fight the case and make them prove every element before you agree to pay them money.

FAILURE TO EXPLAIN LOSS OF ASSETS CAN BE COSTLY

People who may need bankruptcy relief are often reluctant to properly take the steps necessary to prepare for a bankruptcy filing. They may have assets (such as a boat or jewelry) that they do not want to lose. They may have substantially more cash than what they would be allowed to exempt and protect. Many debtors have told me that "no one knows about *(fill in the name of the asset)*.

Our response is always the same. We tell them bankruptcy is really cool. It provides significant benefits not available through any other means. But to get that relief, a debtor has one principle responsibility – to make a full and complete financial disclosure.

We also explain that we cannot protect assets of which we are not aware. Fortunately, nearly all our clients follow our advice and we are able to protect their assets and get them the fresh start they need.

Debtors who fail to disclose assets can be denied a discharge. A failure to explain what happened to assets can also be grounds for denial of discharge.

In one case a debtor withdrew $22,000 from his bank account during the three months prior to the filing date. The debtor asserted that $8,000 was used gambling in Las Vegas and Atlantic City to try and win money to pay his debts. Unfortunately, he was unable to produce documents to demonstrate either his trips or his losses. He could provide no good explanation as to what he did with the money. He was denied a discharge.

In another case a debtor had a reduction in assets of nearly $160,000 over a nine-month period. His explanation was gambling and market losses. The court found this explanation insufficient.

There are plenty of other cases on this same subject. Assets can be protected, but those assets need to be used in reasonable and appropriate ways and that use needs to be substantiated. Paper trails can be very beneficial in protecting a debtor's discharge.

BEWARE !
OF STUDENT LOAN RELIEF SCAMS

As student loan debt rises, people become more desperate, and desperate people take desperate measures. Student loan scams are on the rise.

The scams fall into four basic categories:

- Advanced Fee Scams require you to pay an up-front fee in order for the "helper" to work with you. This could be legitimate, but the fee should be going into an escrow account and should not be earned until you have the loan modification you seek.
- Loan Consolidation Scams are fairly common. The scammer charges a consolidation fee but actually provides you with no service. There are no fees at all for consolidating a federal student loan. You can do it yourself, without charge, at StudentLoans.gov.
- Law Firm Scammers exist as well. Some student loan relief companies are affiliated with law firms, although we know of none in Wisconsin. The student loan relief company will tell the borrower that the law firm can settle the student loans at great savings. The student borrower is asked to make payments to the law firm, and the law firm is supposed to then negotiate a settlement. What typically happens, however, is that no negotiations are undertaken until after you are in default. This means your credit score gets hammered, you've paid large sums to the law firm, and you have no guarantee that you will be able to settle your loans at all.

Scams abound and you need to protect yourself. Please let us know of any new scams you may encounter or learn of so we can broadcast warnings to others.

AND…

THERE ARE EVEN SCAMS TO GET STUDENT LOANS

There are now student loan companies that will tell the student that he or she can get the best interest rate and loan terms, but to do so requires payment of a fee in advance. ***DO NOT PAY.*** There are no instances in which a borrower should have to pay money to get a student loan. Neither federal nor private lenders require up-front fees for student loans.

HAPPY NATIONAL WHISKEY SOUR DAY!

August 25 was National Whiskey Sour Day, so naturally we made that our cocktail of the week at my Sunday Dinner for the family. Whiskey has a long history in America, dating back virtually as far as the settlers do.

George Washington loved whiskey. Following his presidency, he became the country's largest distiller at his estate at Mount Vernon.

Washington bought whiskey for his troops in the frigid cold at Valley Forge. The distiller he purchased that rye whiskey from, Michter's, later advertised that it was "The Whiskey that Warmed the American Revolution".

Michter's Whiskey dated back to the middle of the 18th century and reportedly faced bankruptcy more than once. In 1989 it filed for Chapter 11, but that reorganization effort failed. Joe Magliocco purchased the trademark and for $245 in trademark filing fees, the brand was revived.

Michter's now retails for about $45 a bottle at the low end, and up to $5,000 a bottle for limited edition sour mash. The brand has sales of about $34 Million per year.

Bargains can often be found in bankruptcy.

Contemplate that while you celebrate National Whiskey Sour Day!

WHERE'S KREKELER ?

UW School of Law Faculty Advisor Megan McDermott recommended David Krekeler to The University of Wisconsin Law School Student Chapter of the Federal Bar Association. They have invited David to appear as part of a panel on federal practice with Judge James D. Peterson of the U.S. District Court Western District of Wisconsin on September 18th. David will answer questions about his career and practice, and anything else law students want to know about practicing in Federal Court.

David will be making a presentation on "Understanding Low Income Client Consumer Issues" to the Public Interest Law Section ("PILS") of the State Bar of Wisconsin on Thursday, October 17th. PILS is a resource for public interest attorneys and presents continuing legal education on topics that will assist attorneys working in the public interest. David's presentation will include The Nuts and Bolts of Bankruptcy, as well as The Interplay of Bankruptcy and Divorce.

Have a question? Idea for a future article?
If you ask for it – we will write it!
E-mail Wendy Baker at
wbaker@ks-lawfirm.com

KREKELER STROTHER, S.C.
ATTORNEYS AT LAW
2901 W. Beltline Highway, Suite 301
Madison, WI 53713

We Help Quickly.

Phone: 608/258-8555
Fax: 608/258-8299
www.ks-lawfirm.com