

Subject **Section 109(e) - liquidated or unliquidated?**
From Morgan King's Law Letter # 22 <morgan@morganking.com>
To <morgan@taxjustice.com>
Reply-To <morgan@morganking.com>
Date 2016-12-12 15:01



Discussion of new student loan case scroll to Law & Case Hotwire

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MORGAN D. KING EDITOR

The King Law Letter

**NEWS – EVENTS - UPDATES FOR BANKRUPTCY AND TAX PROFESSIONALS
& CONSUMER PROTECTION ATTORNEYS**

LAW LETTER NO. 22 DECEMBER 12 2016

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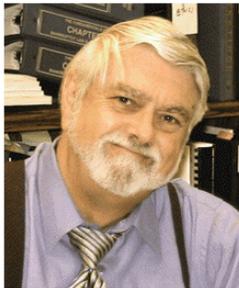
- Discharging Taxes in Consumer Bankruptcy Cases - 7.5 hrs
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- Avoiding & Stripping Liens 4.5 hrs
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Morgan King's



Morgan D. King
of the California Bar

Tax Discharge
Analysis

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Consulting & Mentoring For Attorneys

- Have clients with delinquent taxes?
- Are the taxes dischargeable?
- Does the tax transcript tell the whole story?
- Red-flags on the transcripts
- Has the client told you the whole story?
- If not dischargeable now, then when?
- Are there "sleeping assessment" flags?
- Can the tax liens be stripped?
- Can the liens be attacked on other grounds?
- Pending offer-in-compromise?
- How about innocent spouse?
- McCoy rule or the Beard test?
- Navigating the "tolling" events
- Where does *equitable tolling* come in?
- Is there an "equivalent report or notice" issue?
- Is there a state "piggy-back" tax issue?
- Is the client's conduct "evasion"?
- State income tax issues?
- Sales & excise tax issues?
- Blind-sided by postpetition interest at end of plan?

Morgan King asks ... How can I help you?



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In Bankruptcy Cases*

AS APPEARED IN THE NACBA BANKRUPTCY JOURNAL
Summer 2016

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EXCERPT FROM

[King's
FUNDAMENTALS OF CONSUMER BANKRUPTCY
LAW & PRACTICE](#)

Book Release 2016 # 1
KingLawPublishing.com

King's Fundamentals of Consumer Bankruptcy Law & Practice

Part 4 - The Law of Chapter 13

¶ 4.1 Eligibility For Chapter 13

4.1(e)(7) Liquidated & Unliquidated

4.7(e)(7)(vi) Undersecured debts

Section 109(e) eligibility debt limits apply to secured and unsecured, liquidated debts, respectively.

i. A threshold question is, is the debt in question "liquidated"? If not, it is not counted under § 109(e).

In a hypothetical case, assume the debtor owes \$600,000 to a franchiser, secured on the value of the franchise (a laundry the debtor bought. It is clear the franchise is not worth that much, and determination of the value, i.e., the value of the secured portion, will require an evidentiary trial to determine. An argument could be made that if the secured value of an undersecured claim is unliquidated, so is the unsecured portion; determining the liquidated portion of the unsecured portion depends on results of the trial over the secured part.

Unfortunately, the author has found few cases on point.

Held, in a pending state litigation case, an attorney's claim for fees is unliquidated for purposes of § 109(e) (*In re Stouder* (Bankr.Kan. 2013). Stouder says " ... defenses to any part of the debt renders the entire debt unliquidated, since the precise amount is not settled."

"If the value of the claim depends on a future act of discretion, not regulated by specific criteria, the claim is unliquidated." that case the "future act of discretion" was a pending proceeding in state court: "Determination of the amount is within the discretion of the state court trial judge." But see the opposite result for attorney's fees where the court held that guidelines determining attorney's fees were enough to render the amount liquidated for 109(e) purposes.

But, held, in a case where a bank loan was partially secured by the debtors "equipment," and its value was readily ascertainable, that portion was liquidated and secured, and hence the unsecured balance was deemed liquidated. This suggests that the corollary might also be true; i.e., if the value of the personal property was not amenable to ready calculation,



the unsecured portion, as well, should *not be deemed liquidated*. *In re Enriquez* 315 B.R. 112 (Bankr.N.D.Cal. 2004)

ii. Is the unsecured portion counted in the 109(e) count?

Assuming it is liquidated, is the unsecured portion of the debt counted in the unsecured debt limit per § 109(e)? The weight authority holds that it is. See discussions at ¶ 4.1(e)(5) ¶ 4.1(e)(7)(vi).

Held, the unsecured portion of an undersecured debt is counted as unsecured for § 109(e) eligibility purposes. *Scovis v. Henrichsen* 249 F.3d 975 (9th Cir. 2001).

Held, in a case in which the debtors' personal liability has been extinguished in a prior chapter 7, the unsecured portion of mortgage on his residence must be included in the 109(e) count. *Johnson v. Home State Bank*, 501 U.S. 78 (1991); *In re Blackwell*, 514 B.R. 19 (Bankr.N.D. Cal. 2014) (mortgage) (in dicta the court suggested that where the real property on which the mortgage applied was other than the debtor's residence, the result might be different). *In re Blackwell*, fn. 5.

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THE LAW & CASE
HOTWIRE

HELD: Debtors had to turn \$17,000 insurance on car over to the trustee

Exume, Ganthier, (Bankr MD Fla 2016)

HELD: Debtors had to turnover to trustee \$17,000 of Insurance Proceeds for Totaled Car they received Just prior to Converting to Ch 7 from 13 Shortly before this case was converted from Chapter 13 to Chapter 7, the Debtors received al \$17,000 of insurance proceeds after their car was "totaled" in an automobile accident. The issue before the Court is whetl the insurance proceeds are property of the Chapter 7 estate. If so, they are subject to turno under 11 U.S.C. § 542 of the Bankruptcy Code. The Court concludes that the insurance payment, and the assets purchased therewith, did become property of the Chapter 7 estate The Trustee's Motion for Turnover will be granted.



HELD: Loan from an educational institution is dischargeable

In re Tucker, (Bankr.W.D.N.Y. 2016)

HELD: Financial Arrangement between Debtor and College to pay for Tuition and Fees was Not and "Educational Loan" could be Discharged. Once again this Court is presented with the question as to whether a financial agreement between a student and an educational institution qualifies as a student loan that is non-dischargeable under 11 U.S.C. §523(a)(8).

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IN OTHER NEWS

Bankruptcy - Taxes - Consumer Protection

New York AG, CFPB join forces to fight illegal national debt collection scheme

Frost Editor | December 10, 2016

By Charlene Crowell (NNPA Newswire Columnist)

A new federal lawsuit alleges that since at least 2009, two major players in the debt collection industry have illegally operated, harassed, threatened and deceived millions of consumers across the country-often for debts that were either inflated or not even owed. The scheme based in Buffalo, New York, also netted tens of millions of dollars in revenue each year.

The case seeks to shut down the illegal scheme, secure compensation for victims and assess civil penalties against the companies and its partners.

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Wells Fargo, Ocwen, Others Sanctioned for Violating Ch. 7 Discharge

By Diane Davis

Dec. 5 - Wells Fargo, Ocwen, OneWest, and other secured creditors must pay a Chapter 7 debtor \$7,000 in emotional distress damages, and \$39,142 in punitive damages for willfully violating a debtor's discharge order (*In re Dogar-Marinesco* , 2016 BL 399968, (Bankr. S.D.N.Y., 2016)).

Judge Cecelia G. Morris of the U.S. Bankruptcy Court for the Southern District of New York Dec. 1 concluded that the five creditors, including RAS Boriskin and Duane Morris, harassed the debtors for years by filing an illegal foreclosure action against the debtors' property and sending dozens of collection letters after their debt had been discharged in bankruptcy.

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Incarcerated Ch. 7 Debtor Not Exempt From Credit Counseling

From [Bankruptcy Law Reporter](#)
By Diane Davis

A weekly news service that publishes case summaries of the most recent important bankruptcy-law decisions, tracks major commercial bankruptcies, and reports on developments in bankruptcy reform in...

Incarceration doesn't exempt a debtor from the requirement of completing a credit counseling and financial management course prior to filing bankruptcy (*Black v. Eggmann* , 2016 BL 389433, S.D. Ill., No. 16-cv-0867-MJR, 11/22/16).

Judge Michael J. Reagan of the U.S. District Court for the Southern District of Illinois Nov. 22 concluded that the bankruptcy court was correct in dismissing the debtor's Chapter 7 bankruptcy case.

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ROOKER FELDMAN

Rooker's career as a trial attorney

This morning we find him at his desk, dreaming. He dreamed about a trial he had litigated some years back.

His client was charged with drug possessions. This client had three prior convictions for the same thing!

All morning, Rooker and the deputy district attorney argued with the judge in chambers.

At last Rooker persuaded the judge to keep all mention of the priors out of the jurors ears.

It was time to break for lunch. Rooker, ecstatic, rush his client out of the courtroom and into the elevator. He waited for the door to close, then gave his client a big smile.

Rooker: I won the motion! The jury will never hear about your three prior convictions for drug possession!

The client smiled, not really understanding the significance.

Client: What about my conviction for selling heroin?

Rooker continued beaming his grin to the client for a few moments.

Rooker: Yes! The jury will never know!

Then, he noticed the elevator was jammed with people. He gave them all a smile, and then noticed that they were all wearing big buttons.

The buttons said, "Jury."

The smile left Rooker's face. Later, he had to advise the judge of what happened. The judge was furious. "You realize we have to release that whole panel and call in another 30 people for the jury!"

Continuing ... this reminds of of the time in closing argument you spilled cocaine all over the jurors right in the courtroom!

Rooker: You still remember that, judge?

Back in his office, Rooker took a brief "power nap" at his desk. He began to dream about being in trial again.

Addressing the witness on the stand

Rooker: So, you admit it was hunky, yet still insist it was not dory, as well?

Witness (perspiring and wiping his forehead with a tissue): That's my story, and I'm sticking with it.

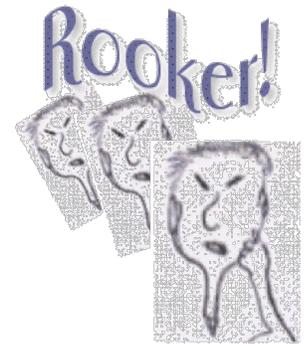
Rooker: And even after this mountain of evidence is in, you admit she was riding six of them, yet still insist they were not white horses!

Witness: Well, she never came round the mountain when she came round the mountain

Later, his client was on the stand, being cross-examined by the D.A.

Client: I can't be guilty. I wasn't even there! She can't identify me!

D.A. So, you deny ever meeting her, and she can't know what you looked like, so how could she sit in this courtroom today and identify you as the perp?



**DESPERATE
CONSUMER
BANKRUPTCY
ATTORNEY!**

Client: Right! She can't say she got a good look at my face!

D.A. Why is that?

Client: Because my head was turned away from her. At that very moment all she could see was the back of my head!

World without end.

Amen.

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Morgan@MorganKing.com



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The Morgan King Company, Box 2952, Dublin, CA, CA 94568

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