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## IMPORTANT PRODUCT ANNOUNCEMENTS



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## ABOUT THE AUTHOR

**CHRISTINE A. KINGSTON, Esq.**

Of the California Bar

Formerly Christine A. Wilton, Ms. Kingston practices law in Los Angeles and Orange Counties, California.

Her practice centers her private practice on Consumer Bankruptcy, litigation in bankruptcy, debt settlement and debt collection practice act claims, fair credit reporting act claim, and mortgages.

Christine is the author and publisher of the Los Angeles Bankruptcy Law Monitor; a discussion on consumer bankruptcy issues relevant to California, and is acting President of Pacific Coast University School of Law Alumni Association.

She received her Juris Doctor from Pacific Coast University School of Law (2005), and undergraduate degree from California State University, Long Beach (B.A. 1989), where she studied Speech Communication. She is admitted to practice law in California and before the United States District Court, Central District.

She was recently successful at trial in discharging approximately \$57,000.00 in student loan debt for her clients.

On August 2 2013 Christine hosted the King Bankruptcy Academy Friday Teleconference on the topic, *Discharging Student Loans*.



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**EXCERPT FROM**  
***King's Fundamentals of***  
***Consumer Bankruptcy Law & Practice***

***By Morgan D. King, Esq.***  
***Of The California Bar***  
Release 2016 # 1  
KingLawPublishing.com

**KING'S FUNDAMENTALS OF CONSUMER BANKRUPTCY LAW & PRACTICE**

**PART 4 The Law of Chapter 13**

## ¶ 4.10(e) Effect of Confirmation

See also part 3.21 Objection to claims.

### 1. Binding on the parties

The weight of authority is, upon confirmation of the plan, all provisions of the plan that were not timely objected to become binding on all parties, including creditors. See ¶ 4.8(e); 11 U.S.C. § 1325(b)(1). § 1327 (Effect of Confirmation). The weight of authority is that the terms of the plan, once confirmed, are binding unless there was a timely objection; some courts have addressed whether a confirmed plan containing illegal provisions (such as, e.g., discharging a non-dischargeable debt) can bind the parties, with mixed results. *In re Butcher*, 459 B.R. 115 (Bankr.Colo., 2011); *In re Smith* (Bankr. E.D. Wis., 2007).

Besides the effect of plan confirmation on creditors' claims, confirmation can come back to bite the debtor, where the debtor waits too long to object to a claim that a creditor filed in the case. The court in *Shook* said -

"When the chapter 13 trustee noticed his intention to pay a 100% distribution to the creditor on its deemed allowed secured claim, unless the debtors objected to the claim within 30 days, the debtors still did not object.

"Then, four and one-half years after plan confirmation, the debtors objected to the secured creditor's claim, seeking disallowance thereof, and turnover of the funds paid to it. The bankruptcy court applied laches and denied their request due to their unreasonable and prejudicial delay.

"The extent to which chapter 13 plan provisions themselves can constitute an "objection to" or "valuation of" a secured claim, or alone can mandate avoidance of the lien, is unsettled. Bankruptcy courts have typically taken one of three approaches: (1) chapter 13 plan confirmation prevails over the claims process; (2) the claims process prevails over plan confirmation; or (3) a middle-of-the-road approach based on due process concerns."

The debtor's power to object to a claim is prescribed primarily by 11 U.S.C. 502, Allowance of claims or interests, and Bankruptcy Rule 3007, . While the rule does not give a deadline to object, many courts have allowed narrow grounds to object after the plan is confirmed. The Code at 11 U.S.C. 1327 refers only to the creditor's objection to claims. The debtor's post-confirmation objection to claims was allowed in *In re Shank*, 315 B.R. 799 (Bankr.N.D. Ga. 2004), *In re Duggins*, 263 B.R. 233 (Bankr.C.D. Ill. 2001). The opposite result was found in *In re Crowe* 321 B.R. 729 (Bankr.W.D. Wash 2005).



Keep in mind that creditors as well as the debtor are allowed to amend a timely filed claim. A

party-in-interest may move to file an amended plan at any time. Bankruptcy Rule 3008, 11 U.S.C. 502(j). The conflict between objecting to, or amending, a claim following confirmation of the plan has perplexing raised issues in the cases.

***TIP: Due to the consequences of failing to object to an incorrect, inflated, or improperly categorized proof of claim (e.g. claim falsely says the debt is secured, or priority), it is prudent in each chapter 13 to calendar a date some time before the plan is confirmed, as well as after the plan is confirmed, to review all proofs of claim filed in the case.***

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## THE LAW & CASE HOTWIRE

**DEBTOR'S PERSONAL INJURY CASE DISMISSED BECAUSE DEBTOR FAILED TO DISCLOSE IT POST-PETITION**

**COURT APPLIES JUDICIAL ESTOPPEL**

Allen v. C&H Distributors (5th Cir. 12/3/2015)

The plaintiffs (debtors) filed a chapter 13. Following the filing, debtor's were injured in an accident, and filed a personal injury case. Subsequently, the case was closed due to the debtors' failure to file proof that they completed the required post-petition duty to complete a financial management course.



Subsequently, defendants in the personal injury case moved for dismissal based on judicial estoppel. This doctrine applies where the debtor takes an inconsistent position in litigation. Debtors had a continuing duty to disclose the cause of action (an asset) to the court in their chapter 13.

"We have recognized that judicial estoppel is appropriate when a party fails to disclose an asset in bankruptcy court but then pursues as claim in a separate tribunal based on that undisclosed asset."

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**FAILURE TO DISCLOSE: SAME RULE OF LAW - DIFFERENT CIRCUMSTANCES -**

## DIFFERENT RESULT

### [Adams v. Graceland Care Ctr. of Oxford, LLC \(Miss. App., 2015\)](#)

On August 9, 2004, Adams filed a Chapter 13 bankruptcy petition in the United States Bankruptcy Court, Northern District of Mississippi. On February 1, 2005, Adams's five-year bankruptcy plan was confirmed, and she made regular payments in accordance with her plan. On December 7, 2007, Adams's mother, Turner, died while living in Graceland Care Center's nursing-home facility. On May 14, 2008, Adams initiated a personal-injury/wrongful-death cause of action against Graceland Care Center, Graceland Management, and Lafayette in her individual capacity and as the survivor and heir of her deceased mother.

On January 12, 2009, Adams, the only child and sole wrongful-death beneficiary, filed a second amended complaint adding Yalobusha as a defendant, alleging that Turner suffered personal injuries and death as a result of substandard healthcare services provided to her while she was a resident at Yalobusha. Although Adams's bankruptcy case was still pending, she failed to amend her schedules to add the cause of action as an asset of her bankruptcy estate prior to completing her payment plan and the bankruptcy court granting her a discharge on March 31, 2009.

In this case, however, the court found that the debtor's omission was not intentional, and hence the matter did not fit within the context of a judicial estoppel rule.

In viewing the facts in the light most favorable to Adams, we find that no motive for concealment has been shown. The efforts by Adams to amend her schedules to list the cause of action are inconsistent with any motive for concealment. We cannot say that the evidence, when viewed in the light most favorably to Adams, shows that Adams intended to conceal her claim from the bankruptcy court in order to reap a windfall by preventing her creditors from recovering any proceeds from a potential judgment.

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## IN OTHER NEWS

Bankruptcy - Taxes - Consumer Protection

**This Could Spark a U.S. Economic Collapse in 2016 Student Debt Bubble**

## to Spark U.S. Economic Collapse?

After much deliberation, the Fed has finally raised rates. Having nearly brought about a U.S. economic collapse, some believe the rate hike has come too late-the commodities sector seems like it's in a perpetual decline, the housing market is inflated, the corporate sector is facing layoffs, federal debt is skyrocketing, and the stock market is in a fragile state. Nonetheless, one issue could spark a U.S. economic collapse in 2016 is student debt.

Student loans have touched all-time highs this year-over a whopping \$1.0 trillion and growing.

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## FORECLOSURES FALL

Credit and Collection news reported that foreclosures hit the lowest level in nine years in November, 2015. The report indicates there were 185,000 fewer loans in 2015 than in 2014.

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### [NACBA NEWS](#)

## Bankruptcy Filers Beware: Con-Artists Posing As Attorneys

Dan LaBert, Executive Director, National Association of Consumer Bankruptcy Attorneys.

October 14, 2015

Telephone-Scam Soliciting Wire Transfers Prompts NACBA and Vermont Attorney General to Issue Consumer Warning

Across the country, consumers are falling prey to a new scam targeting people who have filed for bankruptcy and others just getting started with the process. Bankruptcy attorneys are joining forces with public officials to sound the alarm bell to unsuspecting consumers.

The con artists are using software that "spoofs" the Caller ID system so that the call appears to be originating from the phone line of the consumer's bankruptcy attorney. Victims of the scam are being instructed to immediately wire money to satisfy a debt

that supposedly is outside the bankruptcy proceeding. Some consumers have been threatened with arrest if they fail to wire money to pay the debt.

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### **Analysis: Student Debt May Be the Next Crisis Facing Elderly Americans**

U.S. Trustee Program Reaches \$81.6 Million Settlement with Wells Fargo Bank N.A. to Protect Homeowners in Bankruptcy.

Settlement Addresses the Bank's Errors Affecting Nearly 68,000 Accounts of Homeowners in Bankruptcy.

The Department of Justice's U.S. Trustee Program has entered into a national settlement agreement with Wells Fargo Bank N.A. (Wells Fargo) requiring Wells Fargo to pay \$81.6 million in remediation for its repeated failure to provide homeowners with legally required notices, thereby denying homeowners the opportunity to challenge the accuracy of mortgage payment increases. These failures violated federal bankruptcy rules that took effect in December 2011 and imposed more detailed disclosure requirements to ensure proper accounting of fees and charges on homeowners in bankruptcy.

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