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Atlanta, Georgia

**Debt Limits in Chapter 13:
What Counts and What Doesn't?**

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3:55 p.m. to 4:35 p.m.

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Taxes, personal guarantees, and student loans, oh my!¹ At one point or another, surely every bankruptcy attorney has looked at a debtor's schedules and truly been frightened by that bottom-line number. The debtor's attorney is now faced with the awkward task of telling his debtor that he is too deep in debt for bankruptcy. As bizarre of a conversation as that may be, it happens. Most often, that conversation happens because of one of three types of debt: (1) taxes; (2) personal guarantees; and (3) student loans. So how do the attorney and the debtor move forward? How should they treat those debts in the bankruptcy case? Do those debts need to be listed in the schedules at all? These materials will (hopefully) answers those questions, and others, when it comes to these problematic debts (and debtors).

**I. Characterizing Debts for Purposes of 11 U.S.C. § 109(e):
The First Hurdle of the First Hurdle**

To begin, a debtor seeking relief under Chapter 13 of the Bankruptcy Code must qualify, or be eligible, for relief. *See* 11 U.S.C. § 109(e). 11 U.S.C. § 109(e) provides:

Only an individual with regular income that owes, on the date of the filing of the petition, noncontingent, liquidated, unsecured debts of less than \$394,725 and noncontingent, liquidated, secured debts of less than \$1,184,200, or an individual with regular income and such individual's spouse, except a stockbroker or a commodity broker, that owe, on the date of the filing of the petition, noncontingent, liquidated, unsecured debts that aggregate less than \$394,725 and noncontingent, liquidated, secured debts of less than \$1,184,200 may be a debtor under chapter 13 of this title.²

Assuming the debtor is an individual, who is not a stockbroker or a commodity broker, and who has regular income, the focus shifts to the next hurdle: the debt limit. *See id.* This will necessarily obligate the attorney to look at each “problem” debt to determine whether it is both “noncontingent” and “liquidated” for purposes of § 109(e).

¹ THE WIZARD OF OZ (Metro-Goldwyn-Mayer 1939).

² The dollar amounts are adjusted every three years by the Judicial Conference of the United States. *See* 11 U.S.C. § 104.

A. Noncontingent: Timing is Everything

Eligibility is based on the nature and amount of the debtor's obligations to creditors as of the date the petition is filed. *In re Piovannetti*, 496 B.R. 57, 61 (Bankr. D.P.R. 2013). Only noncontingent and liquidated debts are counted toward the debt limitations for eligibility in a Chapter 13. *In re Barcal*, 213 B.R. 1008, 1012 (B.A.P. 8th 1997). "It is generally agreed that a debt is contingent if it does not become an obligation until the occurrence of a future event, but is noncontingent when all of the events giving rise to liability for the debt occurred prior to the debtor's filing for bankruptcy." *In re Mazzeo*, 131 F.3d 295, 303 (2nd Cir. 1997); see also *In re Singh*, 588 B.R. 136, 139 (Bankr. E.D.N.Y 2018) (concluding that a debt on which the debtor signed a personal guarantee was contingent and thus not included in the debt limit calculation when the event that triggered default on and enforcement of the obligation was the filing of the petition). Stated another way, where all the facts giving rise to liability are present and in existence at the time the debtor files his petition, and no future occurrence is required to establish the debtor's liability, the claim is noncontingent. *In re Dill*, 30 B.R. 546, 549 (B.A.P. 9th Cir. 1983), *aff'd*, 731 F.2d 629 (9th Cir. 1984).

B. Liquidated: How Certain are You?

While the concept of contingency involves the nature or origin of liability, liquidation relates only to the amount of any liability. *In re McGovern*, 122 B.R. 712, 715 (Bankr. N.D. Ind. 1989). The focus is on the certainty of the amount claimed due or the precision with which it can be determined. *Id.* More specifically, the question of whether a debt is "liquidated" turns on whether the debt is subject to "ready determination and precision in computation of the amount due." *Id.* (citing *In re Fostvedt*, 823 F.2d 305, 206 (9th Cir. 1987)). Typically, a debt is considered "liquidated" if the amount due can be readily determined either by reference to an agreement or through "simple mathematics." *Id.* If the

finder of fact must rely upon its judgment to establish an appropriate amount, the debt is unliquidated. *Id.* If judgment or discretion is not required, the debt is liquidated. *Id.*

While it may be *seem* easy enough to apply a fairly straightforward-ish definition to a debtor's case, the mere fact that there is a nearly insurmountable number of opinions on the topic probably means it is not so easy.

II. Taxes: Disputing Means Nothing

When it comes to characterizing tax liability for purposes of 11 U.S.C. § 109(e), the battle is often determining whether the debt is liquidated or unliquidated.³ Arguably the leading case on this topic is *United States v. Verdunn*, 89 F.3d 799 (11th Cir. 1996). In that case, the IRS issued a deficiency notice claiming income tax deficiencies, interest, and penalties against the debtor prior to his filing bankruptcy. *Id.* at 800. In response, the debtor filed a petition in the tax court alleging that the claims were erroneous. *Id.* One month before the trial in the tax court, the debtor filed Chapter 13. *Id.*

As many creditors tend to do, the IRS filed a Proof of Claim in the bankruptcy case. *Id.* The unsecured amount contained in the Proof of Claim was for an amount that would put the debtor over the debt limit. *Id.* As a result, the IRS moved for dismissal of the debtor's case on grounds of ineligibility. *Id.* The bankruptcy court held that the tax liability was considered unliquidated, since the debtor disputed the tax liabilities and alleged that his underpayment was "entirely due to fraud." *Id.* Accordingly, it denied the IRS's motion to dismiss. *Id.* The district court affirmed. *Id.* at 801.

³ Since the determination of whether a debt is contingent or noncontingent hinges on whether all events giving rise to the liability have occurred, it is not often the central issue in tax debt cases. Whether the debtor has a tax debt because he had not yet filed his tax returns or because he had not paid his taxes prior to filing, the obligation is already fixed to the debtor at the time he files; no future event is required. See *In re Tucker, Jr.*, 345 B.R. 373 (Bankr. M.D. Ala. 2006) (after concluding that the all events giving rise to the debtor's tax liability occurred prior to his bankruptcy petition, the court turned to the "more difficult question [of] whether a debt which is disputed by the debtor is liquidated for purposes of § 109(e)"); *In re Hutchens*, 69 B.R. 806, 811 (Bankr. E.D. Tenn. 1987) (holding that the debtor's tax liability for back taxes was noncontingent since his liability had been calculated and assessed by the IRS before filing his Chapter 13 petition).

On appeal to the Eleventh Circuit, the court examined whether such tax liabilities were properly considered “unliquidated” for purposes of § 109(e). *Id.* at 802. The debtor argued that his tax liabilities were not liquidated debts on the date of the petition for two reasons. *Id.* First, the debtor averred that the deficiency notice was insufficient for a court to use to “readily ascertain” the amount of his debt. *Id.* Second, the debtor claimed that the debt was not liquidated because he vehemently disputed the penalties at issue which resulted in the need for extensive evidentiary hearings before the tax court to determine his tax liability. *Id.* at 802. The IRS, on the other hand, maintained that the deficiency notice served as a sort-of contract, which furnished data specifying the amount of tax liability determined by the IRS and would enable the taxpayer to petition the tax court for any redetermination of a deficiency. *Id.* at 802-03. Moreover, the IRS claimed that the amount of debt could be ascertained through the “application of fixed legal standards,” mainly, the Internal Revenue Code. *Id.* at 803. The Eleventh Circuit agreed with the IRS. *Id.*

The court concluded that the tax liabilities were liquidated, and thus held that the debtor was ineligible for Chapter 13. *Id.* at 803. In so holding, the court analyzed the definition of “liquidated”:

Black's Law Dictionary defines a liquidated debt as one where it is certain what is due and how much is due.” *Id.* at 802. (citing *Black's Law Dictionary* 930 (6th ed. 1990)). A liquidated debt is that which has been made certain as to amount due by agreement of the parties or by operation of law. *Id.* Therefore, the concept of a liquidated debt relates to the amount of liability, not the existence of liability. *Id.* (citing *In re McGovern*, 122 B.R. 712, 715 (Bankr. N.D. Ind. 1989)). If the amount of the debt is dependent, however, upon a future exercise of discretion, not restricted by specific criteria, the claim is unliquidated. *Id.* (citing 1 *T. Sedgwick, Measure of Damages*, § 300 at 570 (9th ed. 1912)).

Accordingly, the tax liabilities were considered liquidated, unsecured debts, which rendered the debtor ineligible for relief under Chapter 13. *Id.*

The Eleventh Circuit's holding in *Verdunn* all but sealed the deal on how tax liabilities are characterized for purposes of § 109(e). Its holding also reaffirmed a long-standing rule that disputed debts count towards the statutory limit. See *In re Lindsey*, No. CC-08-1287-PaDMk, 2009 WL 7751414, at *4 (9th Cir. BAP June 17, 2009) (“[T]hat a claim is disputed by a debtor does not require it to be excluded from the § 109(e) eligibility calculation”); *In re Eskanos*, No. 11-40292-BKC-AJC, 2012 WL 5182997, at *1 (Bankr. S.D. Fla. Oct. 18, 2012) (declining the debtors’ invitation to consider the merits of their arguments that the taxes were improperly assessed and dismissing their case for ineligibility); *In re Ahmed*, 362 B.R. 445, 452 (Bankr. C.D. Cal. 2006) (“Debtor’s dispute with respect to liability for the fraud penalties does not make the debt unliquidated.”); *In re Tucker, Jr.*, 345 B.R. 373, 376 (Bankr. M.D. Ala. 2006) (concluding that the court had no discretion when it determined that the IRS’s claim was liquidated even though the debtor had filed an adversary proceeding to determine his tax liability).

III. Personal Guarantees: Timing is Still Everything

The answer to that question is the typical, eye-roll inducing response: It depends. Unlike in issues with tax liabilities where the focus is on whether the debt is “liquidated,” the outcome for personal guarantees hinges on whether the debt is contingent. In many instances, the loan documents and personal guaranty specify the amount owed and provide for any acceleration clause. No discretion is needed in those circumstances; a court need only look to the terms of the contract. See *In re Piovanett*, 496 B.R. 57, 63 (Bankr. D.P.R. 2013) (concluding that the debt arose from loan document, so the amounts owed were “readily available by simple contractual computation.”). Because the amount of liability is readily determinable in those instances, the debt is liquidated.

So that leaves the issue of whether the debt is contingent or noncontingent. For this issue, timing is everything. The dispositive date for determining “contingency” is the date of

filing. 11 U.S.C. § 109(e). As such, if the “triggering” or “future” event has not occurred by the time of filing, the debt is considered contingent for purposes of the debt limit calculation. “Typically, ‘a claim based on a guaranty is contingent unless the loan is in default’ or is dependent on the occurrence of a future event.” *In re Singh*, 588 B.R. 136, 140 (Bankr. E.D.N.Y. 2018) (quoting *In re Benanti*, No. 15-71018, 2018 WL 1801194, at *6 (Bankr. C.D. Ill. April 13, 2018)); see also *In re Mazzeo*, 131 F.3d 295, 300, 302 (2nd Cir. 1997); *In re Hatzenbuehler*, 282 B.R. 828, 835 (Bankr. N.D. Tex. 2002) (concluding that a debt personally guaranteed by the Chapter 13 debtors where the creditor had not exercised its option that would trigger the debtors’ obligation under the guaranty); *In re Pennypacker*, 115 B.R. 504, 507 (Bankr. E.D. Pa. 1990) (“The classic example of a contingent debt is a guaranty because the guarantor has no liability unless and until the principal defaults.”). Where there has been a default on the underlying debt, the “liability on a guaranty becomes fixed and is no longer contingent because all predicates to enforcement have occurred.” *In re LightSquared Inc.*, No. 12-12080, 2014 WL 5488413, at *3 (Bankr. S.D.N.Y. Oct. 30, 2014).

As it relates to a personal guarantee by the debtor,⁴ if the debtor’s liability is triggered before the petition, whether by contract or applicable non-bankruptcy law, the guaranteed debt is appropriately characterized as non-contingent. See *In re Kister*, 453 B.R. 755, 759 (Bankr. E.D. Mo. 2011) (the debtor’s non-contingent liability on the guaranty was triggered when the primary obligor defaulted before the debtor filed his Chapter 13 petition). On the other hand, if, as of the petition date, there is still some occurrence of a future event before the debtor becomes liable, the guaranteed debt is contingent and not counted for § 109(e) purposes.

In re Singh provides an illustrative example. 588 B.R. 136, 137 (Bankr. E.D.N.Y. 2018). In that case, the debtor and his non-filing spouse owned a corporation. *Id.* As part of

⁴ Note the distinction between a debtor signing a guaranty versus a debtor’s liability on a debt to a partnership in which the debtor is a general partner, discussed later.

the loan agreement between the debtor's corporation and the creditor, the debtor executed a guaranty of payment. *Id.* The guaranty provided that if the corporation, the non-filing spouse, and/or debtor became insolvent or commenced a bankruptcy proceeding, it would constitute an "event of default" and the loan would come immediately due and payable. *Id.* at 138. At the time of filing, the corporation was current on its payments to the creditor and the loan had not yet matured. *Id.* at 137. But the moment that the debtor filed, the loan came due and payable. *Id.* at 140.

The court held that, because the determination as to whether a debt is contingent is made as of the date the petition is filed, and at the time he filed his petition the loan had not yet come due, the debt was contingent and therefore not included in the debt limit calculation. *Id.* In other words, because the event giving rise to the debtor's liability under the guaranty did not occur *prior to* the bankruptcy filing, the creditor's claim was contingent for purposes of § 109(e). *Id.* at 137 (emphasis added).

However, once the debtor filed his petition, his obligation under the guaranty became due and fixed. *Id.* So while the obligation was not contingent when he filed and therefore not included in the debt calculation, the debtor became obligated on the debt once he filed. *Id.* This led to a twisted conclusion in the case: the court denied confirmation because the debtor's proposed plan did not provide for the creditor's unsecured claim in full along with the other unsecured creditors. *Id.* at 140-41.

Compare *In re Singh* with *In re Piovanetti*. 496 B.R. 57 (Bankr. D.P.R. 2013). Like in *In re Singh*, the issue in *In re Piovanetti* dealt with the "contingent" aspect of the debt limit calculation. *Id.* In that case, the debtor jointly and severally guaranteed a loan by the creditor for a corporation. *Id.* As in *In re Singh*, the loan agreement contained a default provision which brought the loan due and enforceable upon the commencement of a bankruptcy proceeding, as well as untimely payment. *Id.* at 64. The corporation eventually defaulted on

the obligation and subsequently filed Chapter 11. *Id.* The debtor filed his Chapter 13 three days after the corporation filed its Chapter 11. *Id.* At the time the debtor filed his individual case, the “extrinsic event” had happened: the corporation had defaulted on payments and it had initiated a bankruptcy proceeding. *Id.* Since the debtor’s liability on the guaranty was triggered when the corporation defaulted on both counts, the debt was considered noncontingent and therefore included in the debt limit calculation. *Id.*

The contingency analysis changes, however, when analyzing whether an obligation of a debtor, which is a general partner, is included in determining the debtor’s eligibility for Chapter 13. In those situations, state partnership law controls. If the applicable state law would consider the partner principally liable on a partnership debt, the entire partnership debt is included for purposes of § 109(e) in the partner’s Chapter 13. *See Miami Valley Production Credit Ass’n v. Tegtmeyer*, 31 B.R. 555, 559 (Bankr. W.D. Ohio 1983).

In contrast, where the applicable state law dictates that partnership creditors must first satisfy their claims from partnership assets before proceeding against an individual partner, the partnership debt is not included for § 109(e) purposes. *See In re Norman*, 32 B.R. 562, 565 (Bankr. W.D. Mo. 1983) (finding that the debtor’s liability for the debts of the partnership were contingent, and therefore not considered in the debt limit calculation, because the partnership was not in bankruptcy and was solvent at the time the debtor filed his individual case). In other words, the corporation must be insolvent before the debt can be considered noncontingent in the debtor’s individual bankruptcy case.

Though there is a split of authority with respect to a partner’s liability vis-à-vis the partnership’s liability for the debt limit calculation. Most courts hold that if the partnership debt is secured by collateral owned by a corporation or partnership, the individual cannot include that debt as secured. *See In re Bosserman*, 587 B.R. 668, 675 (Bankr. N.D. Ohio 2018) (finding that the partnership’s creditor’s claim was unsecured in the individual debtor’s

case because “obligations that are secured by collateral owned by a third party are considered unsecured for purposes of § 109(e)”); *In re Lower*, 311 B.R. 888, 895 (Bankr. D. Colo. 2004) (concluding that the corporation’s debt could not be considered secured in the debtor’s individual case because the debtor did not own the collateral—he held a stock interest in the corporation that owned the collateral).

Of course, it is good practice to ask the debtor before filing whether the debtor has signed a personal guaranty, whether on a debt for his own business or a “third-party” business. This is especially true where the debtor has also filed a petition, whether under Chapter 7 or Chapter 11, on his business as well. Compare both schedules of debts with the debtor to verify whether anything on the business’s schedules also needs to be listed on the individual’s schedules. Not doing so can lead to problems that extend beyond eligibility, such as whether the case was filed in good faith. See *In re Pearson*, 773 F.2d 751, 757 (6th Cir. 1985) (“Chapter 13 eligibility should normally be determined by the debtor’s schedules checking only to see if the schedules were made in good faith.”); *In re Belice*, 480 B.R. 199, 201 (B.A.P. 1st Cir. 2012) (“[T]he burden is on the debtors to use reasonable diligence in completing their schedules and lists.”); *In re Bosserman*, 587 B.R. at 676 (“Alternatively, the court finds that the evidence presented raises serious questions as to whether the \$440,000.00 figure listed on Debtor’s Schedules was calculated in good faith.”); *In re Piovanetti*, 496 B.R. at 61-62 (discussing whether the debtor exercised “reasonable diligence” in filing his schedules when he omitted a \$7 million debt on which he signed a personal guaranty but later amended to include after confronted by the creditor at the Meeting of Creditors); *In re Alt*, 251 B.R. 831, 834-35 (Bankr. W.D. Mich. 2000) (finding that a debtor’s petition was filed when she knew about but failed to list a debt that would render her ineligible for Chapter 13).

IV. Student Loans: The 1.5 Trillion-Pound Gorilla

It is widely held by courts that student loans must be included in the debt limit calculation, as student loans are both liquidated and noncontingent. *In re Mosley*, No. 18-30771, 2018 WL 5304731 (Bankr. S.D. Ill. Oct. 24, 2018); *In re Alonzo*, No. 17-20589, 2018 WL 7016636 (Bankr. D. Colo. June 12, 2018); *In re Mendenhall*, No. 17-40592, 2017 WL 4684999 (Bankr. D. Idaho Oct. 17, 2017).

This characterization of the debt is true even if the debtor is repaying his student loans through an income-driven repayment (IDR) plan. Under an IDR plan, a borrower makes monthly payments that are equal to 10% of his discretionary income. After twenty to twenty-five years, depending on the type of repayment plan, the remaining balance, if any, is forgiven. If the borrower defaults, in some cases, the entire remaining balance can come due.

In *In re Pratola*, the debtor, who was repaying through an IDR plan, tried to make this argument. 578 B.R. 414, 416 (Bankr. N.D. Ill. 2017), *rev'd*, 589 B.R. 779 (N.D. Ill. 2018). The debtor argued that his student loans were contingent because the “parties entered into the loan agreements with the knowledge that some of the debt may ultimately be forgiven.” *Id.* at 418. The bankruptcy court did not buy it. *Id.* at 418-19. Instead, it determined that the debtor had a “presently existing duty” on the date of his petition to pay back the educational loans. *Id.* Therefore, the debt was noncontingent. *Id.*

Fortunately for the debtor, the court’s opinion did not end there. After concluding that the debt was noncontingent and therefore included in the § 109(e) calculation rendering the debtor ineligible, the court turned to whether 11 U.S.C. § 1307(c) required it to dismiss the case for cause. *Id.* The court held that “the existence of educational debt in excess of the § 109(e) limit is not cause for dismissal or conversion of this case under § 1307(c).” *Id.* at 422. As a preliminary finding, the court determined that language of §§ 109(e) and 1307(c) was ambiguous in whether it expressly required a court to dismiss a case under such

circumstances. *Id.* 419. Because of the ambiguity, the court permitted itself to look beyond the text. *Id.* The court based its holding on three principals.

First, the court reasoned that Congress’s creation of the debt limits came in response to its expansion of the availability of chapter 13 bankruptcy relief to business owners. *Id.* at 420. “Congress recognized that large business owners might be tempted to file under chapter 13 in order to avoid chapter 11 . . . In order to keep debtors with large businesses from filing chapter 13 cases, Congress created the debt limits.” *Id.* (citing 11 U.S.C. § 109(e)). The court reasoned that Congress could not have intended to exclude individuals with large amounts of educational debt from Chapter 13. *Id.* Relatedly, according to the court, any issues of creditor protections that would be present in a Chapter 11 case are not present in a Chapter 13 case. *Id.*

Second, the court juxtaposed the rate of increase for debt limits with the rate of increase in educational costs and debt. *Id.* “Although the treatment of educational debt has changed and educational costs and debts have increased significantly, the chapter 13 debt limits have increased minimally by comparison.” *Id.* at 421. Due to the dramatic differences in the rates of increase, courts have allowed debtors with student loans to structure their plans in such a way as to tackle both student loan debt and other unsecured debt. *Id.* “[C]ourts have generally permitted chapter 13 debtors to classify educational debt separately from other general unsecured debt under certain circumstances pursuant to §§ 1322(b)(1) and (b)(5).” *Id.*

Lastly, the court concluded that the express language § 1307(c) does not require dismissal in such cases, and it would be inapposite to dismiss a debtor who exceeds the debt limit solely as a result of educational loans. *Id.* at 422. “Dismissing [the debtor’s] case would not advance the Congressional intent behind the debt limits, and doing so would hinder the principal purpose of the Bankruptcy Code—to grant a ‘fresh start’ to the ‘honest but unfortunate debtor.’” *Id.* (quoting *Marrama v. Citizens Bank of Mass.*, 549 U.S. 365, 367

(2007)). To the court, permitting the case to proceed would allow the debtor to continue making payments on his student loans while also being able to make payments to other general unsecured creditors that would not get such payment if the case were dismissed or converted. *Id*

Although the sentiments expressed by the bankruptcy court were encouraging, those sentiments did not hold up on appeal. The district court held that the bankruptcy court abused its discretion in concluding that the existence of educational debts in excess of § 109(e)'s limit is not cause for dismissal or conversion under § 1307(c). *In re Pratola*, 589 B.R. 779, 787 (N.D. Ill. 2018). In a nutshell, the district court held that there is no ambiguity in § 109(e). *Id.* “[T]he text of § 109(e)'s eligibility requirement plainly bars Debtor from proceeding under Chapter 13, and under § 1307(c) his case must either be dismissed or converted.” *Id.* While the district court was “not unsympathetic” to the policy concerns raised by the bankruptcy court, the plain language of § 109(e) foreclosed any efforts of a court to distinguish between certain types of unsecured debts. *Id.* at 790, 792.

Decisions following, and contemporaneous with, the reversal of the bankruptcy court's holding in *In re Pratola* equally lament the position that debtors are in with respect to student loans—but those courts still dismiss or convert the case for cause. *See In re Mosley*, 2018 WL 5304721, at *4 (recognizing that the plain text interpretation of § 109(e) has the effect of forcing student loan-riddled debtors into Chapter 11, but holding that § 109(e) provided no authority for courts to treat such debtors any differently); *In re Alonzo*, 2018 WL 7016636, at *3 (“While the bankruptcy courts in the *Pratola* and *Fishel* cases offer compelling policy arguments, courts faced with a clear statutory command may not rewrite the Bankruptcy Code.”); *In re Petty*, No. 18-40258, 2018 WL 1956187, at *2 (Bankr. E.D. Tex. April 24, 2018) (holding similarly); *In re Bailey-Pfeiffer*, No. 1-17-13506-bhl, 2018 WL 1896307, at *4 (Bankr. W.D. Wis. Mar. 23, 2018) (recognizing the same equitable arguments

raised by the bankruptcy court in *Pratola* but ultimately dismissing the case because it determined that the words of § 109(e) were clear that an individual who is ineligible to be a chapter 13 debtor cannot continue in chapter 13); *In re Mendenhall*, No. 17-40592, 2017 WL 4684999, at *4 (Bankr. D. Idaho Oct. 17, 2017) (requiring dismissal or conversion where the debtor was ineligible under § 109(e) due to student loans).

While it seems that the case law is evolving to be ever-more against debtors, what these cases call into question is whether courts need discretion to have discretion. The debt limits are fixed by the Consumer Price Index and adjusted every three years. But many of these cases, especially those involving student loan debt, warrant a court's individualized approach to a case. Though the Bankruptcy Code effectively standardized the requirements for a debtor to get relief, it also left room for judicial discretion. Whichever side of the issue you fall on, bankruptcy professionals are obligated to ensure that conversation continues. Bankruptcy courts are, after all, courts of equity.

V. Conclusion: Okay, Now We've Hit Our Limit

Before telling a debtor that he is too far in debt for bankruptcy, carefully analyze each debt to determine if the debt would truly cause the debtor to be ineligible for Chapter 13. In most cases, the timing of when the debtor files his case can make the difference. If the issue is taxes, know that disputing the debt will not change the answer. So, before a debtor files, make sure all tax returns have been filed and assessed. If the debtor signed a personal guaranty, check to see whether the business or corporation has filed bankruptcy itself. Lastly, with student loans, see whether the debtor would qualify for loan forgiveness before filing. In the end, just be sure to know your debtor's [debt] limits.