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Student Loan Debt Discharged in Recent Illinois Bankruptcy Court Opinion

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Michael Traison - 312.860.4230
Bonnie Pollack - 516.296.9143
Sophia Hepheastou - 212.510.2227

As a follow up to our recent legal alert regarding the dischargeability of student loan debt, another court has addressed factors to be considered for discharge, ultimately allowing the borrower to discharge the student loan debt at issue. Click here to read our previous legal alert.

Laurina Kim Bukovics ("Bukovics") filed a voluntary petition pursuant to chapter 7 of title 11 of the United States Code (the "Bankruptcy Code") in 2015. *In re Bukovics*, 17-00186 (Bankr. N.D. Ill. Feb. 25, 2020)

As an 18 year old, Bukovics enrolled in the University of Wisconsin. She graduated in 1991 but not before borrowing approximately $21,000 to finance her education for a degree in communications. Of the thirteen (13) loans Bukovics received, none were offered by private lenders. Over the next twenty years, Bukovics struggled to make payments on her loans and often requested and received suspensions in payment while interest continued to accrue. By 2018, despite having made substantial payments, her loan balance approximated $73,000.

Before opining on Bukovics' case, Bankruptcy Judge Jack B. Schmetterer provided a preface describing hardships and statistics associated with student loan debt. The Judge noted that over the last 30 years, average college tuition has grown by 370%, calling student loan debt a "financial obstacle and a pervasive and concerning long-term reality for many people." *Bukovics,* 17-00186 949936, at 1. The Judge noted that cumulative student debt across the United States has risen to over $1.51 trillion as of 2019. *Id.*

As described in prior Cullen and Dykman legal alerts, while the Bankruptcy Code contains a provision allowing for the discharge of most debts as a result of filing bankruptcy, student loans are among the types of debt that are typically non-dischargeable, subject to certain exceptions where the debtor can show that not discharging the student loan debt would pose an undue hardship. *O'Hearn v. Educ. Credit Mgmt. Corp. (In re O Hearn)*, 339 F.3d 559, 564 (7th Cir. 2003).

In addressing whether the non-dischargeability of student loan debt imposes an undue hardship on a debtor, the Seventh Circuit has adopted the test articulated by the Second Circuit in *Brunner v. New York State Higher Education Services Corporation*, 831 F.2d 395 (2d Cir. 1987). Under the *Brunner* test, a debtor must make the

following three-part showing: (1) that the debtor cannot maintain, based on current income and expenses, a "minimal" standard of living for him/herself and his/her dependents if forced to repay the loans; (2) that additional circumstances exist indicating that this state of affairs is likely to persist for a significant portion of the repayment period of the student loans; and (3) that the debtor has made good faith efforts to repay the loans. *Brunner*, 831 F.2d at 396.

In Bukovics' case, like others, the original principal debt of $20,000 had spiraled out of control over a long period during which Bukovics could not obtain employment despite applying to over 200 part-time and full-time jobs over a period of sixteen months. Lenders granted Bukovics periods of forbearance which only increased her debt as interest continued to accrue with no source of income to support payments due and living expenses rising.

In assessing the factors under *Brunner*, the Judge noted that Bukovics had given up her apartment, gave up two vehicles to forgo car insurance payments and was receiving government assistance for food benefits. Bukovics had made sincere efforts to minimize personal and household expenses, going as far as giving up her own apartment and living with friends. She was well below the standard cost of living. Bukovics also had no income, did not receive unemployment benefits and was living off government nutritional assistance and short term loans from family and friends. Bukovics' financial position was also not likely to improve, especially since she could not find employment despite having made considerable efforts to obtain work. Despite her financial position, Bukovics had made good faith efforts to pay the loans due. By the time she filed bankruptcy in 2015, she had paid approximately $29,000 on her consolidated loan, which was more than the principal amount owed. It was clear to the court that Bukovics' difficulties stemmed from interest that had accrued during the time periods she was unable to make payments on the loans that were deferred. Based on all of these factors, the court held that Bukovics had met her burden under the *Brunner* test and her student loan debt would be discharged.

This and other recent decisions regarding student loan debt evidence a trend that may result in a fundamental change in the judicial standards of review before judges considering dischargeability of student loan debt. This opinion also reflects the Bankruptcy Courts' equitable nature while also shedding light on the uncertainty lenders and servicers of student debt will face as more courts tackle this issue.

Please note that this is a general overview of developments in the law and does not constitute legal advice. Nothing herein creates an attorney-client relationship between the sender and recipient. If you have questions regarding these provisions, or any other aspect of bankruptcy law, please contact Michael Traison at 312.860.4230

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Attorneys

- Michael H. Traison
- Bonnie Pollack