by Magdalena Reyes Bordeaux
and Steven Frederick Werth

A Fresh Start

The *Brunner* test, long used to determine a student loan debtor's ability to pay, requires the debtor to both request a "fresh start" and demonstrate a hopelessly dire economic future

Today, more than 44 million Americans collectively owe more than $1.67 trillion in student loan debt.[1] From 1989 to 2009, student loans became the largest source of consumer debt after mortgages.[2] The repayment of student loans has become increasingly difficult, leaving many borrowers still owing educational loans into retirement. Older Americans now hold approximately 20 percent of the nation's student loan debt.[3] The consequences for individuals who default on student loan obligations can be dire. Tax refunds can be seized, wages can be garnished, and Social Security benefits can be garnished, as well as offset.[4] According to a 2016 U.S. Government Accountability Office (GAO) report, offsets of Social Security benefits to

Magdalena Reyes Bordeaux is a supervising senior attorney with Public Counsel and manages Public Counsel's Debtor Assistance Project, which provides bankruptcy and bankruptcy-related legal assistance and representation to individuals and families. Steven Frederick Werth practices bankruptcy law with Sulmeyer Kupetz, A Professional Corporation, in Los Angeles.

MICHAEL CALLAWAY


DEBT

repay defaulted student loans increased from 36,000 in 2002 to 173,300 in 2015.[5] In 2015, approximately 114,000 borrowers 50 years and older had Social Security, retirement, or survivor benefits offset to repay defaulted federal student loans—with 43 percent of borrowers having held these loans for 20 years or more.[6] However, unlike other consumer debts, student loan debt cannot be automatically discharged in bankruptcy.

History

Article I, Section 8, Clause 4 of the U.S. Constitution empowered Congress to establish "uniform laws on the subject of Bankruptcies throughout the United States."[7] A central tenet of bankruptcy law is to provide the "honest but unfortunate" debtor a "fresh start."[8] Yet, a fresh start is not automatic for debtors seeking to discharge student loans.

Section 523(a)(8), the provision in the Bankruptcy Code governing discharge of student loans, requires a debtor to demonstrate that paying outstanding student loan obligations would pose an undue hardship to the debtor and debtor's dependents.[9] Section 523(a)(8) states:

> A discharge under…this title does not discharge an individual debtor from any debt—(8) unless excepting such debt from discharge under this paragraph would impose an undue hardship on the debtor and the debtor's dependents, for—
> (A)(i) an educational benefit overpayment or loan made, insured, or guaranteed by a governmental unit, or made under any program funded in whole or in part by a governmental unit or nonprofit institution; or
> (ii) an obligation to repay funds received as an educational benefit, scholarship, or stipend; or
> (B) any other educational loan that is a qualified education loan, as defined in section 221(d)(1) of the International Revenue Code of 1986, incurred by a debtor who is an individual.

While the syntax of this section is disjointed, its meaning is clear: a general discharge of a debtor will not discharge most types of student loan debts unless failure to do so "would impose an undue hardship on the debtor and the debtor's dependents" for the types of debts identified in subparts (A) and (B).

Discharging student loans in bankruptcy did not always require a showing of undue hardship. Prior to 1976, student loans could be discharged just like credit card debt. Then, in the early 1970's, allegations that debtors would file bankruptcy shortly after graduation when loans became due prompted a change in the law.[10]

The Commission on Bankruptcy Laws was established by Congress to propose ways to halt perceived abuse of bankruptcy laws.[11] Although this commission acknowledged that student loan abuse was more perception than reality, the report it issued to Congress still recommended a restriction on the discharge of student loans.[12]

Congress then passed the Education Amendments of 1976 Act to combat alleged student loan "abuses." For bankruptcy cases filed after September 30, 1977, student loan debts less than five years old were not dischargeable absent a showing of undue hardship."[13] Student loan debts more than five years old could still be discharged like any other unsecured debt. The student loan discharge exception became codified as Section 523(a)(8).[14] The term "undue hardship," however, was left undefined in Section 523(a)(8).

In 1990, Congress extended the period a debtor could discharge student loans without a showing of undue hardship to seven years.[15] Moreover, in 1998, Congress extended this period indefinitely.[16] After 1998, the only way a debtor could discharge student loans was to demonstrate undue hardship.[17] In 2005, Congress then extended this exception to discharge to private student loans.[18] Despite the changes to section 523(a)(8) over the years, Congress has still not defined the term "undue hardship" as the term applies in student loan discharge cases.

Brunner Test

Since the term "undue hardship" was not defined when Section 523(a)(8) was first codified, courts wrestled with applying undue hardship when analyzing student loan discharge cases. Soon, however, a case in New York would impact how courts interpret the term "undue hardship."

In 1982, a young woman named Marie Brunner received her Master of Social Work degree. The grace period suspending the repayment of her $9,000 loan lasted nine months. Before making a single payment, Brunner commenced a bankruptcy case in the Southern District of New York and sought to discharge this debt.[19] Although she prevailed before the bankruptcy court, the decision was reversed on appeal.[20] In 1985, the District Court for the Southern District of New York published a decision—*In re Brunner*— which would have a major impact on how courts interpret the term "undue hardship" under Section 523(a)(8).[21]

The *Brunner* court obtained guidance from the report of the Commission on Bankruptcy Laws from which Congress lifted the words "undue hardship."[22] The report asserted that it was fair to make discharge freely available after five years but difficult before then, as the debtor may be unable to repay his or her debts due to "factors beyond his control."[23] Ultimately, the *Brunner* court concluded that:

> . . . obtaining a discharge of student loans in bankruptcy prior to five years after they first come due requires a three-part showing:
> 1) that the debtor cannot, based on current income and expenses, maintain a "minimal" standard of living for himself or herself and his or her dependents if forced to repay the loans,
> 2) that this state of affairs is likely to persist for a significant portion of the repayment period of the student loan, and
> 3) that the debtor has made good faith efforts to repay the loans.[24]

The *Brunner* court, applying this test, found that Brunner's financial situation could potentially improve, and so denied her discharge. On appeal, the Second Circuit upheld this ruling.[25] This three-part test, which became known thereafter as the Brunner test, was adopted by most, but not all,[26] courts in the country—including the Ninth Circuit.[27]

Although the *Brunner* court recognized that this test may seem "draconian," it justified the harshness of the test by noting that after five years, the test would not apply.[28] Also, the court cited prior decisions that likewise imposed harsh treatment, including a 1981 decision holding that discharge should be based upon a "certainty of hopelessness."[29] Unfortunately, case law stemming from a time when student loans could be discharged after a certain period of time continues to be relied upon to justify denying a discharge of student loans often decades old.[30]

Unduly Harsh

The *Brunner* test as interpreted by bankruptcy courts has become unduly harsh and is no longer the appropriate test to determine undue hardship. The Eighth Circuit noted this in *Long v. Educational Credit Management Corp*. when it stated that it felt that the *Brunner* test is too restrictive and limited a court's discretion.[31] In the concurring opinion in *In re Roth*, Judge Jim D. Pappas stated that the *Brunner* legacy should be discarded because the

Brunner test is "a relic of times long gone."[32] In *Roth*, Judge Pappas stated that requiring that a debtor demonstrate that that her prospects will be hopeless at each stage, is "an unrealistic standard."[33]

Some recent cases recognize the weaknesses of *Brunner.* However, satisfying the *Brunner* test remains a daunting task—especially given how the courts have applied the three factors of the *Brunner* test.

The first factor in the *Brunner* test looks at the debtor's present circumstances and whether the debtor cannot maintain a minimal standard of living. At first blush, meeting this prong appears simple. If the debtor has no surplus income, or if the surplus income is not enough to make the monthly payments necessary to repay his student loans, the debtor should be able to meet the first prong. However, lenders and the courts have taken a different approach.

Cases abound that discuss the "appropriateness" or "reasonableness" of a debtor's expenses relating to a vehicle, health insurance, recreation, and personal family planning decisions.[34] Every single bill for every single necessity can and often does get scrutinized by the lender and the court.[35] For example, debtor Karen Lynn Schaffer's case demonstrates how aggressive student loan lenders can be when challenging the reasonableness of expenses.[36] Schaffer took out parental student loans when her husband was employed.[37] Subsequently, her husband was unable to work because of severe medical problems from diabetes and liver cancer.[38] Schaffer then took a full-time job in security—waking up at 4:00 a.m. every morning before leaving to work.[39] On occasion, Schaffer went to McDonald's to split a value meal with her husband when she did not have time to fix dinner.[40] Thus, after scrutinizing Schaffer's expenses, the lender argued that she was spending too much on eating out.[41]

In another case, debtor Michele D. Walker was grilled by a lender for having too many children.[42] The lender cross-examined Walker during trial and asked her if her children had been "planned" and in closing stated that "you have to make the decision to have a family in light of what you can afford." [43] Also, for debtor Roger Renville who needed mental health treatment, the lender advised Renville to save money by driving to an Indian health service provider—800 miles away—and use his vacation time to make the trips.[44] These are just a sample of cases in which creditors harshly pick apart the "reasonableness" of a debtor's expenses—even when medically necessary.

The second factor of the *Brunner* test is by far the most challenging for the debtor to prove. Unfortunately, unlike other debtors entitled to a "fresh start," debtors seeking to discharge their student loans must simultaneously request a "fresh start" and demonstrate a bleak and hopeless economic future.

Debtor Doug Wallace Jr. obtained his bachelor's degree in Sociology, then subsequent health complications from diabetes caused him to become legally blind.[45] After quitting his job, the Social Security Administration found that his blindness constituted a permanent disability. However, when he filed for bankruptcy and sought to discharge his student loan debt, the court concluded that he had not yet shown the requisite "certainty of hopelessness" that would allow the debt to be discharged under the second prong of the *Brunner* test.[46]

Cases abound that discuss the "appropriateness" or "reasonableness" of a debtor's expenses relating to a vehicle, health insurance, recreation, and personal family planning decisions.

Income-Based Repayment Plans

Analysis of this factor is complicated by income-based repayment (IBR) programs. IBR programs require a borrower to enroll in a 20-25-year loan repayment plan, report income for each of those years, and make a student loan payment that is determined by the amount of that debtor's disposable income for that year. The availability of IBR programs is used as evidence by defendants that a debtor cannot meet this factor because a debtor could be permitted to make a payment as low as zero. However, the debt remains, interest accrues, and at the end of the 25-year term, the debtor will owe more than at the time of the bankruptcy and could suffer a tax consequence due to forgiven debt.

Several bankruptcy courts have found that the question of student loan discharge turns on the availability of IBR programs. The Court in *In re Butler* used the existence of IBR programs in its argument against finding the debtor could meet the first and third *Brunner* factors.[47] The court in *In re Kelley* found that a debtor could not meet the first *Brunner* factor, despite having effectively no income, due to the existence of IBR programs.[48] The Court in *In re Hopson* found that even though a debtor's excess income was not enough to make monthly loan payments, the fact that an IBR program would allow those payments to be zero meant that the *Brunner* test was not met.[49]

It is vital to note that there is no guarantee a forgiveness of debt promised by the government under an IBR program will actually occur in 25 years. In fact, a similar program implemented by the government has been an abject failure: the Public Service Loan Forgiveness (PSLF) program. The PSLF program, launched in 2007, allowed borrowers who work in certain types of public service to have their federal student loans wiped away after 10 years of payments.[50] However, 99 percent of processed applications from PSLF borrowers, who after 10 years submitted applications, were denied.[51] Similarly, students, who have waited 25 years to discharge their student loans under an IBR program, could meet the same fate as PSLF borrowers. Given the 99 percent failure rate of the PSLF program, this is not only possible, but likely.

It is also important to note that bankruptcy debtors have the constitutional right to seek a discharge of their student loans under Section 523(a)(8) despite the availability of IBR programs. In recent years, some courts have rejected the argument that the existence of IBR programs creates a per se rule against a finding of undue hardship.[52]

Expert testimony

For young debtors, the evidence to support a finding that current financial troubles will persist typically involves a physical and mental disability, as well as demonstrating limited job prospects. However, the cost of hiring an expert to testify on a debtor's behalf is prohibitively expensive.

The court in *In re Norasteh* noted that a debtor's failure to submit any corroborative medical evidence at trial was a deficiency in proof that highlighted the fundamental problem with proving a disability

in these types of cases.[53] On the one hand, a debtor lacks the money to pay expert medical professionals to come to court and testify on his or her behalf.[54] On the other hand, most judges are lay persons and require some medical evidence to determine the nature, extent, and likely duration of a disability.[55] However, the cost of an expert can be upwards of $25,000 and often closer to $100,000—a cost no debtor can reasonably pay.[56] As such, the exorbitant cost of hiring experts to testify is a nearly insurmountable barrier when expert testimony is required by the court. [57] The cost of obtaining these expert opinions could costs thousands of dollars effectively placing discharge out of reach for pro se debtors—and making pro bono attorneys hesitant to take on cases in which they will be responsible for paying the costs of obtaining such expert opinions.

The third and last factor courts examine is whether the debtor has made good faith efforts to repay their student loans. The concept of "good faith" can seem innocuous because it is a standard that applies to so many actions that debtors perform in a bankruptcy case. However, it is not benign if it adds to the Bankruptcy Code a requirement that is not there.[58] Also, this good faith requirement was imposed in the undue hardship test at a time when a debtor could automatically discharge student loans after 5 years.[59]

A portion of this test results from the implicit suggestion, derived from the phrasing of the test itself, that if a debtor received a $30,000 inheritance in the past but did not use that to pay down his or her debt, that weighs against a finding of good faith.[60] However, even a $30,000 inheritance does not enable debtors to pay down student loans that can top $200,000 to $300,000—loans which can be largely made up of accrued interest, fees, and penalties.

Debtor Alan Collinge graduated from college with a degree in Aerospace Engineering with a total student loan debt of $38,000.[61] However, after he lost his job, his $38,000 loan ballooned to more than $100,000 in just a few years largely due to added fees, penalties, and accrued interest.[62] As a result, payments made in the past to demonstrate good faith may not reduce the principal and thereby make it seem as if debtors have not made their best efforts to repay the debt.

The good faith analysis, as interpreted by some courts, also focuses on lesser expenditures. What about the $18 a debtor paid to watch cable television? And what about the pair of shoes purchased five years ago? The analysis can become an opportunity to judge debtor's spending habits when finances may not have been an issue.[63]

The specific language used in this *Brunner* factor creates the problem, because as written, actions a debtor took 10 years ago could technically be considered relevant. Further, because past events cannot be undone, they may bar debtors from obtaining a discharge no matter how dire the debtor's current economic circumstances have become. For all the above reasons, a fresh look at discharging student loans appears to be long overdue, including a reexamination of undue hardship by the courts and legislative changes to the Bankruptcy Code.

Revisiting Undue Hardship

The *Brunner* test is only a useful tool if it abides by the text and purpose of the Bankruptcy Code. As this appears no longer to be the case, bankruptcy courts should not be constrained by the *Brunner* test nor allow "judicial gloss" to supersede the statute itself.[64] The statutory inquiry is undue hardship—a case-specific and fact-dominated standard that should take into account a totality of factors.[65] Given the new reality of student borrowing, the *Brunner* test appears to be outdated and, as Judge Pappas indicated in *Roth,* a relic of times long gone.[66]

Recently, a court in New York conducted a rigorous analysis of undue hardship and granted a discharge of student loan debt for a veteran.[67] In *in re Rosenberg* the court found that it did not need to make a determination that the debtor's state of affairs were "going to persist forever" or whether debtor's state of affairs were created by "choice" as suggested by the lender.[68] Instead, the *Rosenberg* court applied the *Brunner* test as written without the retributive dicta requiring proof of "certainty of hopelessness" that as the court noted has become a quasi-standard of mythic proportions.[69]

Though applying the *Brunner* test in a manner more consistent with the statute is possible, as was done by the *Rosenberg* court, decades of precedent based upon a 1981 decision still echo today, making courts that reject this outdated analysis the exception rather than the rule. This unduly harsh test does not take into account the realities faced by students today, namely: 1) borrowers with student loans topping $100,000 to $200,000, 2) students with educational degrees from for-profit institutions that offer little or no educational benefit or enhanced earning potential, 3) older Americans at risk of having Social Security income garnished, and 4) borrowers foreclosed from proving undue hardship because they cannot afford paying for experts. Considering these new challenges, the *Brunner* test is no longer a useful tool in analyzing undue hardship. Today, judicial analysis should adhere to the language of the statute and should conduct a case-specific examination of facts that takes into account a totality of factors.

There are two recommendations that courts might adopt to ensure deserving debtors of a discharge to obtain relief under Section 523(a)(8). The first recommendation is to exclude IBR in undue hardship analysis, i.e., the bankruptcy courts should not consider IBR plans in their undue hardship analysis. Section 523(a)(8) does not require debtors to be on an IBR plan to qualify for a discharge, and such requirement should not be read into the statute. As Judge Frank H. Easterbrook noted in *Krieger v. Educational Credit Management Corp.*, it is an incorrect proposition of law when a judge thinks debtors must always agree to a payment plan and forgo a discharge—which is their constitutional right to seek.[70]

The second recommendation for courts to adopt concerns establishing a bankruptcy court pro bono expert panel should the court require corroborative evidence from a medical or vocational expert. A pro bono mediation panel is already run by some courts. As the court may need clarification regarding the extent and impact of a disability, a pro bono expert panel could be available to the court and assuage concerns about the veracity of debtor's allegations.

These recommendations can be applied without the need for legislative action. That said, legislative changes to the Bankruptcy Code also appear necessary and long overdue. Recently, the American Bankruptcy Institute Commission on Consumer Bankruptcy issued a final report with recommendations on changes to student loans that provide useful guidance including 1) a seven-year period after which a debtor can discharge student loans without a showing of undue hardship, and 2) the elimination of the student loan discharge exception to private student loans.[71]

Legislative Action

There are two legislative changes that could bring long overdue relief to debtors who have no possibility of paying back their student loan debts. The first change would be to amend Section 523(a)(8) to bring back the seven-year time limitation, thus

allowing debtors to discharge outstanding loans automatically if they have been due for seven years. This seven-year time limitation is not new and was in place by amendment in 1990.[72] Importantly, this time limitation allows students, who are unable to pay their student loans, to get a fresh start just like other debtors who encounter financial difficulties. This change would be the most meaningful change to the Bankruptcy Code as it relates to student loan debt discharge. It would provide thousands of debtors—especially older Americans in jeopardy of having their Social Security income garnished—with relief.

The second legislative change would be to amend Section 523(a)(8) to exclude private student loans from non-discharge protection, as they were prior to 2005. Prior to 2005, private student loans could be discharged just like any other debt.[73] Unfortunately, the extension of discharge protection to private student loans has enabled a for-profit school industry to flourish—one that may care more about recruiting students than with educating them.[74]

The *Brunner* test as applied by the courts when examining undue hardship has been unduly harsh. Given the crushing student loan debt carried by thousands of students, many of whom will never pay back these decades-old educational loan obligations, a fresh look at the undue hardship is long overdue, as well as legislative changes to the Bankruptcy Code. It is time for a "fresh start" also to be available for the honest but unfortunate student loan borrower filing for bankruptcy relief. ■

---

[1] Board of Governors of the Federal Reserve System, Consumer Credit - G.19 (Aug. 2020), *available at* https://www.federalreserve.gov/releases/g19/current/default.htm. However, note that New York reports only $1.54 trillion. Federal Reserve Bank of New York, Center for Microeconomic Data, Quarterly Report on Household Debt and Credit 1 (May 2020), *available at* https://www.newyorkfed.org/medialibrary/interactives/householdcredit/data/pdf/hhdc_2020q1.pdf. This could be because $1.515 trillion is federal and $124.65 billion is private.

[2] Note, *Ending Student Loan Exceptionalism: The Case for Risk-Based Pricing and Dischargeability*, 126 Harv. L. Rev., 587, 587 (2012).

[3] Jo Ann Jenkins, *Student Loan Debt Is Crippling Too Many Families*, AARP (July 3, 2019).

[4] *Id.*

[5] U.S. Government Accountability Office Report GAO-17-45, *Social Security Offsets: Improvements to Program Design Could Better Assist Older Student Loan Borrowers with Obtaining Permitted Relief*, 11, 82 (Dec. 2016).

[6] *Id.* at 11.

[7] U.S. Const. art. I, §8.

[8] *See, e.g.*, Marrama v. Citizens Bank, 549 U.S. 365 (2007).

[9] 11 U.S.C. §523(a)(8).

[10] Neil T. Phillips, Note, *How Poor is Poor Enough? Tracking the Evolution of Student Loan Dischargeability from Judge Haight to Judge Easterbrook*, 12 Geo. J.L. & Pub. Pol'y 329, 333 (2014) (citing H.R. Rep. No. 93-137(1973); H.R. Rep No. 95-595(1977)).

[11] B.J. Huey, *Undue Hardship or Undue Burden: Has the Time Finally Arrived for Congress to Discharge Section 523(a)(8) of the Bankruptcy Code?*, 34 Tex. Tech L. Rev. 89, 98 (2002-2003).

[12] *Id.*

[13] Education Amendments of 1976 Act, Pub. L. 94-482, §439, 90 Stat. 2081, 2141.

[14] Bankruptcy Reform Act of 1978, Pub. L. No. 95-598, §523, 92 Stat. 2591.

[15] Crime Control Act of 1990, Pub L. 101-647, § 3269,104 Stat. 4789.

[16] Acosta-Conniff v. ECMC (In re Acosta-Conniff), 536 B.R. 326, 330 (Bankr. M.D. Ala. 2015).

[17] *Id.*

[18] *See* 11 U.S.C. §523 (a)(8).

[19] In re Brunner, 46 B.R. 752, 753 (S.D. N.Y. 1985).

[20] *Id.*

[21] 46 B.R. 752 (S.D. N.Y. 1985), *aff'd sub nom.* Brunner v. N.Y. State Higher Educ. Servs. Corp., 831 F. 2d 395 (2d Cir. 1987).

[22] *Id.* at 754.

[23] *Id.* at 755.

[24] *Id.* at 756.

[25] *See* Brunner, 831 F. 2d 395 (2d Cir. 1987).

[26] The First and Eighth Circuits utilize a "totality of circumstances" test to determine undue hardship. *See* Abdinoor v. Navient Solutions, Inc. (In re Abdinoor), 2015 BNH 006 (Bankr. D. N.H. 2015).

[27] *See* United Student Aid Funds, Inc. v. Pena (In re Pena), 155 F. 3d 1108 (9th Cir. 1998).

[28] In re Brunner, 46 B.R., 752, 755 (S.D. N.Y. 1985).

[29] In re Briscoe, 16 B.R. 128, 131 (Bankr. S.D. N.Y. 1981).

[30] *See* Graddy v. Educational Credit Mgmt. Corp., No. 1:17-CV-3018-AT, 2020 LEXIS 97869 (N.D. Ga. June 2, 2020) (noting that the second factor of the *Brunner* test is often stated as requiring a "certainty of hopelessness"), *appeal filed*, No. 20-12267 (11th Cir. June 15, 2020).

[31] Long v. Educational Credit Mgmt. Corp. (In re Long), 322 F. 3d 549, 554 (8th Cir. 2003).

[32] Roth v. Educ. Credit Mgmt. Corp. (In re Roth), 490 B.R. 908, 922 (B.A.P. 9th Cir. 2013) (Pappas, J., concurring).

[33] *Id.* at 923.

[34] *See, e.g.*, In re Perez, No. 16-28473-B-7, 2018 Bankr. LEXIS 490 (Bankr. E.D. Cal. Feb. 20, 2018).

[35] *See, e.g.*, In re Hopson, 588 B.R. 509 (Bankr. N.D. Ill. 2018).

[36] *See* Natalie Kitroeff, *Loan Monitor is Accused of Ruthless Tactics on Student Debt*, N.Y. Times, Jan. 1, 2014.

[37] *Id.*

[38] *Id.*

[39] *Id.*

[40] *Id.*

[41] *Id.*

[0] In re Walker, 406 B.R. 840, 863 (Bankr. D. Minn. 2009), *aff'd*, 427 B.R. 471 (B.A.P. 8th Cir. 2010), *aff'd*, 650 F. 3d 1227 (8th Cir. 2011).

[43] *Id.*

[44] In re Renville, No. 04-61899-7, 2006 Bankr. LEXIS 3211, *33 (Bankr. D. Mont. Jan. 5, 2006).

[45] Jennifer Grant & Lindsey Anglin, *Student Loan Debt: The Next Bubble?*, Am. Bankr. Inst. J., Dec. 2013, at 44, 88.

[46] *Id.*

[47] In re Butler, No. 14-71585, 2016 Bankr. LEXIS 245 (Bankr. C.D. Ill. Jan 27, 2016).

[48] In re Kelley, 548 B.R. 99 (Bankr. E.D. N.C. 2016).

[49] In re Hopson, 588 B.R. 509 (Bankr. N.D. Ill. 2018).

[50] *See* Jillian Berman, *This Government Loan Forgiveness Program Has Rejected 99% of Borrowers So Far*, MarketWatch (Sept. 23, 2018), https://www.marketwatch.com/story/this-government-loan-forgiveness-program-has-rejected-99-of-borrowers-so-far-2018-09-20.

[51] *Id.*

[52] *See* Murphy v. United States (In re Murphy), Nos. 15-11240-j7, 15-1051-j, 2018 Bankr. LEXIS 1598 (Bankr. D. N.M. June 1, 2018); Pierson v. Navient (In re Pierson), No. 17-3168, 2018 Bankr. LEXIS 3106 (Bankr. N.D. Ohio Oct. 4, 2018).

[53] Norasteh v. Bos. Univ. (In re Norasteh), 311 B.R. 671, 678 (Bankr. S.D. N.Y. 2004).

[54] *Id.*

[55] *Id.*

[56] Stephen Hoffman, *Expert Witnesses and How They Add to the Cost of Litigation*, (Oct. 3, 2017), *available at* https://www.hofflawyer.com/general/2017/10/03/expert-witnesses-add-cost-litigation/.

[57] *See* McCoy v. United States (In re McCoy), No. 19-40269, 2020 U.S. App. LEXIS 17717 (5th Cir. June 5, 2020) (denying discharge to 62-year old woman with $345,000 in student loan debt who had disabilities arising from an old accident, as debtor did not submit expert medical testimony at trial); In re Lozada, 594 B.R. 212 (Bankr. S.D. N.Y. 2018) (denying discharge to debtor who had back pain and could not lift heavy objects and noting that debtor failed to provide admissible medical expert testimony that this condition would persist: Gama Law Firm Newsletter, *Why Are Lawsuits So Expensive?!?*, (Sept. 5, 2016), https://gamalawfirm.com/blog/why-are-lawsuits-so-expensive/.

[58] *See* 11 U.S.C. §523(a)(8).

[59] In re Brunner, 46 B.R. 752, 755 (S.D. N.Y. 1985).

[60] *See generally* Lozada v. Educational Credit Mgmt. Corp. (In re Lozada), 594 B.R. 212 (Bankr. S.D. .N.Y. 2018).

[61] Matt Taibbi, *Ripping Off Young America: The College Loan Scandal*, Rolling Stone (Aug. 29, 2013), *available at* https://www.rollingstone.com/politics/politics-news/ripping-off-young-america-the-college-loan-scandal-186926/.

[62] *Id.*

[63] *See* Hlady v. Key Bank N.A. (In re Hlady), No. 8-16-74011-las, 2020 Bankr. LEXIS 1126 (Bankr. E.D. N.Y. Apr. 24, 2020) (no good faith showing where debtor purchased shoes for $156 six years prior, withdrew $303 from an ATM machine four years prior, purchased books for $142 four years prior, and paid $207 at a restaurant six years prior).

[64] Krieger v. Educational Credit Mgmt. Corp., 713 F. 3d 882, 884 (7th Cir. 2013).

[65] *Id.*

[66] Roth v. Educational Credit Mgmt. Corp. (In re Roth), 490 B.R. 908, 920 (B.A.P. 9th Cir. 2013).

[67] Rosenberg v. N.Y. State Higher Educ. Servs. Corp. (In re Rosenberg), 610 B.R. 454, 458 (Bankr. S.D. N.Y. 2020).

[68] *Id.* at 461.

[69] *Id.* at 459.

[70] Krieger v. Educational Credit Mgmt. Corp., 713 F. 3d 882 (7th Cir. Ill. 2013).

[71] Summary of Selected Recommendations by ABI's Commission on Consumer Bankruptcy, http://s3.amazonaws.com/abi-org/Newsroom/Summary+of+Key+Recommendations_FINALv2.pdf (last viewed Oct. 22, 2020).

[72] Richard Pallardy, *History of Student Loans: Bankruptcy Discharge*, Savingforcollege.com (Feb. 21, 2019), https://www.savingforcollege.com/article/history-of-student-loans-bankruptcy-discharge.

[73] 11 U.S.C. §523 (a)(8).

[74] CBS News, *For-profit colleges linked to almost all loan fraud claims* (Nov. 9, 2017), https://www.cbsnews.com/news/study-most-student-loan-fraud-claims-involve-for-profits/.