



745 Old Frontenac Square Suite 202
Frontenac MO 63131
tateesq.com | 314.884.1886

[REDACTED]
Trial Attorney
Office of the United States Trustee
111 S 10th St
St Louis MO 63102

Re: In [REDACTED] – student loans as nonconsumer debt

Dear [REDACTED],

Thank you for contacting me about Ms [REDACTED]'s chapter 7 case. Your concerns are well received. You've asked for authority to support our characterization of [REDACTED]'s student loans as consumer debt. Before I get to that, let me tell you how we got here.

[REDACTED] filed this chapter 7 following an unusually contentious divorce and subsequent custody battle (all told, her legal fees were in excess of \$120 thousand). She now has sole custody of her two boys. Her husband has supervised visitation. That's a win. But at a cost.

You see, although [REDACTED] makes a comfortable salary, her wages, by themselves, weren't enough to get the legal help she needed to keep her children safely in her custody. Her parents helped out. A lot. She owes them about \$100 thousand (listed on Schedule E/F). Her credit cards also helped. Hence the high balances.

Like many debtors, bankruptcy was [REDACTED]'s last option. Before filing her case, [REDACTED] tried to negotiate with her creditors. For instance, she contacted her credit card companies to negotiate settlements. Some were willing but only at amounts and deadlines she couldn't meet. The same is true of the holder of her student loan. Despite her pleas for a reduced payment, the holder refused to offer a monthly payment lower than \$4500.

So what was [REDACTED] to do?

She looked into filing a chapter 13. But the amount of her unsecured debt prohibits her from doing so. That left her between the devil and the deep blue sea. She could file a chapter 11 but at a significant cost. Or, she could file a chapter 7 at a much, much, lower cost but absent a guarantee her case would be allowed to proceed

because its filing is based on a murky area of law: whether student loans can, in certain limited instances, be nonconsumer debt.

[REDACTED] chose the sea.

She filed her chapter 7 case and marked her debt as primarily nonconsumer debt because she incurred her student loan with an eye toward profit. *In re De Cuna*, WL 6389205 (Bankr. S.D. Tex. Dec. 6, 2013).

[REDACTED] incurred the bulk of this debt in pursuit of becoming a nurse anesthetist. She decided on this career path only after realizing she could easily earn triple to quadruple what she could as a common journalist (her initial career path). To her, the loans were an investment in increasing her wealth. That's it.

Thankfully, her investment paid off. If not, who knows if she would have been in position to protect her children by gaining sole custody.

[REDACTED] I imagine this case set off some alarms. I can assure you it wasn't filed lightly or with the intent to abuse the chapter 7 process. The fact is most of the \$470 thousand [REDACTED] owes in student loan debt is attributable to her investing in becoming a nurse anesthetist and thereby increasing her profits.

I do not anticipate this being true for all other debtors with high student loan balances and income in excess of the CMI for their family size.

But for [REDACTED] it is.

Let me know if you need more information.

Best.



Stanley Tate

Attorney

tate@tatesq.com