



Financial Recovery Law

SCOTUS Confirms Chapter 13 Can Include Student Loan

By: Bill Gray. *This was posted Wednesday, March 24th, 2010*

On March 23, 2010, the U.S. [Supreme Court issued a 9 – 0 opinion in United Student Aid Funds, v. Espinosa](#) (08-1134) in which the Court affirmed the 9th Circuit's holding that a chapter 13 debtor can obtain a discharge of a [student loan](#) by including it in a chapter 13 plan, if the creditor fails to object after notice and opportunity to do so, and the BK court enters an order confirming the chapter 13 plan. In bankruptcy, a student loan is not discharged unless the bankruptcy court makes a determination that excepting the student loan would be an undue hardship on the debtor. Under [Bankruptcy Rules](#), the court is required to make such a determination in an adversary proceeding — a lawsuit within the bankruptcy case. In *Espinosa*, the debtor did not bring an adversary proceeding. Rather, the debtor put in his plan that only the principal amount of the loan would be paid through the plan, but that accrued interest would be discharged. The student loan lender did receive a copy of the plan, and even filed a Proof of Claim. But, the lender did not object to confirmation.

The court did, subsequently, enter an order confirming the plan as proposed. After confirmation, the chapter 13 trustee sent a notice to the lender, saying that the Proof of Claim amount differed from the amount stated in the chapter 13 plan, and that if the lender disputes the amount in the plan, they should notify the trustee within 30 days. After the debtor completed his plan payment, the student loan lender tried to collect the remaining amount due. The debtor filed a motion seeking enforcement of his bankruptcy discharge.

The lender filed a motion seeking to declare the order confirming the chapter 13 plan void — which was the issue before the Supreme Court. That is, the student loan lender argued that the BK Court order confirming the chapter 13 plan void because they (the lender) was denied due process regarding the required statutory finding of undue hardship, which did not happen here.

The Supreme Court, in looking only at Bankruptcy Rule 60(b)(4), which permits a court to relieve a party for a final order or judgment, found that the lender was not denied due process, since the lender did receive the plan, filed a claim, and received the notice from the chapter 13 trustee. The Court agreed that the confirmation of the plan without an undue hardship determination was legal error, legal error does not void the order. The Court noted that Rule 60(b)(4) strikes a balance between the need for finality of judgments, and the right of parties to have a full and fair opportunity to raise issues.

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The lesson to be learned — creditors should indeed carefully review proposed chapter 13 plans, and raise objections to disputed issues before a plan is confirmed.

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