UNITED STATES BANKRUPTCY COURT
For the Southern District of Iowa

In the Matter of	:	
JEFFREY D. SIEGLAFF and TERESA S. SIEGLAFF,	:	Case No. 91-473-C H
Debtors.	:	Chapter 13

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ORDER--CONFIRMATION OF PLAN

On May 6, 1991, a hearing was held on confirmation of Debtors' Chapter 13 plan. The following attorneys appeared on behalf of their respective clients: J. W. Warford as Chapter 13 Trustee and Michael L. Jankins for the Debtors. At the conclusion of the hearing, the Court took the matter under advisement and the Court considers the matter fully submitted.

This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(L). The Court upon review of the pleadings and arguments of counsel now enters its findings and conclusions pursuant to Fed.R.Bankr.P. 7052.

FINDINGS OF FACT

1. On February 19, 1991, the Debtors filed for protection under Chapter 13 of the Bankruptcy Code. The Debtors filed their Chapter 13 plan with the petition.

2. The plan provides the Debtors will pay the Trustee $200.00 per month for 54 months. Unsecured creditors would be paid 10 cents on the dollar, while unsecured student loan obligations would be paid 100 percent outside of the plan. Debtors' plan further proposes to pay the secured claim of ITT

Financial Services valued at $600.00 in full prior to distribution to other creditors.

3. Debtors' Chapter 13 statement indicates the Debtors' student loan unsecured debts total $6,474.00, while nonstudent loan unsecured debts total $1,846.74.

DISCUSSION

The Chapter 13 Trustee objects to confirmation of Debtors' Chapter 13 plan because it does not provide the same treatment for unsecured student loan debts and nonstudent loan unsecured debts.

11 U.S.C. § 1322(a)(3) provides "[t]he plan shall -- if the plan classifies claims, provide the same treatment for each claim within a particular class." Subject to 11 U.S.C. § 1322(a), the plan may "designate a class or classes of unsecured claims...but may not discriminate unfairly against any class so designated." 11 U.S.C. § 1322(b)(1). Providing for payment of student loan obligations separate from the plan payments has the same effect as providing for separate classification of those obligations. See In re Davidson, 72 B.R. 384, 389 (Bankr. D. Colo. 1987). The issue of whether such classification is acceptable under § 1322(b)(1) is the same as when the debtor provides for a separate class of educational loan obligations to be paid as a part of the plan payments. See id.

Recently, the Eighth Circuit Court of Appeals held that a Chapter 13 plan may provide for the separate classification and treatment of unsecured claims for child support arrearages assigned to county collection departments by a debtor's former spouse. In re Leser, No. 90-5492, 1991 WL 141269 (8th Cir. August 1, 1991). Leser confirmed a plan that proposed to pay the counties' unsecured claims for child support arrearages in full while other unsecured creditors would be paid eight percent of their claims. Id. at 1. The focus of Leser was on the treatment of claims for child support arrearages assigned to a county collection agency, but the Eighth Circuit Court of Appeals did cite nondischargeability of a debt as a factor in deciding whether separate classification of a claim is proper. Id. at 3 (quoting Davidson, 72 B.R. at 387). Student loan obligations are dischargeable only to the extent allowed by 11 U.S.C. § 523(a)(8).

A separate classification of unsecured claims still must be analyzed to determine whether it is fair. The analysis should consider (1) whether the discrimination has a reasonable basis; (2) whether the debtor can carry out a plan without discrimination; (3) whether the discrimination is proposed in good faith; and (4) whether the degree of discrimination is directly related to the basis or rationale for the discrimination. Id. at 2; cf. In re Tucker, No. 90-2904, 1991 WL 150351 at 2 (Bankr. S.D. Iowa July 25, 1991)

(same analysis but slightly different language).

The Debtors have failed to show or argue that the favorable treatment of unsecured student loan creditors has a reasonable basis beyond the fact that student loan obligations are dischargeable only in accordance with § 523(a)(8). Tucker held that the fact that § 523(a)(8) now applies in Chapter 13 does not necessarily give the debtor a reasonable basis for favoring student loan creditors over other unsecured creditors. Tucker, 1991 WL 150351 at 2. Since the Debtors have failed to show a reasonable basis sufficient for the Court to allow their favorable treatment of student loan creditors, the Court must deny confirmation of their plan.

The Trustee also objects that the plan unfairly discriminates among secured creditors by paying one secured creditor in full before any funds are disbursed to any other secured creditors. Section 1322(a)(3) permits classification of claims so long as the classification provides the same treatment for each claim within a particular class. Since this plan does not provide for the same treatment within the plan's single class of secured claims, in that the ITT Financial Services would be paid before all other secured creditors in its class, confirmation of the Debtors' plan must be denied.

ORDER

IT IS ACCORDINGLY ORDERED that confirmation of Debtors' Chapter 13 plan is denied.

Dated this ___30th_____ day of August, 1991.

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RUSSELL J. HILL
U.S. BANKRUPTCY JUDGE