

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF IOWA

In the Matter of

MICHAEL ROBERT STEVENSON,
JENNIFER JANE STEVENSON,

CaseNo.9100043-C J

Chapter 13

Debtors.

ORDER ON OBJECTION TO CONFIRMATION OF PLAN

On April 17, 1991 the court conducted a hearing on the Chapter 13 trustee's objection to the debtors' modification of their plan before confirmation. Joe W. Warford, the Chapter 13 trustee, appeared pro se. Michael L. Jankins represented the debtors.

The debtors' plan proposes to pay general unsecured creditors three cents on the dollar. The modification of the plan clarifies "that the student loan obligations which would otherwise be classified as general unsecured creditors and which are nondischargeable obligations, shall be paid 100 cents on the dollar through the duration of the Plan". The trustee objects to the discriminatory treatment.

11 U.S.C. section 1322(b) provides in relevant part:

(b) Subject to subsection (a) and (c) of this section, the plan may--

(1) designate a class or classes of unsecured claims, as provided in section 1122 of this title, but may not discriminate unfairly against any class so designated; however, such plan may treat claims for a consumer debt of the debtor if an individual is liable on such consumer debt with the debtor differently than other unsecured claims;

With the exception of the type of consumer debt identified in

section 1322(b)(1), the ability to designate classes of unsecured claims in a Chapter 13 plan is limited to the classification contemplated by Congress in 11 U.S.C. section 1122 which states:

(a) Except as provided in subsection (b) of this section, a plan may place a claim or an interest in a particular class only if such claim or interest is substantially similar to the other claims or interests of such class.

(b) A plan may designate a separate class of claims consisting only of every unsecured claim that is less than or reduced to an amount that the court approves as reasonable and necessary for administrative convenience.

An unsecured claim is an unsecured claim, meaning it is substantially similar to any other unsecured claim and properly included in the class for unsecured claims. Separate classification of unsecured claims may be justified on the ground of administrative convenience, not on the ground that there is less money available to pay all the general unsecured creditors equally because the debtors wish to pay as much as possible under the plan on the nondischargeable obligations.¹

WHEREFORE, the court finds that 11 U.S.C. section 1322(b)(1) and section 1122 do not permit the debtors to designate the nondischargeable student loans as a separate class of unsecured claims.

¹ Furthermore, the Bankruptcy Code must be approached in a cohesive fashion. For example, the distribution scheme set forth in 11 U.S.C. section 726 does not provide priority status or enhanced payment for a claim on the basis of nondischargeability. Consider also 11 U.S.C. section 707(b) which discourages liquidation relief in cases where the debt is primarily consumer in nature and the debtor would be able to pay general creditors significantly more under another chapter than they would receive upon liquidation.

ORDER

THEREFORE, the trustee's objection to the debtors' modification of their plan before confirmation is sustained. The debtors shall file an amended plan, a motion to dismiss or a motion to convert on or before May 17, 1991.

Dated this 19th day of April, 1991.

LEE M. JACKWIG
CHIEF U.S. BANKRUPTCY JUDGE