Bankruptcy Issues and Credit Scoring

The history and the why

Bankruptcy is among a number of types of law that turn debt contracts into conditional promises. Statutes of limitations, usury, exemption statutes, door-to-door sales acts, lemon laws, consumer protection acts, credit reporting acts, credit collection acts, landlord and tenant law, and foreclosure acts also limit what can be promised about debt repayment (or at least what can be enforced about the promise). Nor is legislation turning solemn vows into conditional promises limited to debt covenants -- otherwise a promise of marriage "until death do us part" could not legally end in divorce. In the end, bankruptcy is yet another legal recognition that human lives are (relatively) short, and circumstances change.

The notion that some debts would need to be periodically adjusted is not new, dating at least from Biblical times:

> At the end of every seventh year you shall make a remission of debts. This is how the remission shall be made: everyone who holds a pledge shall remit the pledge of anyone indebted to him. He shall not press a fellow-countryman for repayment, for the Lord's year of remission has been declared. Deuteronomy 15-1,2 *The New English Bible*.

And again from the New Testament:

> Give us this day our daily bread.
> And forgive us our debts, as we forgive our debtors.
> Matthew 6-11,12 *King James Version*.

In the United States, the power to enact uniform laws on bankruptcy is an enumerated power of the federal government:

> The Congress shall have Power [...] To establish an uniform Rule of Naturalization, and uniform Laws on the subject of Bankruptcies throughout the United States; *U.S. Constitution* Article 1 Section 8.

Permanent federal statutes on bankruptcy first appear in 1898 (although several short term acts precede it, beginning with an act in 1800). This was replaced with the bankruptcy code in 1978, and has been amended frequently since, most notably in 2005.

Flavors to the present

Chapter 7: This is by far the most often filed form of bankruptcy for individual debtors. In essence, the debtor makes a public disclosure of debts and assets, is allowed to retain exempt property, has non-exempt assets liquidated by a trustee, and has most debts discharged. A few

categories of debt are not discharged: alimony and child support, most student loans, most tax debts (except sufficiently old income taxes), criminal fines and penalties, and debts resulting from fraud are the most common exceptions.

Chapter 13: This is a payment plan administered by the bankruptcy court. Generally the debtor is paying only a percentage, often a small percentage, of the outstanding debt. Plans are approved based upon income in excess of ordinary living expenses being paid to the trustee. Plans can be as short as 3 years or as long as 5, with some higher income debtors being required to file this chapter rather than chapter 7.

Chapter 11: Generally a business reorganization, although these cases can be filed by (wealthy) individuals. These cases tend to be flexible, highly negotiated, and carry very high administrative costs.

Chapter 12: Specifically limited to farmers, this is a variation of chapter 13 enacted in the 1980s farm crisis, in recognition that many farmers fit poorly in either a chapter 13 or a chapter 11 case.

Chapter 9: This chapter provides for the financial reorganization of municipalities.

Chapter 15: Added by the 2005 revisions, this chapter applies to cross-border insolvencies -- the insolvency of foreign companies with U.S. debts.

Particular Issues du jour:

Automatic Stay Violations -- Which part of "no collecting" did you not understand?

Generally speaking, there is very little new in this area. Despite this, cases litigating stay violations and fines of painful size are surprisingly common. The collection of child support and alimony can continue after a case is filed, but nearly everything else that private attorneys and their clients would be doing to collect debts should stop. Prosecutors can continue with criminal cases, and these include *criminal* bad check charges. But creditors who send notices, invoices, or warnings on bad checks after a case has been filed are violating the stay.

An action in the bankruptcy court to lift (remove) the automatic stay is relatively straightforward to file, and generally gets the approval of bankruptcy judges. Self-help interpretation by creditors about why the stay doesn't apply to them usually draws angry lectures and fines.

If in doubt, read 11 USC §362 carefully to determine whether there may be an exception to the stay that applies. Then, unless the exception is crystal clear, get an order from the bankruptcy court lifting the stay.

For individual debtors the automatic stay begins with the filing of the case, and ends when the case is dismissed, discharged, or denied a discharge.

Dissolution of Marriage -- Co-dependent and confused

Commonly enough debt, or at least the stress of having a high level of debt, is one cause (sometimes *the* cause) of a marriage breaking down. Equally uncomfortably, debts that two people can struggle by with together become impossible to pay if they live separately. This leaves divorce and bankruptcy co-existing in different court systems, often with different lawyers, and interacting in mostly uncomfortable ways.

From the bankruptcy side, debts arising from alimony or child support (collectively domestic support obligations) are non-dischargeable (11 USC § 523(a)(5)), and are a priority debt if funds are distributed by a bankruptcy trustee (11 USC § 507(a)(1)). Collection of domestic support obligations is also not subject to the automatic stay (11 USC § 362(b)(2)), although the stay does apply to bankruptcy estate assets other than the debtor's income. Similarly amounts awarded to a spouse, former spouse, or child of a debtor in a decree are non-dischargeable (11 USC § 523(a)(15)), but these are not priority debts and are subject to the automatic stay.

The automatic stay also does not apply to proceedings establishing paternity, setting or modifying support obligations, determining child custody, dealing with domestic violence, or dissolving a marriage (except that property of the bankruptcy estate cannot be divided) (11 USC § 362(b)(2)).

Lien stripping -- Good news/bad news

The 2008 recession and the housing bubble has made modification of mortgages a priority for many debtors. For the most part, if the mortgage is on residential real estate, this cannot be accomplished by a bankruptcy filing. It is possible to cure the deficiency on a mortgage loan over a period of time in a chapter 13 bankruptcy, but the loan itself cannot be modified, due to 11 USC § 1322(b)(2). The US Supreme Court has interpreted this code section as also prohibiting the modification of a partially secured mortgage loan on residential real estate. *Nobelman v. Am. Sav. Bank*, 508 U.S. 324, 113 S.Ct. 2106, 124 L.Ed.2d 228 (1993).

Despite this, a growing consensus exists (in fact in all courts of appeal to consider it to date) indicating that a second or subsequent mortgage lien that has no equity in the property can be treated as an unsecured loan and the lien removed from the property at the completion of the chapter 13 plan. The Northern District of Iowa bankruptcy court has allowed this in *In re Krapfel*, and the 8th Circuit Bankruptcy Appellate Panel approved it in *In re Fisette*, 455 B.R. 177 (8th Cir BAP, 2011). The 8th Circuit Court of Appeals has not yet ruled on the question, *In re Fisette*, No. 11-3119 (8th Cir, 2012).

Lien stripping is a good news/bad news sort of proposition; on the one hand, your client has the second lien removed, and that seems very good news. On the other hand, the prior mortgages

on the property (usually a first mortgage) exceed the value of the property -- and this "under water" status is required in order to strip the lien. That means that it is likely to be some years before your client has any equity in the property to show for their payments. In some ways, this is not much different than renting, at least in the near term.

A very few bankruptcy courts have allowed lien stripping in chapter 7 cases, but this is a minority view, and no courts in Iowa or the 8th circuit seem to have taken this position.

Student Loans -- All hope abandon ye who enter here[1]

Generally, student loans are not dischargeable unless the bankruptcy court determines, after an adversary hearing, that failure to discharge would impose an undue hardship on the debtor and the debtor's dependents (11 USC § 523(a)(8)). An example of a case where student loan debts were discharged is attached as exhibits A and B. Attorney Steven G. Klesner's outline of the 8th Circuit roadmap for these cases for the 31st Annual Bankruptcy Conference – Iowa Chapter Federal Bar Association is the best current research that I've seen. (Permission to include the outline did not come in time to include it as an exhibit.)

Judgment Liens -- The ghosts of credit past

The Iowa Code provides for automatic attachment of judgment liens to real estate owned by the judgment debtor for a period of ten years from the entry of the judgment (Iowa Code § 624.23(1)). Unfortunately, a great number of forgotten, void, or satisfied judgments do not get corrected of record to show their updated status, and these "forgotten liens" can create a number of title problems which are expensive to resolve, particularly when a real estate closing is imminent. Bankruptcy creates some of these "gone but not gone" problems, since the bankruptcy court records are not automatically made a part of the state court records.

Wisconsin has a straightforward resolution of this problem by statute (WI Code §806.19(4)) when the satisfaction is due to a bankruptcy filing. Sadly, Iowa has no procedure quite as direct. A number of solutions do exist, however, which can be more or less useful depending on the facts.

30 day foreclose it or lose it on homesteads: Assuming the real estate is a homestead, this procedure under Iowa Code § 624.23(2) is effective and almost universally recognized by Iowa title examiners. Documents for a typical case are attached as Exhibit D. Unfortunately, this is usually the slowest way of showing that the lien does not attach to a piece of real estate.

Barratta *affidavits*: *Baratta v. Polk County Health Services, Inc.*, 588 NW 2d 107 (Iowa, 1999) provides that a judgment lien against a homestead does not attach to the real estate, and that a lien against only one spouse cannot attach, because it cannot impair the other spouse's homestead in the whole property. In some cases, an affidavit establishing the required facts

[1] Lifted (and repurposed) from Dante's *Divine Comedy* (Inferno) English translation by Reverend H. F. Cary in 1814.

about the homestead may be sufficient, and an example is attached as Exhibit E.

Bankruptcy comfort orders: The Bankruptcy Court is presently willing (if not particularly eager) to issue "comfort orders" saying that a lien does not attach to an exempt homestead.

Iowa Rules of Civil Procedure discharge: Iowa judges have authority under Iowa Rule of Civil Procedure 1.1016 to discharge judgments in whole or in part based upon subsequent developments relevant to the case. An example of using this procedure is attached as Exhibit F.

Mortgage Loans

The National Mortgage Settlement has given some hope that changes will happen in the servicing of mortgage loans. Sadly, it basically contains no user-serviceable parts (that is to say, has no private right of action for clients). Some sources of information are set out below:

NACBA webinar: http://nacba.org/Programs/NACBAWebinars.aspx This appears so far to be available without membership in the organization.

Mortgage Settlement: http://nationalmortgagesettlement.com/ This is the official website for the settlement.

More mortgage settlement: http://www.nytimes.com/2012/09/30/business/when-banks-erase-a-debt-that-isnt-there.html?_r=1&emc=tnt&tntemail1=y A New York Times article about some of the settlement results.

Its name is FICO. It is held in reverence. It settles everything. Some think it is the voice of God.[2]

The mortgage crisis has resulted in an increasing call for documenting lending eligibility, particularly on loans guaranteed by government entities or sold onto the secondary market to quasi-government players like Fannie Mae and Freddie Mac. Much of this increased scrutiny is arguably a good thing, but it has also resulted in an increased reliance on credit scores and credit scoring which may be raising the importance of a FICO scores beyond the level of certainty that they are actually able to provide.

Attached as Exhibit G is some question and answer information about credit reports and credit scoring (also available on the web at www.kintzlaw.com/bankruptcy/creditreportfaq.html).

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[2] Quite blatantly stolen from Mark Twain: " We all do no end of feeling and we mistake it for thinking. And out of it we get an aggregation which we consider a boon. Its name is public opinion. It is held in reverence. It settles everything. Some think it is the voice of God." -- Samuel Clemens, writing as Mark Twain, "Corn-pone Opinions" essay, 1900.

A couple other points are probably worth making. First, it is difficult to get a score that will be identical to the information which is given to your lender, as this story on the findings of the Consumer Financial Protection Bureau shows: http://money.cnn.com/2012/09/25/pf/credit-scores-cfpb/index.html.

Beyond that, many of the variations on credit scores, even those from Fair Isaacs and Company (the FICO people) are simply unavailable to consumers: http://money.cnn.com/2012/08/28/pf/fico-credit-scores/index.html?iid=EL

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

In the Matter of:

Susan M. Shaffer,	Case No. 10-01926-als7
Debtor	Chapter 7
Susan M. Shaffer,	Adv. Pro. 10-30109-als
Plaintiff	
v.	
United States Department of Education, Iowa Student Loan Liquidity Corporation,	
Defendants	
Educational Credit Management Corporation,	
Intervenor-Defendant	

MEMORANDUM OF DECISION
(date entered on docket: December 1, 2011)

COURSE OF PROCEEDING

Susan M. Shaffer ("Debtor" or "Plaintiff") filed a voluntary chapter 7 proceeding on April 15, 2010. She commenced this adversary proceeding on July 23, 2010 seeking discharge of her student loan obligations pursuant to 11 U.S.C. section 523(a)(8) (2011). Named Defendants included the United States Department of Education ("DOE") and Iowa Student Loan Liquidity Corporation ("ISLLC"). A Motion to Intervene was granted as to Education Credit Management Corporation ("ECMC"). (Collectively "Lenders"). Trial on the complaint was conducted on September 1, 2011. The Debtor was represented by Steven G. Klesner. ECMC was represented by Brooke S. Van Vliet. Craig P. Gaumer was present on behalf of the

DOE. Appearing as counsel for ISLLC was Matthew C. McDermott. The matter is now fully submitted. The court has jurisdiction of these matters pursuant to 28 U.S.C. sections 157(b)(1) and 1334. Upon review of the evidence and the parties' briefs, the following findings of fact and conclusions of law are entered by the Court pursuant to Federal Rules of Bankruptcy Procedure 7052 and 9014. For the reasons set forth herein, the Debtor is granted a discharge of her student loan obligations based upon undue hardship.

FACTS

The Debtor began her college education as a freshman at the University of Northern Iowa in Cedar Falls. At the end of her first year, she returned to Iowa City, Iowa to be closer to her family, and in August of 1995 she became a student at the University of Iowa ("U of I"). She attended the U of I as both a full-time and part-time student until 2002 when she received a Bachelor of Arts degree in Psychology. She also attended Kirkwood Community College at various intervals to obtain pre-pharmacy credits and to remain qualified under her parent's health insurance coverage. Since her mid-teens, the Debtor has been challenged by mental health conditions, including eating disorders, depression, self-harm and anxiety. Consequently, her higher education has been impacted as demonstrated by a delay in obtaining her bachelor's degree and a low grade point average which resulted in three semesters being removed from her academic record at the U of I. Shaffer enrolled as a full-time student at the Palmer College of Chiropractic Medicine ("Palmer") in Davenport, Iowa in March 2007. She left this program in June 2008, prior to completing her degree. During this time, her moods affected her decisions, but not her grades. The Debtor explained that her primary reason for leaving her dream of becoming a chiropractor was due to the fact that she realized that she would never be able to

repay her outstanding student loans. She claims that even with the benefit of hindsight she would make the same decision today.

To fund her education, the Plaintiff obtained loans which now total approximately $204,525. Not including current interest accruals, the DOE is owed $57,489.11; ECMC is owed $47,900; and ISLLC is owed $99,136. At various intervals, payment deferments have been granted to the Debtor.

After leaving Palmer, Shaffer returned to Iowa City to live with her mother. She became employed at the U of I in the Women's Health Clinic in November 2008. Fearing she would be laid off by the U of I, she sought other employment. In August 2009, she began working as an Accounts Receivable Specialist at Precision Revenue Strategies ("PRS"). Plaintiff's duties required her to contact insurance companies to resolve claims. The job was stressful, and Shaffer began to experience medical issues which resulted in two leaves of absence and hospitalization for depression, for which she received disability insurance payments.

Believing she would be terminated at PRS, the Plaintiff voluntarily left this job. To meet her living expenses, Shaffer worked at temporary employment, cashed in retirement funds, utilized the disability insurance payments and accepted contributions from family members. At the time of trial, she had again obtained employment at the U of I as a Clerk III for which she will receive 90% of a full-time salary of $26,975 plus pro-rated benefits.

DISCUSSION

Treatment of student loans in a bankruptcy proceeding is governed by 11 U.S.C. section 523(a)(8), which provides in relevant part, that educational loans or those made, insured or guaranteed by a governmental unit are not discharged unless an undue hardship for the debtor or debtor's dependents is demonstrated. "The policy of this provision [is] clear. Congress

intended to prevent recent graduates who were beginning lucrative careers and wanted to escape their student loan obligations from doing so." Long v. Educ. Credit Mgmt. Corp. (In re Long), 322 F.3d 549, 554 (8th Cir. 2003). A debtor bears the burden to prove undue hardship by a preponderance of the evidence. Grogan v. Garner, 498 U.S. 279, 289-91, (1991). The concept of "undue hardship" is not defined by the bankruptcy code. The Eighth Circuit has adopted an analysis involving the totality of a debtor's circumstances[1] for the purpose of determining undue hardship. See Walker v. Sallie Mae Servicing Corp. (In re Walker), 650 F.3d 1227, 1230 (8th Cir. 2011); In re Long, 322 F.3d at 554; Andrews v. S. D. Student Loan Assistance Corp. (In re Andrews), 661 F.2d 702, 704 (8th Cir. 1981); Sederlund v. Educ. Credit Mgmt. Corp. (In re Sederlund), 440 B.R. 168, 171 (B.A.P. 8th Cir. 2010). Undue hardship can be substantiated by a showing of a disability that prevents meaningful employment or by a verified inability to pay based upon income and living expenses. Three areas of inquiry are relevant to the analysis: "(1) the debtor's past, present, and reasonably reliable future financial resources; (2) a calculation of the debtor's reasonable necessary living expenses; and (3) any other relevant facts and circumstances surrounding each particular bankruptcy case." In re Long, 322 F.3d at 554. Each of these factors is addressed below.

I. Past, Present and Future Financial Resources

Plaintiff's earnings over the past five years, as reflected by her tax filings, ranged from $1,480 in calendar year 2008 to $31,977 in calendar year 2009. In some years, she has supplemented her income by cashing in retirement funds. Shaffer's compensation was highest at PRS where she left voluntarily due to stress that exacerbated her mental health symptoms, her concern that she would be terminated because of her medical absences, and her inability to meet

[1] Rejecting the more restrictive three prong test set forth in Brunner v. N.Y. State Higher Educ. Servs. Corp., 831 F.2d 395 (2nd Cir. 1987).

the employer's required daily quotas. Not including her income at PRS, when gainfully employed she has consistently earned an average of $26,049 annually.

In the past, the Plaintiff has sought employment with various health care providers. She has not been successful in obtaining interviews or positions outside of the U of I where she has worked in three different departments as a Clerk III. Shaffer readily admits that she likes working at the U of I. In her current employment, she has health care benefits which allow her to obtain medication and access counseling services. She is able to perform her duties, and unlike during her previous experience at PRS, she has not manifested significant mental health symptoms. Upon questioning, the Debtor was asked if advancing to a Clerk IV position was possible which would increase her annual salary to $34,000. Shaffer testified that she has made application for Clerk IV jobs and does not qualify for advancement to a Clerk IV position due to lack of supervisory experience. At this time, it appears unlikely that there is an opportunity for meaningful advancement at the U of I. In January 2012, she will qualify for a merit pay increase, although there is no information as to its amount, and at some level, increases are capped.

II. Reasonable Living Expenses

Monthly expense information was provided by Shaffer as part of the discovery process. At trial, a review of her expenses for calendar year 2010 were discussed and revised. She resides in a mobile home owned by her father, for which she pays the monthly lot rent of $310 and property taxes. Monthly lot rent is increasing by $10 in October 2011. The Debtor's other monthly expenses include: utilities $150; cell phone and internet access $109; automobile and renters insurance $104; transportation costs $100; food $400; medical and dental expenses $100; and recreation $75. A category for other regular expenses that includes personal care,

housekeeping supplies, home maintenance, furnishings and pet care is listed in a monthly amount of $300. Although this category could be identified as a possible source of funds for some payment on the student loans, to the extent it contains a reserve for unanticipated expenses that may not occur on a regular monthly basis, the amount is neither unreasonable nor extravagant. The Debtor owns a 2002 Buick, has discontinued her cable television, and has allotted the amount of $600 annually for clothing. In reviewing her budgeted expenses, I agree with the Debtor that she lives frugally.

At trial, ECMC pointed to several months where the Debtor spent money eating out and shopping at retail stores. An average over a three-month period was utilized in making this point. However, the cited expenditures do not appear to constitute a consistent spending pattern. No other similar examples were provided by ECMC even though numerous monthly bank statements were admitted into evidence. During the months that this spending occurred, the Debtor testified that she had received funds from her retirement account and gifts from family.

Although speculation as to increased future expenses is not appropriate in determining undue hardship, it is not unlikely that at some point the Debtor may be required to purchase a different vehicle, or in the event her father returns from out of state she may also be required to find a new residence. See Educ. Credit Mgmt. Corp. v. Jesperson (In re Jesperson), 571 F.3d 775, 780 (8th Cir. 2009). Upon the occurrence of either of these events, it is probable that the Debtor's monthly expenditures will increase in some amount. Based upon the evidence, it is doubtful that Shaffer will experience a substantial decrease in her overall monthly expenses in the foreseeable future.

"There is no precise formula for, or statutory definition of, what constitutes a "minimal standard of living." Brown v. Am. Educ. Servs., Inc. (In re Brown), 378 B.R. 623, 626 (Bankr.

W.D. Mo. 2007). "To be reasonable and necessary, an expense must be 'modest and commensurate with the debtor's resources.'" In re Jesperson, 571 F.3d at 780 (citing In re DeBrower, 387 B.R. 587, 590 (Bank. N.D. Iowa 2008)). Adjustments to living expenses may be required to permit payment on student loans, however, a debtor is not required to live in abject poverty to demonstrate an undue hardship. In re Brown, 378 B.R. at 626 (citing Educ. Credit Mgmt. Corp. v. Stanley (In re Stanley) 300 B.R. 813, 818 (N.D. Fla. 2003)). "A minimal standard of living requires that the debtor have sufficient financial resources to satisfy needs for food, shelter, clothing and medical treatment." Id. In this case, after allowing for withholding[2] and her living expenses, Shaffer's total disposable income is less than $100 monthly.

III. Additional Relevant Facts and Circumstances

To analyze this portion of the totality of a debtor's circumstances, assistance and guidance is found under a number of factors that may include:

> (1) total present and future incapacity to pay debts for reasons not within the control of the debtor; (2) whether the debtor has made a good faith effort to negotiate a deferment or forbearance of payment; (3) whether the hardship will be long-term; (4) whether the debtor has made payments on the student loan; (5) whether there is permanent or long-term disability of the debtor; (6) the ability of the debtor to obtain gainful employment in the area of the study; (7) whether the debtor has made a good faith effort to maximize income and minimize expenses; (8) whether the dominant purpose of the bankruptcy petition was to discharge the student loan; and (9) the ratio of student loan debt to total indebtedness.

In re Brown, 378 B.R. at 626-67 (citing VerMaas v. Student Loans of N.D. (In re VerMaas), 302 B.R. 650, 656-57 (Bankr. D. Neb. 2003); Morris v. Univ. of Ark., 277 B.R. 910, 914 (Bankr. W.D. Ark. 2002)). While these items are helpful, some are duplicative of the totality of the circumstances test and not all may be relevant to the facts of a specific case. See Hangsleben v.

[2] According to her 2010 tax returns, the debtor has not engaged in over-withholding which could result in skewing her monthly disposable income and could result in a substantial refund.

United States of America (In re Hangsleben), No. 10-30178, Adv. No. 10-7018, 2011 WL 2413340, at *6 (Bankr. D.N.D. June 10, 2011).

There is no dispute that Shaffer suffers from diagnosed mental health issues, including unspecified eating disorders, depression (bi-polar) and anxiety. The Lenders argue that Shaffer does not suffer a disability, permanent or otherwise, which prevents her from working or earning a living.[3] The Plaintiff admits that she has not been terminated from employment due to a disability, that she has not been told she is unable to work due to her medical conditions, and that she does not qualify for social security disability or Medicaid. However, the record is equally clear that Shaffer suffers from diagnosed mental illness which has affected her education and employment performance, that she has routinely and consistently sought medical treatment and taken prescription drugs for her symptoms, and that her symptoms have existed in some form for eighteen years. Incapacity (or disability) is only one of the enumerated items to be considered as additional relevant facts. There is no requirement that a debtor prove qualification for disability benefits or be completely unable to work due to a disability in order to be successful in demonstrating an undue hardship. To require such a showing would render the first two factors of the totality of the circumstances test completely irrelevant. In Shaffer's situation, her health issues are not debilitating. But based upon her employment and job search history, her ability to gain employment in a position that will meaningfully increase her annual income is not foreseeable.

In Jesperson, the Eighth Circuit identified a debtor's ability to make payments under the Income Contingent Repayment Program as a relevant factor under the totality of the circumstances. Specifically the Court stated: "[A] student loan should not be discharged when

[3] ECMC additionally argues that a finding of undue hardship is not justified based upon a debtor's sympathetic circumstances.

the debtor has 'the ability to earn sufficient income to make student loan payments under the various special opportunities made available through the Student Loan Program.'" 571 F.3d. at 781 (citations omitted).

Debtor has not made any payment on the loans with the DOE. Nor has she requested administrative relief, although she is aware that an income based payment plan is available. Similarly, Shaffer is also aware that an income contingent repayment plan ("ICRP") is an option with ECMC. Some payment on the debts owing to ISLLC (and perhaps ECMC) have been made, but the amounts are not substantial. She has been granted deferments on these loans, but was denied her most recent requests for economic deferment. ISLLC has been unwilling to lower her interest rate or negotiate payments and does not offer income contingent repayment plans for the loans provided to the Plaintiff. A graduated payment plan is available which would begin with a monthly payment of $287 and increase to over $500 monthly within a given period of time.

The Debtor admits that she has not agreed to enter into any repayment plans offered by the DOE or ECMC. Her reasoning is that without knowing the total amount she would owe for all her loan obligations combined she is uncertain whether she could actually make the required monthly payments to each Lender. According to information provided by the Lenders, the total monthly payment under their available programs totals $614 (DOE estimated at $180; ECMC $147; ISLLC $287). Based upon her current income and expenses, the Plaintiff is unable to meet even the combined lower monthly payment obligations to the Lenders.

CONCLUSION

This is not a case where a disability or physical condition precludes gainful employment. This is also not a case where the debtor has a lack of some skills to obtain employment.

However, it appears that Shaffer has been unable to be employed in the area of her undergraduate degree, does not have the requisite management experience to obtain higher paying employment, and does have medical conditions that impact her ability to perform in stressful environments. These facts taken as a whole do not result in a finding that the Plaintiff's income limitations are "self-imposed." See Sederlund v. Educ. Credit Mgmt. Corp. (In re Sederlund), 440 B.R. 168, 175 (B.A.P. 8th Cir. 2010) (court not discharging student loans when debtor's income limitations were self-imposed). While Debtor's employment and education decisions may not have been objectively reasonable, the fact remains that even under the available payment options, Shaffer does not have the ability, based upon her education and employment history, to make payments on the student loans and maintain a minimal standard of living.

IT IS HEREBY ORDERED:

1. That the Plaintiff has established an undue hardship and the student loans owing to the DOE, ECMC and ISLLC are discharged.
2. The Parties shall bear their own costs.
3. Judgment will enter accordingly.

/s/ Anita L. Shodeen
Anita L. Shodeen
U.S. Bankruptcy Judge

Parties receiving this Memorandum of Decision from the Clerk of Court:
Electronic Filers in this Adversary Proceeding

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

In the Matter of:

Susan M. Shaffer,	Case No. 10-01926-als7
Debtor	Chapter 7
Susan M. Shaffer,	Adv. Pro. 10-30109-als
Plaintiff	
v.	
United States Department of Education, Iowa Student Loan Liquidity Corporation,	
Defendants	
Educational Credit Management Corporation,	
Intervenor-Defendant	

ORDER
(date entered on docket: January 18, 2012)

Before the Court is Educational Credit Management Corporation's ("ECMC" or "Movant") Motion to Amend Order ("Motion") pursuant to Bankruptcy Rules of Procedure 7052 and 9023. On December 1, 2011, a Memorandum of Decision and Judgment ("Ruling") were entered discharging Susan M. Shaffer's ("Shaffer" or "Plaintiff") student loans based upon undue hardship. For the reasons stated herein, the Motion is denied.

LEGAL STANDARD

A request for amended findings and conclusions may be filed within fourteen days of judgment entry as provided for under Bankruptcy Rule 7052 which incorporates Federal Rule of Civil Procedure 52(b) which states in relevant part: "[o]n a party's motion . . . the court may

amend its findings – or make additional findings – and may amend the judgment accordingly." Fed. R. Civ. Pro. 52(b) (made applicable to this proceeding by Fed. R. Bankr. Pro. 7052). Bankruptcy Rule 9023 provides the same time period to request that the judgment be altered or amended as provided for under Federal Rule of Civil Procedure 59(e). "Federal Rule of Civil Procedure 59(e) was adopted to clarify a . . . court's power to correct its own mistakes in the time period immediately following entry of judgment. Rule 59(e) motions serve a limited function of correcting 'manifest errors of law or fact or to present newly discovered evidence.'" In re Lockwood, Bankr. No. 4:09-BK-13545 E, Adv. No. 4:09-AP-01247, 2010 WL 1727447, at *2 (Bankr. E.D. Ark. Mar. 30, 2010) (citations omitted).

"The Rule 'is not intended to routinely give litigants a second bite at the apple, but to afford an opportunity for relief in extraordinary circumstances.'" Am. Guar. & Liab. Ins. Co. v. United States Fid. & Guar. Co., 693 F. Supp. 2d 1038, 1053 (E.D. Mo. 2010) (citations omitted). In this Circuit, such "*motions cannot be used to introduce new evidence, tender new legal theories, or raise arguments which could have been offered or raised prior to the entry of judgment.*" Leonard v. Dorsey & Whitney LLP, 553 F.3d 609, 620 (8th Cir. 2009) (quoting United States v. Metro. St. Louis Sewer Dist., 440 F.3d 930, 934-35 (8th Cir. 2006) (emphasis added). Courts have broad discretion in granting or denying such motions. Hagerman v. Yukon Energy Corp., 839 F.2d 407, 413-14 (8th Cir. 1988).

DISCUSSION

ECMC presents two arguments in support of its requested relief: (1) that the Court incorrectly calculated the monthly and aggregate payment amounts that would be owing under income-contingent payment options available through ECMC and the United States Department

of Education ("DOE")[1], and (2) that the Court did not separately consider each of Shaffer's loan obligations in reaching its conclusion of undue hardship[2] as required under Andresen v. Nebraska Student Loan Program. (In re Andresen), 232 B.R. 127 (B.A.P. 8th Cir. 1999) (abrogated on other grounds by Long v. Educ. Credit Mgmt. Corp. (In re Long), 322 F.3d 549, 553-54 (8th Cir. 2003)).

By letter dated May 25, 2011, ECMC indicated that the Plaintiff would be eligible for monthly payments of $147.79 under its income-contingent repayment plan. (Exhibit ECMC-D). The DOE also indicated in writing that it could offer a reduced monthly payment to the Plaintiff in the amount of $180.00 (Exhibit DOE-D).[3] The Movant now argues that these payments were calculated based upon the Plaintiff's prior income, not her wages at the time of trial. As a result, the Motion asserts that the Court committed error by utilizing incorrect income-contingent payment amounts in reaching its decision.

According to the docket, this adversary proceeding was initially scheduled for trial on July 27, 2011. The parties' request to continue the trial was granted, and the matter was rescheduled for September 1, 2011. The parties filed exhibit lists on August 22, 24 and 25, 2011. Pursuant to the Trial Notice and Order, copies of the exhibits were to be exchanged by the parties one week prior to trial. There was no indication at trial or in the pending Motion that any of the parties did not timely receive copies of exhibits. Plaintiff's Exhibit 8 is a letter dated July 20, 2011 confirming Shaffer's salary at her new employment at the University of Iowa.[4] Clearly, the

[1] The pending Motion is brought only in the name of ECMC, although information as to repayment amounts includes both ECMC and the DOE. It is unclear from the Motion whether it is filed only on behalf of ECMC. Based upon the text of the Motion, it appears to rely upon some facts related solely to the DOE obligation although it is not a joint motion, nor has a joinder been filed by the DOE.

[2] By way of background, the Plaintiff's complaint named two Defendants: DOE and Iowa Student Loan Liquidity Corporation ("ISLLC"). A Motion to Intervene was filed and granted as to the Defendant ECMC. According to the information provided in the pleadings and exhibits, ECMC acquired a portion of the student loan debt owing by the Plaintiff to ISLLC. At the time of trial there were student loan obligations owing by the Plaintiff to each of the three Defendants.

[3] The referenced exhibits were offered and received without objection at trial.

[4] This referenced exhibit was offered and received without objection at trial.

Defendant(s) were aware of the amount of Plaintiff's salary at the time of trial. Although ECMC and DOE both acknowledged that the amount of the monthly payments could change based upon a lower salary, neither of these Defendants provided any revised reduced income-contingent payment. Similarly, neither of these Defendants requested the opportunity to submit post-trial filings to update the income-contingent payment amounts. Any downward adjustment of the monthly payment amounts that ECMC (or the DOE) wanted the Court to consider, could have been calculated and provided to the Court *prior to trial, at trial, or immediately after trial.* Failure of a defendant to introduce or supply correct information related to its case does not mandate a finding of error on the Court's part. ECMC's request for relief under this argument constitutes an attempt to introduce new evidence, not "newly discovered evidence."

An amendment to the findings is also urged because the Court erred in failing to limit the total combined payments that may be owing under the income-contingent repayment plans provided by ECMC and the DOE. This argument is rejected for two reasons. First, the reduced combined payment relies upon a new calculation that has been rejected as an attempt to introduce new evidence after the record was closed. Second, neither party raised this at trial.

The Motion further argues that the Court did not consider each loan separately when determining whether repaying the loans would be an undue hardship. It is only at this juncture of the proceeding that the Defendants appear to part ways on what appeared to be a coordinated effort at trial.[5] The Ruling addressed the issue of Shaffer's ability to pay under the totality of the circumstances. The Ruling analyzed Shaffer's present and future ability to generate income and included a finding that her future expenses would in all probability increase, not decrease.

[5]It appears that there may be a continued coordinated effort in place between ECMC and the DOE, whether done consciously or not, based upon ECMC's Motion which includes facts and references to the DOE obligation to support the requested relief. Also noteworthy is the cross reference and incorporation of exhibits by the Defendants on the filed exhibit lists.

Plaintiff's current disposable income after payment of monthly expenses was deemed minimal. These factors weighed in favor of the finding of undue hardship.

ECMC appears to suggest that the loans owing to it and the DOE should not be discharged because the Plaintiff can afford to pay the amount due under their income-contingent repayment plans. An alternative interpretation might be that because the obligation owing to ISLLC does not qualify for a reduced repayment plan, the Court should automatically permit this loan to be discharged. It is also within the realm of possibility that ECMC is actually requesting that a portion of each of the three student loans be excepted from discharge due to the Plaintiff's ability to make some amount of payment. Even if these inferences are correct, none of these theories were presented in the briefs or at trial.[6]

ECMC's reliance on Andresen is misplaced and stretches the actual holding of the case. The facts in Andresen can be easily distinguished from the facts in this adversary proceeding. Unlike the situation here, Andresen involved separate loans that were all owing to a single original lender, had not been transferred and had not been consolidated. Andresen, 232 B.R. at 129. A court does not have the ability to rewrite the terms of a student loan, which would necessarily include the terms of repayment. Hawkins v. Buena Vista College (In re Hawkins) 187 B.R. 294, 301 (Bankr. N.D. Iowa 1995). Qualification for, or availability of, repayment plans is only one of the factors that is analyzed to determine whether undue hardship has been established. To suggest that a finding of undue hardship is governed only by whether a lender offers a reduced payment, or a large enough reduced payment vis-à-vis other lenders, ignores all of the other factors, most importantly, a debtor's actual ability to pay after consideration of income sources and reasonable expenses.

[6] See Cheney v. Educ. Credit Mgmt. Corp., 280 B.R. 648, 666 n.5 (D. N.D. Iowa 2002).

None of these potential arguments, nor the Andresen case were raised at trial or in the briefs. In fact, the primary focus of the briefed arguments related to Shaffer's disability and ability to make *some* payment on her student loans under income-contingent payment options. The Motion appears to suggest that if the lower income-contingent payment option(s) is applied, Shaffer does have adequate disposable income to pay on the ECMC and the DOE loans. To apply such a strict balance sheet approach does not automatically mandate a conclusion that no undue hardship exists, nor does it consider the standard adopted in In re Long. 322 F.3d 549 (8th Cir. 2003). Applying the appropriate factors, the Ruling included specific findings under the totality of Shaffer's circumstances to support its finding of undue hardship, whether the loans are considered separately or in the aggregate. See In re Long, 322 F.3d at 554; Cheney v. Educ. Credit Mgmt. Corp. (In re Cheney), 280 B.R. 648, 666 (D. N.D. Iowa 2002).

IT IS THEREFORE ORDERED that the Motion is denied.

/s/ Anita L. Shodeen
Anita L. Shodeen
U.S. Bankruptcy Judge

Parties receiving this Memorandum of Decision from the Clerk of Court:
Electronic Filers in this Adversary Proceeding

Outline Exhibit "A"

United States Bankruptcy Appellate Panel
FOR THE EIGHTH CIRCUIT

No. 12-6010

In re:	*	
	*	
Susan M. Shaffer,	*	
	*	
Debtor.	*	
	*	
Susan M. Shaffer,	*	Appeal from the United States
	*	Bankruptcy Court for the
Plaintiff-Appellee,	*	Southern District of Iowa
	*	
v.	*	
	*	
United States Department of Education,	*	
	*	
	*	
Defendant,	*	
	*	
Iowa Student Loan Liquidity Corporation,	*	
	*	
	*	
Defendant-Appellant, and	*	
	*	
Educational Credit Management Corporation,	*	
	*	
	*	
Intervenor-Defendant.	*	

Submitted: August 28, 2012
Filed: October 30, 2012

Before KRESSEL, Chief Judge, SCHERMER and NAIL, Bankruptcy Judges.

NAIL, Bankruptcy Judge.

Iowa Student Loan Liquidity Corporation ("Iowa Student Loan") appeals the December 1, 2011 judgment of the bankruptcy court[1] determining the educational loan debts Debtor Susan M. Shaffer ("Debtor") owed to the United States Department of Education, Iowa Student Loan, and Educational Credit Management Corporation were discharged.[2] We affirm.

BACKGROUND

Debtor is an unmarried woman in her mid-thirties. She has no dependents. Since her mid-teens, Debtor has suffered from a variety of mental health issues, including eating disorders, depression, self-harm (cutting), and anxiety. These mental health issues have adversely affected both her academic endeavors and her ability to maintain employment.

In 1994, Debtor enrolled at the University of Northern Iowa. At the end of the school year, she returned to Iowa City to be closer to her family. In August 1995, she enrolled at the University of Iowa. She attended that school, as either a full-time student or a part-time student, until 2002, when she received a bachelor of arts degree in psychology. Debtor also attended Kirkwood Community College from time to time to obtain pre-pharmacy credits and to maintain her coverage under her parents' health insurance. In March 2007, she enrolled at the Palmer College of Chiropractic Medicine. She attended that school until June 2008. Debtor left without completing her degree when she realized she would never be able to repay her outstanding student loans. To fund her education at these various institutions, Debtor obtained educational loans totaling approximately $204,525.00, which includes $57,489.11

[1]The Honorable Anita L. Shodeen, United States Bankruptcy Judge for the Southern District of Iowa.

[2]Neither the United States Department of Education nor Educational Credit Management Corporation appealed the bankruptcy court's judgment.

Debtor owed to the United States Department of Education, $47,900.00 she owed to Educational Credit Management Corporation, and $99,136.00 she owed to Iowa Student Loan.[3]

After leaving the Palmer College of Chiropractic Medicine, Debtor again returned to Iowa City to live with her mother. In November 2008, she began working in the Women's Health Clinic at the University of Iowa. In August 2009, she left that job and began working as an accounts receivable specialist for Precision Revenue Strategies. While there, Debtor suffered from depression, which caused her to take two medical leaves of absence. In 2010, following her second leave of absence, Debtor believed she would eventually be fired, so she left that job, too. While she sought another job, Debtor met her living expenses by taking temporary jobs, cashing in her retirement funds, utilizing her disability insurance payments, and accepting contributions from other members of her family. In July 2011, she began working in the radiation oncology department at the University of Iowa.

Debtor filed a petition for relief under chapter 7 of the bankruptcy code on April 15, 2010. On July 23, 2010, she filed a complaint to determine the dischargeability of her educational loan debts. The matter was tried, and on December 1, 2011, the bankruptcy court entered a memorandum decision in which it concluded excepting the educational loan debts Debtor owed to the United States Department of Education, Iowa Student Loan, and Educational Credit Management Corporation from discharge would impose an undue hardship on Debtor and a judgment determining those debts were discharged. On February 1, 2012, Iowa Student Loan filed a timely notice of appeal.[4]

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[3]These figures do not include accruing interest.

[4]The time for all parties to appeal the bankruptcy court's judgment ran from January 18, 2012, the date on which the bankruptcy court entered an order denying Educational Credit Management Corporation's timely motion to amend the

STANDARD OF REVIEW

We review *de novo* the bankruptcy court's conclusion that excepting Debtor's educational loan debts from discharge would impose an undue hardship on Debtor. *Walker v. Sallie Mae Servicing Corp.* (*In re Walker*), 650 F.3d 1227, 1230 (8th Cir. 2011) (citing *Long v. Educ. Credit Mgmt. Corp.* (*In re Long*), 322 F.3d 549, 553 (8th Cir. 2003)). We review for clear error the findings of fact on which the bankruptcy court based its conclusion. *Id.* (citing *Reynolds v. Pa. Higher Educ. Assistance Agency* (*In re Reynolds*), 425 F.3d 526, 531 (8th Cir. 2005)). We will not overturn the bankruptcy court's findings of fact "unless, after reviewing the entire record, we are left with the definite and firm conviction that a mistake has been made." *Id.* (citing *Cumberworth v. U.S. Dept. of Educ.* (*In re Cumberworth*), 347 B.R. 652, 657 (B.A.P. 8th Cir. 2006)).

DISCUSSION

If "excepting such debt from discharge . . . would impose an undue hardship on the debtor and the debtor's dependents," a discharge under 11 U.S.C. § 727 discharges the debtor from a debt for an educational 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." 11 U.S.C. § 523(a)(8). The debtor must establish undue hardship by a preponderance of the evidence. *Walker*, 650 F.3d at 1230. In determining whether the debtor has met this burden, the bankruptcy court must consider the totality of the debtor's circumstances, taking into account:

> (1) the debtor's past, present, and reasonably reliable future financial resources; (2) a calculation of the reasonable

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bankruptcy court's judgment. Fed.R.Bankr.P. 8002(b).

> living expenses of the debtor and her dependents; and (3) any other relevant facts and circumstances surrounding the particular bankruptcy case.

Id. (citing *Long*, 322 F.3d at 554).

In its memorandum decision, the bankruptcy court carefully considered and addressed each of the foregoing factors. On appeal, Iowa Student Loan raises three issues: (1) whether the bankruptcy court erred in not separately evaluating each of its 13 loans to determine whether each such loan imposed an undue hardship on Debtor; (2) whether the bankruptcy court erred in finding Debtor's income limitations were not self-imposed; and (3) whether the bankruptcy court erred in considering, without the aid of expert testimony, the effect of Debtor's mental health issues on her ability to obtain and maintain employment.[5]

With respect to the first issue, we have held where more than one educational loan is involved, the bankruptcy court must separately evaluate each under § 523(a)(8): "We hold that the bankruptcy court's application of § 523(a)(8) to each of [debtor's] educational loans separately was not only allowed, *it was required*." *Andresen v. Nebraska Student Loan Program, Inc.* (*In re Andresen*), 232 B.R. 127, 137 (B.A.P. 8th Cir. 1999) (emphasis added). While the bankruptcy court's memorandum decision does not clearly set forth a separate evaluation of each of Debtor's educational loans, Iowa Student Loan did not raise this issue in the bankruptcy court.[6] Consequently, we will not consider it on appeal.[7] *Edwards v.*

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[5]We have listed the issues in the order in which Iowa Student Loan listed them in its Statement of the Issues, not in the order in which it discussed them in the Argument portion of its briefs.

[6]Educational Credit Management Corporation, which is not a party to this appeal, raised the issue of whether each of Debtor's educational loans needed to be separately evaluated for the first time in its motion to amend the bankruptcy court's

Edmondson (*In re Edwards*), 446 B.R. 276, 280 (B.A.P. 8th Cir. 2011) (citations therein).

In discussing this issue in its briefs, however, Iowa Student Loan renews two arguments it *did* make in the bankruptcy court. Both merit discussion regardless of whether Debtor's educational loans are evaluated separately or collectively.

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judgment. The bankruptcy court denied that motion, in part because no one raised the issue at trial, and no one appealed the bankruptcy court's order denying it.

[7]Were we to do so, however, the outcome in this case would likely be the same. While the bankruptcy court did not expressly state Debtor could not make *any* payment on *any* of her educational loan debts, based on the evidence in the record, that is the fairest reading of the bankruptcy court's memorandum decision. Debtor testified her monthly take-home pay would be $1,500 to $1,600. This was the *only* evidence of her take-home pay presented to the bankruptcy court: Debtor had not yet been paid by her new employer and thus had not received a pay stub or an earnings statement. Iowa Student Loan now characterizes Debtor's testimony as a "vague guess[ ]," but it did not object to her testimony on this point on that or any other basis, request a continuance until a pay stub or an earnings statement could be produced, or offer any evidence to the contrary. Debtor also provided evidence–through her testimony regarding an exhibit that was admitted by the bankruptcy court but was not included in the record on appeal–supporting the bankruptcy court's finding that Debtor's reasonable monthly living expenses comprised $310 for lot rent (increasing to $320 in October 2011), $150 for utilities, $109 for cell phone and internet access, $104 for automobile and renter's insurance, $100 for transportation costs, $400 for food, $100 for medical and dental expenses, $75 for recreation, $50 for clothing, and $300 for other regular expenses including personal care, housekeeping supplies, home maintenance, furnishings, and pet care (a total of $1,708 beginning in October 2011). Iowa Student Loan has not challenged the bankruptcy court's finding that Debtor's monthly living expenses are reasonable. Based on this evidence, the bankruptcy court found Debtor's monthly disposable income was less than $100, a sum the bankruptcy court subsequently described as "minimal" in its order denying Educational Credit Management Corporation's motion to amend the bankruptcy court's judgment. This finding is not clearly erroneous: By our reckoning, Debtor's reasonable monthly expenses *exceed* her monthly disposable income by $100 to $200.

Specifically, Iowa Student Loan argues Debtor admitted having the ability to pay $350 to $400 per month on her student loans. This oversimplifies Debtor's testimony. Debtor testified she could "probably" make such a payment, but even without the benefit of observing her demeanor on the witness stand–a benefit the bankruptcy court of course had–it is readily apparent from even the most casual reading of the transcript she was not confident she could do so. Moreover, Debtor was not asked to–and did not–explain how she could possibly make such a payment, given her current monthly take-home pay and her current reasonable monthly living expenses. Consequently, we do not view her "admission" as evidence that would *require* the bankruptcy court to find Debtor could make such a payment without undue hardship. *Anderson v. City of Bessemer City, North Carolina*, 470 U.S. 564, 574 (1985) (citations therein) ("Where there are two permissible views of the evidence, the factfinder's choice between them cannot be clearly erroneous.").

Iowa Student Loan also argues Debtor's spending more in the past for clothing and eating out than the amount the bankruptcy court found reasonable going forward further demonstrates Debtor's ability to make payments on her educational loans. We disagree. At most, what Iowa Student Loan describes as Debtor's "alarming[ly] profligate" spending in the past demonstrates Debtor–like many, if not most, other debtors–may have made unwise spending decisions and may have lived beyond her means. This does not mean the bankruptcy court should have expected Debtor to continue to live beyond her means to make payments on her educational loans in the future. Consequently, we do not view Debtor's past spending for clothing and eating out–even if "alarming[ly] profligate"–as evidence that would *require* the bankruptcy court to find Debtor could make payments on her educational loans without undue hardship in the future. *Id.*

With respect to the second issue Iowa Student Loan raises on appeal, the Eighth Circuit Court of Appeals has held "[a] debtor is not entitled to an undue hardship discharge of student loan debts when his current income is the result of self-

imposed limitations, rather than lack of job skills[.]" *Educ. Credit Mgmt. Corp. v. Jesperson* (*In re Jesperson*), 571 F.3d 775, 782 (8th Cir. 2009). Iowa Student Loan argues Debtor's current income is the result of a self-imposed limitation, *i.e.*, her decision to drop out of chiropractic school.[8] This argument fails for two reasons. First, it presupposes–with no support in the record– had Debtor not dropped out: (1) she would have graduated; (2) she would have found employment as a chiropractor; and (3) she would have earned enough as a chiropractor to generate sufficient net income to pay off not only her current educational loan debts, but also the additional educational loan debts she would have incurred in completing her degree. Second, and more importantly, Debtor testified regarding both her decision to apply to chiropractic school and her subsequent decision to drop out. Inasmuch as it found Debtor's income limitations were not self-imposed, the bankruptcy court at least implicitly accepted Debtor's explanation of her decisions. Giving due regard to the opportunity of the bankruptcy court to judge Debtor's credibility, Fed.R.Bankr.P. 8013, we cannot say the bankruptcy court's finding was clearly erroneous.

Finally, with respect to the third issue Iowa Student Loan raises on appeal, we have held expert testimony is *not* required in cases such as the one before us.

> The bankruptcy court determined that [debtor] could endure only work that was essentially ministerial and that she suffered from the stress of increased responsibility due to a lack of self-confidence. While there was no evidence that the debtor was clinically disabled or maladjusted, the bankruptcy court expressly found that [debtor] was not fit for the higher responsibility and higher paying positions

[8]Iowa Student Loan contends– contrary to the sage advice of both Will Rogers, who said, "When you find yourself in a hole, stop digging," and Kenny Rogers, who sang, "You got to . . . know when to fold 'em"–Debtor should have taken out *more* educational loans in the hope this would enable her to pay off her *existing* educational loans.

> she tried and then left. *There is no reason to view the trial court's findings as unreliable merely because no expert evidence was introduced.* The record offers no reason to suggest that the bankruptcy court made its decision without due consideration. The bankruptcy court took evidence, judged the debtor's credibility, and applied the proper totality of the circumstances test. Its finding of undue hardship is not clearly erroneous.

Cline v. Illinois Student Loan Assistance Ass'n (*In re Cline*), 248 B.R. 347, 350 (B.A.P. 8th Cir. 2000) (emphasis added). Iowa Student Loan argues the bankruptcy court "speculated" about Debtor's mental health issues and insists the bankruptcy court should not have considered Debtor's mental health issues without the aid of expert testimony.[9] For the reasons discussed in *Cline*, we disagree. The bankruptcy court heard Debtor's testimony, judged her credibility, and accepted her description of her mental health issues and their effect on her ability to maintain employment. Iowa Student Loan offered no testimony–expert or otherwise–or other evidence to the contrary. Consequently, we cannot say the bankruptcy court's finding was clearly erroneous.

CONCLUSION

Having reviewed *de novo* the bankruptcy court's conclusion that excepting Debtor's student loan debts from discharge would constitute an undue hardship and having reviewed for clear error the findings of fact on which the bankruptcy court based its conclusion, we affirm the judgment of the bankruptcy court determining the

[9]In support of its position, Iowa Student Loan cites us to two bankruptcy cases, one from the Northern District of Ohio and the other from the Western District of Michigan. While we respect the opinions of bankruptcy courts from other circuits, we are not bound by them. We are, however, bound by our own opinions, including *Cline*.

educational loan debts Debtor owed to the United States Department of Education, Iowa Student Loan, and Educational Credit Management Corporation were discharged.

Student Loan Dischargeability: Trends in the Eighth Circuit

31st Annual Bankruptcy Conference – Iowa Chapter Federal Bar Association
Des Moines, Iowa -- November 1-2, 2012

Steven G. Klesner
Johnston, Stannard, Klesner, Burbidge & Fitzgerald, PLC

Permission to include the outline did not come in time to include it as an exhibit. The outline is available in the program materials for the 31st Annual Bankruptcy Conference -- Iowa Chapter Federal Bar Association, or directly from the author.

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Iowa District Court for Jackson County

[redacted]

Plaintiff,

vs.

[redacted]

Defendants

No. 07491SCSC[redacted]

FILED
2012 JUN 13 PM 12:20
CLERK DISTRICT COURT
JACKSON COUNTY, IA.

Proof of Service

I, Brian W. Peters, state that I represent [redacted] in connection with the real estate detailed on the attached documents. In compliance with Iowa Code §624.23(2) I attach the following documents:

Demand Pursuant to Iowa Code §624.23(2) dated June 9, 2012.

Certified Mail receipt and Domestic Return Receipt showing that the demand was received June 11, 2012 by [redacted]

Copies from the Iowa Legislature webpages of Iowa Code §624.23 and Iowa Code §654.4A.

[redacted] Defendant,

By: _____

Brian W. Peters, #AT0006121
P O Box 703
Dubuque, IA 52004-0703
(563) 588-0547
Fax (563) 588-1981

Outline Exhibit "D"

Iowa District Court for Jackson County

[redacted] Plaintiff,

vs.

[redacted] Defendant

No. 07491SCSC[redacted]

FILED
2012 JUN 13 PM 12:20
CLERK DISTRICT COURT
JACKSON COUNTY, IA.

Demand Pursuant to Iowa Code §624.23(2)

To:
[redacted]

You may claim a lien in property described on the attached Schedule "A" by reason of the judgment in the case captioned above.

Pursuant to Iowa Code §624.23(2) unless execution is levied within thirty days of the time that this demand has been served upon you, your claim will be barred.

Affidavit

I, Brian W. Peters, state that I represent [redacted], who hold the property as their homestead. Pursuant to Iowa Code §624.23(1), this judgment does not attach as a lien to this real estate.

Signed under penalty of perjury and pursuant to the laws of the state of Iowa June 9, 2012.

Brian W. Peters, #AT0006121

Served by Certified Mail No. [redacted]

Outline Exhibit "D"

Schedule "A" Legal Description

Omitted

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

[redacted]

COMPLETE THIS SECTION ON DELIVERY

A. Signature
X [redacted] ☐ Agent ☐ Addressee

B. Received by (Printed Name) [redacted] C. Date of Delivery 6-1-12

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type
☒ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number (Transfer from service label) [redacted]

PS Form 3811, February 2004 Domestic Return Receipt 102595-02-M-1540

7004 2890 0002 5162 2123

U.S. Postal Service™
CERTIFIED MAIL™ RECEIPT
(Domestic Mail Only; No Insurance Coverage Provided)

For delivery information visit our website at www.usps.com®

OFFICIAL USE

Postage	$ .45
Certified Fee	2.95
Return Receipt Fee (Endorsement Required)	2.35
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	$5.75

Postmark Here

Sent To [redacted]
Street, Apt. No., or PO Box No. [redacted]
City, State, ZIP+4 [redacted]

PS Form 3800, June 2002 See Reverse for Instructions

Outline Exhibit "D"

654.4A Service of process — in rem relief.

In addition to any other form of service authorized by law, where in rem relief is the only relief requested in a foreclosure action against either a party or a person to be served with a notice pursuant to **section 654.15B**, all of the following shall apply:

1. If the person to be served is a judgment creditor, service may be made by certified mail, with proof of delivery, to the judgment creditor's registered agent or to the judgment creditor at the judgment creditor's principal place of business in the state where the business is organized, as indicated by the records in the office of the secretary of state, or to the judgment creditor at the last address indicated in the case in which the judgment was entered.

2. Upon affidavit that service cannot be made on a judgment creditor either pursuant to **subsection 1** or by personal service in this state, service may be made by certified mail, with proof of delivery, on the judgment creditor's attorney of record if that attorney is a practicing attorney in this state, along with a copy of **this section**, and a payment of ten dollars. The attorney shall forward the notice by ordinary mail to the judgment creditor's last known address but the attorney shall have no further duties under **this section** with respect to the notice.

3. An attorney who agrees to accept service on behalf of a judgment creditor may charge a reasonable fee, not to exceed ten dollars, for accepting service.

4. If a person, other than a governmental taxing unit, is an interested person with respect to a decedent's estate in probate, the person may be named generally as a person interested in the decedent's estate and service of process shall be made by personal service or certified mail, along with proof of delivery, on the attorney for the personal representative. If the estate is probated in this state and a person has requested notice pursuant to **section 633.42**, the mortgagee shall also serve that person or the person's attorney by ordinary mail at the address specified in the request for notice. A person so served may intervene as a named defendant as a matter of right.

5. If a defendant, other than a governmental taxing unit, is a person whose identity is not reasonably ascertainable, and the person has an interest in a decedent's estate not probated in this state, such person may be named generally as a person with an interest in the decedent's estate and service of process shall be made by publication unless the mortgagee has actual notice that the decedent's estate is probated in another state. A person so served may intervene as a named defendant as a matter of right.

2009 Acts, ch 51, §5, 17
Section applies to all actions commenced on or after July 1, 2009; 2009 Acts, ch 51, §17

Outline Exhibit "D"

624.23 Liens of judgments — real estate — homesteads — support judgments.

1. Judgments in the appellate or district courts of this state, or in the circuit or district court of the United States within the state, are liens upon the real estate owned by the defendant at the time of such rendition, and also upon all the defendant may subsequently acquire, for the period of ten years from the date of the judgment.

2. *a.* Judgment liens described in **subsection 1** do not attach to real estate of the defendant, occupied as a homestead pursuant to **chapter 561**, except as provided in **section 561.21** or if the real estate claimed as a homestead exceeds the limitations prescribed in **sections 561.1** through **561.3**.

b. A claim of lien against real estate claimed as a homestead is barred unless execution is levied within thirty days of the time the defendant, the defendant's agent, or a person with an interest in the real estate has served written demand on the owner of the judgment. The demand shall state that the lien and all benefits derived from the lien as to the real estate alleged to be or to have been a homestead shall be forfeited unless the owner of the judgment levies execution against that real estate within thirty days from the date of service of the demand. The demand shall contain an affidavit setting forth facts indicating why the judgment is not believed to be a lien against the real estate. A warranty of title by a former occupying homeowner in a conveyance for value constitutes a claim of exemption against all judgments against the current homeowner or the current homeowner's spouse not specifically exempted in the conveyance. Written demand shall be served in any manner authorized for service of original notice under the Iowa rules of civil procedure or in a manner provided in **section 654.4A, subsections 1** through **3**. A copy of the written demand and proof of service of the written demand shall be filed in the court file of the case in which the judgment giving rise to the alleged lien was entered.

c. A party serving a written demand under **this subsection** may obtain an immediate court order releasing the claimed lien by posting with the clerk of court a cash bond in an amount of at least one hundred twenty-five percent of the outstanding balance owed on the judgment. The court may order that in lieu of posting the bond with the clerk of court, the bond may be deposited in either the trust account of an attorney licensed to practice law in this state or in a federally insured depository institution, along with the restriction that the bond not be disbursed except as the court may direct. A copy of the court order shall be served along with a written demand under **this subsection**. Thereafter, any execution on the judgment shall be against the bond, subject to all claims and defenses which the moving party had against the execution against the real estate, including but not limited to a lack of equity in the property to support the lien in its proper priority. The bond shall be released upon demand of its principal or surety if no execution is ordered on the judgment within thirty days of completion of service of the written demand under **this subsection**.

3. Judgment liens described in **subsection 1** shall not attach to subsequently acquired real estate owned by the defendant if the personal liability of the defendant on the judgment has been discharged under the bankruptcy laws of the United States.

4. *a.* In addition to other provisions relating to the attachment of liens, full faith and credit shall be afforded to liens arising for overdue support due on support judgments entered by a court or administrative agency of another state on real estate in this state owned by the obligor, for the period of ten years from the date of the judgment. Notwithstanding any other provisions of law, including but not limited to the formatting of forms or requirement of signatures, the lien attaches on the date that a notice of interstate lien promulgated by the United States secretary of health and human services is filed with the clerk of district court in the county where the real estate is located.

b. The lien shall apply only prospectively as of the date of attachment to all real estate the obligor may subsequently acquire and does not retroactively apply to the chain of title for any real estate that the obligor had disposed of prior to the date of attachment.

5. A judgment lien attaching to the real estate of a city may be discharged at any time by the city filing with the clerk of the district court in which the judgment was entered a bond in the amount for which the judgment was entered, including court costs and accruing interest, with surety or sureties to be approved by the clerk, conditioned for the payment of the judgment amount, interest, and court costs. If the real estate is located in a county other than that in which the judgment was entered, the clerk of the district court in which the judgment was entered shall certify to the clerk of the district court of the county in which the real estate is located that the bond has been filed.

6. A judgment against a city shall not give rise to a lien attaching to the streets, alleys, or utility easements of a city or attaching to the real estate of a city which is used by the city for transportation, health, safety, or utility purposes.

7. If a case file has been sealed by the court, or if by law the court records in a case are not available to the general public, any judgments entered in the case shall not become a lien on real property until either the identity of the judgment creditor becomes public record, or until the judgment creditor, in a public document in the case in which judgment is entered, designates an agent and office, consistent with the requirements of **section 490.501**, on which process on the judgment creditor may be served. Service may be made on the agent in the same manner as service may be made on a corporate agent pursuant to **section 490.504**. An agent who has resigned without designating a successor agent and office and who is otherwise unavailable for service may be served in the manner provided in **section 490.504, subsection 2**, at the agent's office of record.

[C51, §2485, 2489; R60, §4105, 4109; C73, §2882; C97, §3801; C24, 27, 31, 35, 39, §11602; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §624.23; 82 Acts, ch 1002, §1 – 3]

85 Acts, ch 100, §8; 86 Acts, ch 1014, §1; 89 Acts, ch 102, §8; 97 Acts, ch 175, §202; 2002 Acts, ch 1089, §1; 2006 Acts, ch 1132, §4, 16; 2010 Acts, ch 1021, §1; 2011 Acts, ch 6, §1

Judgment lien for alcoholic beverage violations, §123.113

Special limitations on judgments, chapter 615

Subsection 7 applies to judgments entered on or after July 1, 2007; 2006 Acts, ch 1132, §16

Subsection 2, paragraph c amended

Outline Exhibit "D"

Iowa District Court for Dubuque County

[redacted]

Plaintiff,

Vs.

[redacted]

Defendant

[redacted]

Statement Under Penalties of Perjury Concerning Judgment Lien

I, [redacted] state that I am a Defendant in the matter captioned above. I am submitting this statement to explain the relationship between the judgment in the case captioned above and real estate legally described as:

[redacted]

My husband, [redacted] and I have both continuously occupied this real estate as our homestead, from on or about [redacted] o the present date. The real estate is less than one-half acre in size.

I further state that the debt which is the subject of the case captioned above was incurred after the date that we acquired our homestead, and was not for work done or material furnished exclusively for the improvement of the homestead.

Pursuant to the Iowa Supreme Court case of *Baratta v. Polk County Health Services, Inc.*, 588 NW 2d 107 (Iowa, 1999), this judgment does not attach as a lien to the real estate captioned above.

Pursuant to Iowa Code § 622.1, I certify under penalty of perjury and pursuant to the laws of the state of Iowa that the preceding is true and correct.

Dated: [redacted]

_____

[redacted]

Outline Exhibit "E"

Prepared by: Brian W. Peters, P O Box 703, Dubuque, IA 52004-0703 (563) 588-0547

Return to: Brian W. Peters, P O Box 703, Dubuque, IA 52004-0703 (563) 588-0547

Homestead Plat

State of Iowa)
) ss.
Dubuque County)

The undersigned, pursuant to Iowa Code Section 561.4, Plat the following real estate as my/our homestead:

Parcel No. _____, locally known as: _____.

I/we further state that I/we acquired the above real estate by deed dated _____, and recorded as Instrument No. _____ in the Office of the Dubuque County Recorder.

I/we have occupied the above property as my/our homestead from the date of the deed above and continue to occupy the property as my/our homestead.

_____ _____
Name 1 Name 2

Subscribed and sworn to before me this _____ day of _____, 20_____.

_____
Notary Public in and for the State of Iowa.

Iowa District Court for Dubuque County

, Plaintiff,

vs.

, Defendant(s).

No.

Motion for Order Discharging Judgment in Whole

Defendant(s) state(s):

1. A chapter 7 bankruptcy case was filed which affects this case. Plaintiff and the Dubuque County Clerk of Court were both notice parties in that case, as shown by the attached Notice of Chapter 7 Bankruptcy Case, Meeting of Creditors, & Deadlines.

2. A discharge order issued in the chapter 7 bankruptcy case, and a copy of that order is attached.

3. Iowa Rule of Civil Procedure 1.1016 provides, "Where matter in discharge of a judgment has arisen since its entry, the defendant or any interested person may, on motion, have the same discharged in whole or in part, according to the circumstances."

WHEREFORE, Defendant(s) pray(s) for the entry of an order discharging the judgment in this case in whole.

, Defendant(s),

By: _____

Brian W. Peters, #AT0006121
P O Box 703
Dubuque, IA 52004-0703
(563) 588-0547
Fax (563) 588-1981

PROOF OF SERVICE

The undersigned certifies that the foregoing instrument was served upon the persons listed below by personal service or by U.S. Mail, on

_____

cc.
Plaintiff or Attorney

Outline Exhibit "F"

Iowa District Court for Dubuque County

, Plaintiff,

vs.

, Defendant(s).

No.

Order Discharging Judgment in Whole

A Motion for an Order Discharging Judgment in Whole having come before the Court, and it appearing that the judgment in this case has been previously discharged by a chapter 7 bankruptcy filing,

IT IS HEREBY ORDERED that the Judgment, including all interest and costs, is discharged in whole against Defendant(s) , pursuant to Iowa Rule of Civil Procedure 1.1016. The Clerk of Court is directed to show this judgment, including interests and costs, as satisfied on the ICIS record of the case as well as making this order a part of the case file.

Dated _____, 2012.

_____

Judge, Iowa District Court.

Outline Exhibit "F"

Credit Report Questions and Answers

The Frequently Asked Questions piece that follows is reproduced, with permission, from the original written by **Brian W. Peters** of the **Kintzinger Law Firm**, Dubuque, Iowa.

This document gives general answers to questions that are frequently asked by our clients. It is intended for clients of this office, and is not intended as a substitute for our advice in individual cases. You also should understand that credit reporting law changes from time to time; we believe the information below was accurate when written, but we cannot guarantee that it will remain correct over time. We do hope that it will be a useful background, and a way to think about questions to ask us directly.

Quick links

- Bankruptcy Home
- Bankruptcy FAQ
- Bankruptcy Worksheet
- Reaffirmation FAQ

IN THE NEWS

- The Wall Street Journal on Credit Scoring.
- The Wall Street Journal on Free Credit Scores.
- You can get your free credit reports from Equifax, Experian, and TransUnion at annualcreditreport.com.
- Purchase the three FICO scores and the 12 report codes from MyFICO.com/12 (sorry, no free site is available).
- Visit the Equifax website.
- Visit the Experian website.
- Visit the TransUnion website.
- Visit the ChoicePoint website.

PRACTICE AREAS
INCLUDING, BUT NOT LIMITED TO:
- PERSONAL INJURY
- BANKRUPTCY
- FAMILY LAW
- PROBATE & ESTATE PLANNING
- CRIMINAL DEFENSE

Q. What is a credit report?

A. A credit report compiles information about your credit past, generally assembling this rather sterile financial gossip from commercial databases. The most useful and complete form of this information is what the Federal Trade Commission calls a "credit file disclosure," which contains all the information about you in a particular database as of the date compiled. This is the report you can receive without charge once a year from each of the three national consumer reporting companies by going to www.annualcreditreport.com.

Q. Why is my lender's report different than mine?

A. Some information on the "credit file disclosure" that you can get is off limits for your lender. The information about who inquired for pre-screened offers, or who verified information on you as a current customer should not be disclosed to anyone but you. Also, medical information contained in the report is supposed to be redacted -- so, for example, "Regional Cancer Center" should show as "Medical Payment Data" or something similar.

Typically the biggest difference is in how the information is formatted. The three national consumer reporting companies are almost always the source of the basic information, but a host of other companies compile and format the information in different ways for different

Outline Exhibit "G"

users. For ordinary mortals the formats range from merely puzzling to totally incomprehensible, but for a lender familiar with the report and actually interested in only a small portion of the information, the format can be time saving.

Q. Who's spying on me?

A. Three corporations almost exclusively control the basic collection of consumer credit data: Equifax, Experian, and TransUnion. Their primary source of information is creditors gossiping to them, often on a monthly basis. They also collect some public record data, and occassionally may receive data from you. They do not, for the most part, compare data with each other, so the information compiled by one company is not necessarily the same as the information compiled by another.

Q. What's a FICO score?

A. **F**air, **I**saacs & **CO**mpany (hence **FICO**) sells the oldest and best known of the mathematical models for summarizing the data on a credit report. The "FICO score" is a single number between 300 and 850 that roughly indicates the statistical likelihood of a borrower repaying loans based on their credit report; the higher the score the more likely the borrower is to repay the loan in full.

Credit scoring came about to make lending decisions less subjective. As we continue to move toward a national credit economy, it also reduces costs for lenders. Subjective decisions by a local loan officer who actually knows the borrower can qualify people for lending that "pure numbers" could not justify. On the other hand, subjective decisions can disqualify some borrowers for non-financial reasons -- like the color or shape of their skin, or their views on religion. Credit scoring appears to bypass this subjectivity by creating an objective mathematical score to be used by the lender. It also allows the lender to use less time and money training personel to make lending decisions, or even to delegate lending decisions to a computer model, which reduces the lender's costs in processing loans. It can also dramatically reduce the time between credit application and credit approval; when you see credit products that promise "instant approval," these nearly always use credit scoring as the basis for the decision.

Q. How do I improve my credit score?

A. Basically three things: always make loan payments on time, don't carry balances of more than half the credit limit on any credit card, and correct inaccurate entries on your credit report. "Churning" credit cards (that is, continually getting new cards and cancelling old ones) also will reduce your credit score, as will frequently applying for new credit generally. The web and late-night television abound with "experts" and "consultants" whispering that, for a fee, they can let you in on tips and tricks known to no one but a priviledged few that will "dramatically turn around" your credit score. They either are dressing up the information above, talking about things that make only tiny differences in credit scores, or urging you to do something illegal. None of those are things you should be paying them for.

Q. Why do insurance companies and employers check credit scores?

A. Partly this is the siren song of "cheap, objective decision making" being sold to these folks by the consumer credit industry. For insurance companies, a person in financial distress may make more claims under an insurance policy. For example, you are more likely to file a claim for a cracked windshield or a minor accident if you're broke than if you can afford to repair the vehicle without insurance. The trouble is that a low credit score can mean many things other than being broke.

In the case of employers, the usual claim is that people in financial distress are more likely to have poor attendance records, and are more tempted to steal. Quite apart from the question of whether a low credit score shows financial distress, people miss work and steal from their employers for a whole host of reasons unrelated to their careful use of credit.

Regardless of whether it's a good idea, though, both large employers, and particularly insurance companies, often do use credit scoring to make decisions about you.

Q. Some of the stuff on the report is wrong, how do I fix it?

A. Consumer reporting companies are required to investigate and correct inaccurate entries in their databases. You have the greatest chance of getting these corrections made quickly and easily if you first make sure what is in the database, and then supply proof that it is inaccurate. However simple that sounds, these are the most common sources of frustration in making corrections.

First, get current reports from all three credit reporting companies. If you haven't done this in the last year, the cheapest way to get these reports is to go to www.annualcreditreport.com. You can also request these through a toll-free number -- 1-877-322-8228 -- or request by mail (the Federal Trade Commission form in pdf format is here). The process of getting these reports from the AnnualCreditReport.com website requires patience and persistence, but it is entirely possible. All three companies will try to sell you additional products, none of which you need, and none of which are required to get the report.

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Then go to each of the credit reporting companies and identify each inaccurate entry, and explain why it is inaccurate.

For Equifax, go to: Equifax Online Dispute,
or telephone: 800 797-7033
or write to:
Equifax Credit Information Services, Inc
P.O. Box 740241
Atlanta, GA 30374

For Experian, go to: Disputes,
or telephone: 800 583-4080
or write to:
Experian
NCAC
P O Box 9595
Allen, TX 75013

For Trans Union, go to: Online Dispute,
or telephone: 800 916-8800
or write to:
Trans Union
P O Box 2000
Chester, PA 19022-2000

In general, writing to the credit reporting company (certified U.S. mail, return receipt requested) is the best practice. Online dispute submission, and telephone dispute submission are probably 2 to 3 days faster -- that's approximately the mail time -- but these methods do not create a record of what you sent, or allow you to attach documents.

Q. What can be changed?

A. The bumper sticker answer to "What can I correct?" is "inaccurate information." Simply put, if your report says you're 90 days delinquent in paying a debt, and you can prove you were not, you can have the inaccurate information removed. On the other hand, if you actually were 90 days delinquent, that information can't be "corrected." There are some categories of special problems:

--Bankruptcy -- yours: The debts that were discharged in the bankruptcy should be noted as "discharged," "included in bankruptcy," "chapter 7 petition," "chapter 13 petition," or some variation of these. What will sometimes happen is that the creditor will instead report that the account is "written off" or "charged off." When a debt is "discharged" it can no longer be collected. When it is "written off" or "charged off" it is still valid, and probably soon to be sold or transferred to someone else to collect. Correct this by supplying the bankruptcy case number, the discharge order, and proof that notice was sent to the creditor.

--Bankruptcy -- someone else's: This is most often a problem for co-signers on a loan when the primary debtor has filed and the co-signer hasn't. Sometimes the original creditor will include the notation "included in bankruptcy" on the information supplied for the co-signer, even though the co-signer hasn't filed. An explanation that the primary debtor has filed bankruptcy, but you have not, is generally sufficient to get this corrected.

--Divorce: Debts or collections which are solely in your ex-spouse's name should not appear on your credit report. These do happen, and should be corrected by proof that this is not your debt. Sadly, it is NOT sufficient that a stipulation or even a court order directed your ex-spouse to pay a debt. The creditor was not a party to the divorce case, and the order has no bearing on the creditor's ability to collect from either you or your ex-spouse on joint debts.

--Credit Limit: The credit limit on a trade line account (VISA, Mastercard, store credit card, etc.) should be reported. For competitive reasons (to keep other issuers from stealing customers) some companies will report the "highest credit balance" rather than the credit limit. Because nearly all scoring models base their result in part on how much of your available credit you're using, this can substantially reduce your score. Capital One has been the most frequent offender in failing to report limits, but other cards will do this on some accounts. You can try to get the limit reported by supplying proof of the limit to the credit reporting agency, or by calling and writing the card issuer and demanding that the limit be reported. If neither of these work, pay off any balance on the card and stop using it. Usually, it is not a good idea to cancel the card (because it can effect the portion of the score dependent on "length of established credit").

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--Stray Data: This can be a difficult problem, because the the original data is not necessarily inaccurate, just improperly identified with you. This is sometimes called a "mixed file," and identity theft is really a special form of this problem. The problem comes about because the credit reporting agency doesn't actually maintain a "file" as such on you. Instead, they assemble data about you from their database when a report is requested. They also are aware that the data reported to them is imperfect -- digits in social security numbers can be transposed or omitted, people often change their names when they are married, divorced, or adopted, and some folks use nicknames or variations in the spelling of their names at different times in their lives. To compensate for this, the credit reporting agency will typically match 7 or 8 digits of a social security number and 5 or 6 characters of a first name, or use some similar system. They (correctly) feel that the statistical chance of that imperfect match generating bad data is quite small. The problem is that each of these databases is dealing with a number of entries that vastly exceeds the number of dollars in the federal budget. While the statistical likelihood of any one person's report containing bad data due to this process is low, the likelihood that there will be inaccurate reports is a certainty.

Correction of a stray data problem should almost always be by certified mail, and should be accompanied by as much documentation as you can produce. Keep a record of everything that you send, and continue to follow up to be sure that the stray data is removed and that it stays removed.

--Stale Data: Everything should time off a credit report in seven years except a public record notice of a chapter 7 bankruptcy (which times off 10 years from the date of filing) or a federal tax lien filing. For chapter 13 (wage earner payment plan) bankruptcies, the seven years runs from the date of filing, not the date of discharge. Generally, the credit reporting agencies are good at getting this done automatically. The problem usually arises with "re-dated" entries. One set of these arises from mergers, liquidations, and bankruptcies of creditors. Often the data transferred to the purchasing creditor is in poor shape or in an incompatible format, so the new creditor uses the date the debt was acquired -- rather than the date of last activity, as they should be doing. This also happens with collection agencies and debt purchasers. There is, sadly, a sleazy low end of this industry that deliberately re-dates entries for competitive advantage, but even very ethical collectors and debt purchasers can receive bad or garbled data. Correction of these errors is simply by proving the date of last activity on the account, and should be proven to each of the credit reporting agencies that carry the entry. One special form of this problem related to bankruptcy is that a re-dated entry refering to a bankruptcy discharge can keep the bankruptcy on the credit report after it should have timed off. Another is that a properly discharged debt can be incorrectly reported as "written off" or "charged off" after the liquidation or bankruptcy of the original creditor. In either case, proof of the correct dates and discharge status for the bankruptcy should get the entry removed.

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