Dated: July 15, 2004
The following is SO ORDERED:

David S. Kennedy
UNITED STATES CHIEF BANKRUPTCY JUDGE

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

In re	
James Darryl Foust,	Case No. 00-24646
Debtor.	Chapter 7
James Darryl Foust,	
Plaintiff,	
vs.	Adv. Proc. No. 00-0318
The Education Resources Institute and Education Credit Management Corporation, as successor in interest to EdSouth,	
Defendants.	

MEMORANDUM AND ORDER RE PLAINTIFF'S COMPLAINT SEEKING A JUDICIAL DETERMINATION OF THE DISCHARGEABILITY OF STUDENT LOAN DEBTS OWED TO THE DEFENDANTS COMBINED WITH NOTICE OF THE ENTRY THEREOF

Plaintiff, James Darryl Foust ("Debtor"), has filed a complaint under 11 U.S.C. § 523(a)(8) seeking a judicial determination that the particular debts owed by him to the above-named defendants on the date of the filing of his chapter 7 petition in the amount of approximately $230,000 arising out of student loan obligations are dischargeable. The ultimate and sole issue here is whether the debtor's student loan debts owed to these defendants are dischargeable, in whole or in part, because of the asserted undue hardship it would create for him not to discharge the debts. By virtue of 28 U.S.C. § 157(b)(2)(I), this is a core proceeding. The court has subject matter jurisdiction under 28 U.S.C. §§ 1334(a)-(b) and 157(a)-(b). Based on the entire case record including consideration of the pleadings, statements of counsel, and the sworn testimony at the trial, the following shall constitute the court's findings of fact and conclusions of law in accordance with FED. R. BANKR. P. 7052.

The Parties

Debtor in this chapter 7 case is the plaintiff in the above-captioned adversary proceeding. He resides with his father in Shelby County, Tennessee,[1] and is currently unemployed. Debtor has an undergraduate degree from the University of Tennessee at Knoxville, Tennessee, and a medical degree from the Saint Georges University School of Medicine at Saint Georges, Grenada, West Indies. Although he is licensed as a physician in the State of Alabama, he does not practice medicine due to a medical problem referred to below.

Defendant, The Education Resources Institute, Inc. ("TERI"), is a not-for-profit organization that guarantees loans that arise out of the *International Health Professions Loan Program*. At the time of filing of this chapter 7 case, the debtor's outstanding loan balance to TERI was approximately $104,423.90. Defendant, Education Credit Management Corporation ("ECMC"), is a successor in interest to EdSouth, a guarantor of the balance of the debtor's student loans, and

[1]Debtor was residing at home with both parents at the filing of the chapter 7 petition, however, his mother died during the pendency of this case. As noted, he currently lives with his father.

was owed approximately $125,562.61 at the time of the filing of this case.

Prepetition Background Facts

The relevant prepetition background facts involving these parties may be briefly summarized as follows. Debtor borrowed monies from the defendants to pay for his educational expenses while attending the University of Tennessee at Knoxville, Tennessee, and also Saint Georges University School of Medicine at Saint Georges, Grenada, West Indies. He received a Bachelor of Arts Degree in December 1985 from the University of Tennessee, and a Doctor of Medicine Degree from Saint Georges University School of Medicine at Saint Georges Grenada, West Indies, in June 1995. Upon completion of his medical degree, the debtor was licensed to practice medicine in the State of Alabama and subsequently completed one year of residency at the Saginaw Cooperative Hospitals located at Saginaw, Michigan. Although he ultimately completed the required sections of his first year residency, the Michigan residency contract was not renewed after the first year of residency. In response, the debtor filed an employment discrimination civil action lawsuit against the Michigan Saginaw Cooperative Hospitals on the basis of his Attention Deficit Disorder ("ADD"), hoping to secure a residency position to complete his residency requirement or, alternatively, to obtain monetary damages in an amount sufficient at least to satisfy the student loans that are the subject of the instant dischargeability complaint.

At the debtor's request, this court held the outcome of the instant complaint in abeyance as the debtor strongly believed at the time that if he were successful with the Michigan discrimination civil action, all bankruptcy administrative claimants and these student loan defendant-creditors would have been paid in full. Debtor eventually was not successful in the discrimination civil action. This, coupled with his inability to secure a position in the medical field, are the primary reasons the debtor cited at the trial as to why no payments had been made to either defendant, TERI or ECMC,

to date and also why he sought a full discharge of these student loan debts.[2]

Defendant TERI filed a motion for summary judgment pursuant to FED. R. BANKR. P. 7056 asserting that there was no issue of fact in dispute. TERI primarily relied on the statements of the debtor contained in the instant complaint, his deposition, and responses to TERI's interrogatories. It also was observed that the debtor was unemployed; that he had no other debts than these student loans; that his living expenses were minimal as he resided with his parents; that he admitted that the student loan debts were owed; and that he took no steps to make any payments on the student loans. This court disagreed with TERI and denied TERI's motion for summary judgment (or to dismiss) in an oral bench ruling making findings of fact and conclusions of law that were subsequently manifested in a bare order entered on this court's docket. Judicial determinations under section 523(a)(8) ordinarily are very fact specific and generally are not appropriate for summary judgment disposition; and this proceeding is not any different. The trial of the instant complaint was thereafter scheduled and later conducted.

At the trial on the merits the debtor testified, among other things, that notwithstanding his educational background, except for a brief employment as a convenience store clerk in 2000 and 2001, he has remained primarily unemployed during the pendency of the chapter 7 case, earning relatively small amounts of money doing odd jobs. His federal income tax returns indicate no income for 1998 or 1999, and $9,571.17 for 2000 and $19,770.25 for 2001. Obviously, the ADD has hampered his ability at times relevant here to find gainful employment. His listed assets in Schedule B herein consist of a personal computer and printer, along with various household goods, clothing and a personal checking account with a balance of approximately $250.00. Debtor is single and has no dependents. He is 41 years of age.

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[2]It is noted that the Pennsylvania Higher Education Assistance Agency ("PHEAA") filed a motion to intervene in this adversary proceeding pursuant to FED. R. BANKR. P. 7024 and FED. R. CIV. P. 24(a)(2), as a servicer of the loans that were subject to the dischargeability complaint. Though allowed to intervene by order dated July 20, 2000, PHEAA was ultimately dismissed as a party defendant. An agreed order was entered substituting ECMC, as successor in interest for EdSouth (the original named defendants here were EdSouth and TERI).

Debtor primarily contends that even though he has received a formal education and obtained a medical degree, he nonetheless is unable to secure employment at this time as a physician or find other meaningful employment and, as such, is faced with an "undue hardship" in repaying these student loans. He has made some attempts at obtaining a position in another residency program, but cites his ADD and the fact that his contract was not renewed in his previous residency program as the grounds for an inability to secure a position in a residency program in order to complete that portion of his educational training in the medical field. After the trial on the instant adversary proceeding, the court entered an order of preliminary findings and deferred final findings and conclusions for a period of 90 days to allow the debtor to seek out the assistance of a fee or non-fee career counselor, as well as continue his job search, in order to further attempt to maximize his employability and resulting income. The post-trial report that the debtor filed at the end of this period and prior to renewed closing statements of counsel revealed that he had contacted approximately 14 employment agencies and used online resources in order to attempt to find gainful employment. Additionally, the debtor indicated that he is now receiving a Social Security Disability ("SSD") payment of $398.00 per month.[3] As of the date of the supplemental closing arguments on June 15, 2004, the debtor had not found gainful employment.

Defendants, TERI and ECMC, contend ultimately that the debtor under the existing circumstances has not carried the required burden of proof that an undue hardship would result from the non-dischargeability of these debts as contemplated under section 523(a)(8) of the Code.

Legal Analysis

[3]As there is no indication as to the nature of the SSD payment, the court presumes that the SSD payment is of a partial nature and considers that the debtor will have the continued ability to seek employment within the confines of his disability payment. The court is unconvinced that the debtor's ADD evidenced at trial is a malady that would entirely preclude him from working in gainful employment of some type in the future.

Section 523(a) of the Code currently enumerates 18 congressionally created policy exceptions to a chapter 7 debtor's general discharge. Applicable for consideration in this adversary proceeding is section 523(a)(8) of the Code, which generally excepts from discharge a particular debt arising out of the debtor's governmental or non-profit guaranteed student loans. The outcome of dischargeability complaints under section 523(a), especially in the subsection 523(a)(8) context, is very fact specific and typically is decided on a case-by-case basis considering a totality of the particular facts and circumstances. More specifically, section 523(a)(8) provides, in relevant part, that:

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> (a) A discharge under section 727 ... of this title does not discharge an individual debtor from any debt –
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> (8) for an educational benefit overpayment or loan overpayment or loan made, incurred or guaranteed by a governmental unit, or made under any program funded in whole or in part by a governmental unit or non-profit institution, or for an obligation to repay funds received as an educational benefit, scholarship or stipend, unless excepting such debt from discharge under this paragraph will impose an undue hardship on the debtor and the debtor's dependents. 11 U.S.C. §523(a)(8)

The Code does not define "undue hardship". *Tennessee Student Assistance Corp. v. Hornsby* (*In re Hornsby*), 144 F.3d 433, 437 (6th Cir. 1998); *Brunner v. New York State Higher Educ. Svcs. Corp*. (*In re Brunner*), 46 B.R. 752, 753 (S.D.N.Y. 1985), *aff'd* 831 F.2d 395 (2d Cir1987). Therefore, it is within the discretion of the court to decide on a case-by-case basis considering a totality of the particular facts and circumstances, whether the debtor has sufficiently demonstrated that an "undue hardship" will be incurred if the student loans are not discharged under section 523(a)(8). As a guide under which to make this decision, the Sixth Circuit has looked to the three-

prong test set forth in *Brunner*, 831 F.2d at 396, coupled with a "totality of the circumstances" approach. *Hornsby*, 144 F.3d at 437.

Under the *Brunner* test, the debtor will successfully establish "undue hardship" if he/she can demonstrate by a preponderance of the evidence that (1) the debtor cannot maintain, based on current income and expenses, a "minimal" standard of living for himself and his dependents if forced to repay the student loans; (2) additional circumstances exist that indicate that this current set of circumstances will continue for a significant portion of the repayment period; and (3) the debtor has made a good faith effort to repay the loans. *Brunner*, 831 F.2d at 396. Each part of the *Brunner* test stands independently and the debtor bears the burden of proving each prong. *Pobiner v. ECMC, et al.* (*In re Pobiner*), 309 B.R. 405, 416 (Bankr. E.D.N.Y. 2004), citing *In re Maulin,* 190 B.R. 153 (Bankr. W.D.N.Y. 1995); *In re Butler*, 1997 Bankr. Lexis 63 (Bankr. W.D. Tenn. Jan. 24, 1997), citing *Grogan v. Garner*, 498 U.S. 279 (1991); *Ford v. Tennessee Student Assistance Corp*, 151 B.R. 135, 139 (Bankr. M.D. Tenn. 1993).

The *Brunner* test itself, however, does not stand alone. The overarching principal behind the Bankruptcy Code, that of equity and a fresh financial start for the honest, but unfortunate debtor, also must be considered (as well as the concept of fair and equitable treatment to creditors). For example, the Tenth Circuit "disdains [an] 'overly restrictive' interpretation of the [Brunner] test". *Alderete v. Educ. Credit Mgmt. Corp.* (*In re Alderete*), 308 B.R. 495, 503 (10th Cir BAP 2004), citing *Educ. Credit Mgmt. Corp. V. Polleys* (*In re Polleys*), 356 F.3d 1302, 1308 (10th Cir 2004). "[T]he terms of the test must be applied such that debtors who truly cannot afford to repay their loans may have their loans discharged." *In re Polleys*, 356 F.3d at 1309. It is for this reason that the courts have cited further factors for consideration. The Sixth Circuit has recognized the varied and numerous factors and solutions that bankruptcy courts have achieved since *Brunner* was decided. *In re Hornsby*, 144 F.3d at 437-38; *Rice v. United States* (*In re Rice*), 78 F.3d 1144, 1149 and 1152 n.9 (6th Cir, 1996). These include, but are not limited to: the amount of debt, the rate at which the

interest is accruing, the debtor's standard of living and expenses, consideration of whether the debtor has attempted to minimize his expenses. *In re Hornsby*, 144 F.3d at 437, *quoting In re Rice*, 78 F.3d at 1150; *Dematteis v. Case Western Reserve Univ., et al* (*In re Dematteis*), 97 Fed. Appx. 6 (6th Cir BAP, 2004), *quoting In re Rice*, 78 F.3d at 1150. It also is appropriate to note that a simple showing of a financial burden is not sufficient, as all circumstances must be taken into account, though it is inappropriate to have a debtor "live in abject poverty before a discharge is forthcoming." *In re Hornsby*, 144 F.3d at 438, *quoting In re Rice*, 78 F.3d at 1151.

Additionally, it is of note that by virtue of section 105(a) of the Code, the Sixth and Ninth Circuits have found a basis for the partial discharge of a student loan under appropriate circumstances to be determined on a case-by-case basis. *Saxman v. Educ. Credit Mgmt. BJR Corp. (In re Saxman)*, 325 F.3d 1168 (9th Cir. 2003); *In re Hornsby*, 144 F.3d 433 (6th Cir. 1998). The partial discharge would address that portion of the student loan debt that actually causes an "undue hardship" for the debtor. *In re Hornsby*, 144 F.3d at 440. It is noted that there is no constitutional right to obtain a bankruptcy discharge. *U.S.* v. *Kras (In re Kras*), 409 U.S. 434, 446 (1973); *In re Krohn*, 886 F.2d 123 (6th Cir. 1989). Unquestionably, a bankruptcy discharge is a privilege – not a right accorded all debtors. *In re Tabibien*, 289 F.2d 793, 795 (2nd Cir. 1961); 11 U.S.C. §§ 727(a) and 523(a). The nation's federal bankruptcy laws do not afford even an honest debtor an *absolute* fresh start in all situations. It is this consideration that guides the Sixth Circuit in *Hornsby*. The Sixth Circuit held in *Hornsby* that a partial discharge was a possibility, relying on the overarching equity principle as expressed in section 105(a). *In re Hornsby*, 144 F.3d at 440.

With the foregoing as a backdrop, this court now turns to the debtor's proof at the trial here and the analysis of the above-mentioned factors as they should be applied to this particular case. Turning first to the three considerations outlined in *Brunner*, this debtor very adequately met the first prong, or consideration by a preponderance of the evidence. Debtor maintains a minimal standard of living now as he is currently residing with his father and occasionally may contribute, for example,

$100 from time to time to the household budget on an irregular basis. Debtor's Schedule J herein reflects that his monthly expenses include $50 for telephone, $200 for food, $25 for clothing, $10 for medical and dental expenses, $50 for transportation, and $10 for recreation (which is primarily costs associated with an internet access account). The court feels that even these rather minimal expenses may actually be understated. For example, as the debtor indicated, he is not covered under an insurance plan; accordingly, $10 seems a rather moderate amount to budget for future medical expenses for a person having ADD. Also, as the debtor does not own a car, $50 per month for transportation also is a rather minimal amount. Overall, a monthly budget of approximately $395, though within the amount of debtor's monthly SSD payment, is an extremely minimal amount for a single man, age 41, even with no dependents. Debtor has acknowledged that, but for the support of his father, he would not have his minimum needs met.

In turning to the second prong of *Brunner*, whether additional circumstances exist indicating that this state of affairs is likely to persist into the future for a significant portion of the repayment period, the court must use a forward looking approach. The purpose of this analysis is to ensure that the discharge of the student loan obligations will be more difficult than that of dischargeable debts. *Rifino v. United States (In re Rifino)*, 245 F.3d 1083, 1088-89 (9th Cir. 2001). Some courts have considered, for example, a mental illness "if sufficiently debilitating and unlikely to improve," as a basis for justifying the discharge of the student loan. *Swinney v. Academic Fin'l Svcs.* (*In re Swinney*), 266 B.R. 800, 805 (Bankr. N.D. Ohio 2001).[4] The *Swinney* court considered the debtor's allegation of a mental disorder as a reason for her discharge, but denied a total discharge as the debtor in that case failed to provide additional evidence of her disability as the grounds for her inability to find employment and the ability to repay the student loans. In fact, the *Swinney* court

[4]*Cf. United Student Aid Funds v. Paolini* (*In re Paolini*), 1997 U.S. App. LEXIS 22454 (debtors full discharge of student loans under the facts of the case was denied as debtor's obsessive compulsive disorder coupled with self-imposed "time off" was not sufficient to prevent debtor from gaining any employment even one not in the legal field for which she was trained, partial discharge was not considered by the court).

cited the debtor's inability to qualify for any disability payments as an indicator that her disability had less of an impact on her employability than she would have the court believe. In the instant case, not only did the debtor have evidence beyond his bare statement that his ADD had an impact on his employability, he has successfully obtained a partial Social Security disability award.

The *Swinney* court also considered the availability of a partial discharge or the ability of the court to change the debtor's student loan obligations. Though not every debtor should be eligible for such relief, the "equities of the situation tip distinctly in favor of the debtor." *In re Swinney*, 266 B.R. at 806, citing *Fraley v. U.S. Dept. Of Ed. (In re Fraley)*, 247 B.R. 417, 422 (Bankr. N.D. Ohio 2000); *Grine v. Texas Guaranteed Student Loan Corp. (In re Grine)*, 254 B.R. 191, 196 (Bankr. N.D. Ohio 2000). With this in mind, the court looks to fashion a proper remedy or result under the circumstances. A program brought to the attention of the court by the defendants will be discussed below. This program, coupled with the evidence that the debtor has had insufficient funds to meaningfully service these student loan debts up to now and has had little success, despite efforts in finding employment, suggests to the court that indeed special circumstances may exist here.

ECMC brought to the attention of the court the existence of a repayment plan, specifically the *William D. Ford Income Contingent Repayment Plan* ("Plan"), which bases the amounts of monthly repayment on the debtor's income level each year as reported to the Internal Revenue Service via annual tax returns, comparing his income with the federal poverty guidelines in establishing a repayment amount. Some courts have looked to the existence of this plan and the debtor's use or non-use of this plan as a factor to consider when looking at the "good faith" prong of the undue hardship test, the third prong of the *Brunner* test. *See, for example, Long v. Educ. Credit Mgmt. Corp.* (*In re Long*), 292 B.R. 635 (BAP 8th Cir. 2003).

The "good faith" examination is also very fact specific. For example, the court in *Alderete v. ECMC, et. al.*, 308 B.R. 495 (10th Cir BAP 2004), held that despite the debtor's failure to investigate income contingent repayment plans such as the one described above, the debtor was

eligible for an "undue hardship" discharge as this was not indicative of an absence of good faith. *In re Alderete*, 308 B.R. at 507. Specifically, the *Alderete* court cited the *Polleys* court in stating that the third prong of the *Brunner* test "is based on whether the Debtors are 'acting in good faith in seeking the discharge, or whether [they are] intentionally creating ... hardship.'" *Id.* Additionally, the *Polleys* court states that "the failure to make a payment [to the holder of a student loan], standing alone, does not establish lack of good faith." *In re Polleys*, 356 F. 3d at 1311. If a debtor's unfortunate financial condition exists through factors beyond the debtors control, good faith can exist. *In re Polleys*, 356 B.R. at 1311-12. In support of its position, defendant TERI also pointed to the existence of the plan as a further indication of the debtor's asserted lack of good faith as he did not avail himself to it (or a similar program). This fact, of course, is not solely indicative of good faith. That is, as mentioned above, the failure of a debtor to avail him/herself to such repayment plan in and of itself is not always outcome determinative regarding good faith considerations. Rather, in this case the court will look to such a plan as a possible solution in attempting to fashion a fair and equitable result compatible with the debtor's particular and very difficult situation and the competing claims of the defendants.

Further consideration of the additional factors evidences the debtor's need for financial relief in the instant case, if only a partial discharge. The additional factors to consider here are the amount of the debts, the debtor's standard of living, and whether the debtor has attempted to minimize expenses. In this case the debtor has a minimal standard of living and has taken it upon himself, with the assistance of his parents, to drastically reduce the amount of money spent on his living expenses. Debtor does not live beyond his means and, in fact, has a minimal standard of living. Debtor has not spent extravagantly or assumed other debts for which he cannot be responsible. Finally, the amount of the debts here can be termed as overwhelmingly large debts, upon which interest continues to accrue. If the debtor were successful in a medical career or

another career with equal earning potential, these debts of approximately $230,000 would be easier to satisfy. However, in this case, despite repeated attempts by the debtor to secure first a position in a residency program in order to complete his training, and second, any other occupation by which he would have the ability to satisfy these debts, the court is satisfied that these are factors beyond the debtor's control at this time. The situation this debtor finds himself in is one that is, as noted earlier, somewhat unique and quite difficult.

Considering the unique, difficult, and specific facts and circumstances existing here, the court is of the opinion that the debtor should avail and submit himself to the plan referred to above and make payments over the 25 year period consistent with the plan's mandates, requirements, and regulations. The required payments to be made by the debtor under this plan, if any, should be allocated and distributed pro-rata between the defendants, TERI and ECMC. Such required payments under the plan, if any, will be nondischargeable as not constituting an undue hardship on the debtor. After the repayment period of 25 years, the remaining unpaid original debt not payable under the income contingent repayment program and owed by the debtor to these defendants will be declared dischargeable. Debtor will be 66 years of age at the end of the repayment period. Payment by him of the unpaid balance, as viewed today, would constitute an undue hardship under these circumstances and should be dischargeable. This also will alleviate the concern that a potentially large federal income tax burden could exist at the end of the repayment period regarding the remaining balance owed (*i.e.*, the cancellation or forgiveness of the unpaid balance of the debts that may give rise to adverse tax consequences). This approach, while providing for a contingency plan will potentially benefit the educational lenders, defendants here, from the possible future income derived from the employability of the debtor. At the trial, the debtor demonstrated himself to be an intelligent and well-spoken individual. This court cannot say at this time that the debtor will remain continuously unemployed over the course of the next 25 years. Under this imposed approach as fashioned by the court, the debtor will not have oppressive debts

looming over his head as the payments to the defendants will only be gauged by his earnings for each year, if any, and he concomitantly will be allowed to enjoy a fair fresh start and concentrate on making a life for himself with the assurance that this repayment plan will not demand payment of him that would be in excess of a fair and equitable amount and the balance owed at the end of the 25 year period will be subject to discharge without adverse tax consequences to him.

Conclusions

It is emphasized here that this is not a typical student loan action under section 523(a)(8) of the Code. Debtor has a medical degree and owed at the time of bankruptcy approximately $230,000 in student loan debts. He currently has ADD, receives a Social Security Disability payment, and is unable to utilize his medical training. Moreover, employment of any kind seemingly is a serious problem for the debtor at this time in his life. What if his situation positively changes in the future to allow him to become a high income medical doctor? What if a cure is discovered for ADD? Or, what if his ADD becomes worse and he is completely unable to work at any type job during the next 25 years and thereafter? As noted, this is an unusual case warranting the fashioning of an unusual, but a fair and equitable judicial result, being mindful that this court cannot predict the future of this debtor or whether ADD will ever be sufficiently cured. This result also is compatible with equitable principles and allows the court to attempt to balance the competing and countervailing interests and equities of the parties under the particular facts and circumstances and applicable law. From the bankruptcy policy perspective, it is observed that the Supreme Court stated in *Bank of Marin v. England*, 385 U.S. 99, 103 (1966), that the bankruptcy laws cannot be read "with the ease of a computer." Based on all the foregoing, the court finds and concludes that a partial discharge in accordance and consistent with the foregoing should result.

In the final analysis, it additionally and conclusionally appears to the court, after sifting through the totality of the particular facts and circumstances, applicable law, and the subject of student loans, that some degree of statutory tension exists between the competing congressional

policies of the nation's student loan programs and its bankruptcy laws.[5] Although it may be a judicially arduous task and perplexing exercise in all cases to successfully apply and thereby harmonize these competing federal policies involving issues under section 523(a)(8) of the Code concerning former students who are experiencing financial distress, nonetheless, it is the duty of the court to do so, and the courts will continue to address these difficult matters on a case-by-case basis with the judicial outcome being very fact intensive and specific.

ORDER AND NOTICE

Based on the foregoing and the case record as a whole,

IT IS ORDERED AND NOTICE IS HEREBY GIVEN: That the instant complaint filed to determine the dischargeability of the student loan debts owed by the above-named debtor-plaintiff, James Darryl Foust, to the defendants, TERI and ECMC, results in the plaintiff-debtor's prepetition debts for student loans, including attorneys' fees, expert witness fees, and post-judgment interest to be treated and calculated under the *Income Contingent Repayment Plan* referred to above (*i.e.*, the plan) and are judicially declared to be nondischargeable to the extent that the debtor is required to make the payments under the plan discussed above for a period of 25 years; however, any portion of the unpaid student loan debts still outstanding, if any, and not payable under the *Income Contingent Repayment Plan* at the end of the 25 year period are hereby prospectively and expressly declared to be dischargeable without adverse tax consequences to the plaintiff-debtor.

IT IS FURTHER ORDERED: That any monies collected under the *Income Contingent Repayment Plan* during the 25 year period discussed above shall be divided pro-rata between the defendants, TERI and ECMC, based upon their current outstanding balances owed to them by the

[5]By analogy, it is noted, for example, that in *NLRB v. Bildisco & Bildisco (In re* Bildisco & Bildisco), 465 U.S. 513 (1984), and section 1113 of the Code, the Supreme Court and Congress respectively addressed concerns and issues regarding the countervailing congressional tension existing between the competing policies of the federal labor and bankruptcy laws arising out of settings involving collective bargaining agreements. After the Supreme Court decided *In re* Bildisco & Bildisco, the Congress decided to legislate on the subject of the standards to be statutorily set with regard to assurances that debtors and creditors would be treated fairly and equitably when addressing such competing policies in collective bargaining agreement settings. *See* 130 Cong. Rec. H.7496 (daily ed. June 29, 1984); remarks of Rep. Langren, Rep. Hughes, and Rep. Morrison; section 1113 of the Code legislatively reversing, in part, *In re* Bildisco & Bildisco.

debtor.

BY THE COURT

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