

Huge Win for Private Student Loan Borrowers

By Jason W. Johnson

Student loans are notoriously difficult to shed through the bankruptcy process. A person must show that it would impose an "undue hardship" on them to be required to repay the student loans, and the test for proving undue hardship has historically been nearly insurmountable.

The Second Circuit Court of Appeals has handed a game-changer ruling to people in New York, Connecticut and Vermont who are suffocating under the weight of private student loan debt. In a major blow to many private lenders, the Second Circuit ruled that a private student loan is NOT an "obligation to repay funds received as an educational benefit"—as Navient (one of the largest private student loan servicers) has long argued—and therefore IS dischargeable in bankruptcy without having to prove undue hardship. This quoted language may sound like it applies to private loans, but the Second Circuit found that it really refers to conditional grants that are similar to scholarships and stipends—not loans.

While this ruling does NOT apply to government funded or backed loans, it is going to help a large number of people discharge huge amounts of private student loan debt through bankruptcy. It will be interesting to see how many other circuits follow this approach, and whether it gives bankruptcy judges throughout the country—many of whom have commented in written opinions on the harshness of the "undue hardship" tests—persuasive authority on which to base decisions discharging private student loan debt.

The Second Circuit's unanimous and well-reasoned decision (the language of which is fairly damning on Navient) can be viewed [here](#). And if you're curious whether your student loan is private, see if you can find it [here](#) (if not, it's a private loan).

Brian Bedinghaus

312.580.1269 | bbedinghaus@ralaw.com

Ehren Frey

239.338.4252 | efrey@ralaw.com

Paul Giordano

239.338.4267 | pgiordano@ralaw.com

James Inendino

312.582.1689 | jinendino@ralaw.com

W. Glenn Jensen

407.214.6850 | gjensen@ralaw.com

Jason Johnson

407.214.6818 | jwjohnson@ralaw.com

Daniel Rohletter

614.723.2003 | drohletter@ralaw.com

John J. Rutter

330.849.6713 | jrutter@ralaw.com

Bruce Schrader II

330.849.6604 | bschrader@ralaw.com

Christopher Tackett

614.723.2098 | ctackett@ralaw.com

Eric Werrenrath

407.720.8285 | ewerrenrath@ralaw.com

Michael Yashko

239.338.4249 | myashko@ralaw.com

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