Guaranteed to Work or It's Free!: The Evolution of Student Loan Discharge in Bankruptcy and the Ninth Circuit's Ruling in Hedlund v. Educational Resources Institute, Inc.

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by

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I. INTRODUCTION: THE SAME OLD STORY WITH A NEW PLOT TWIST

By now, even our non-legal sector friends have heard the same old story: don’t go to law school. Attending law school was once a guaranteed way to ensure a lifetime of financial stability. But for recent graduates, it’s not so simple. After the Great Recession of 2008, there are not enough jobs in the legal field and too many lawyers—basic supply and demand economics.¹ A survey by the American Bar Association showed that as of February 15, 2013, only 56.2% of all 2012 law school graduates found full-time jobs requiring bar passage, while 12.9% were employed in J.D. preferred positions.² Another 3.6% were employed in part-time positions, 2.4% in short-term full-time positions, and 10.6% unemployed, seeking work.³

Being unemployed, underemployed, or working for noncompetitive wages is a concern for anyone in any discipline. But it is particularly debilitating for law school graduates who complete school with six-figure debts.⁴ Further, if


³See ABA Section of Legal Education and Admissions to the Bar, supra note 2.

⁴The average law student graduates with over $100,000 in student loan debt. See Paul Caron, Law School Rankings by Debt Load Per Graduating Student, TAXPROF BLOG (March 23, 2012), http://taxprof
a new lawyer falls into the unlucky thirty percent, what relief is he afforded when the repayment period begins?n

One such victim of the law school debt trap is Michael Hedlund. A 1997 graduate of the Willamette University College of Law, Hedlund asserted, “I had planned on making $200 an hour instead of $20 when I agreed [to take out almost $100,000 in student loans].” In May 2013, after a ten-year legal battle with his creditors, a panel of judges in the Ninth Circuit Court of Appeals ruled in favor of Hedlund, allowing a partial discharge of over $50,000 in student loans. After the ruling, Hedlund’s debt still totaled about $32,000 plus interest, but he was more than happy to have the bulk of the heavy law school burden off his back. “I owe a car instead of a house now,” he said in regards to the new balance of his student debt. “It’s huge for me. What I’ve wanted all along is something I can afford,” Hedlund admitted, not simply having the slate wiped clean.

Equal Justice Works characterized Hedlund’s case as offering “hope for student borrowers.” An article published by the legal nonprofit organization stated, “Hedlund’s case is hopeful precedent,” and urged “more borrowers in bankruptcy should assert their rights under the undue hardship standard.” Elie Mystal, a writer on the popular legal blog website Above the Law, penned a cheeky article entitled, “In Ruling on Undue Hardship, Court is Not Allowed To Come Into Your House and Repurpose Your Wife.” In this slightly misguided piece, Mystal gives a sarcastic and darkly
humorous rant addressing the manner in which the district court analyzed Mrs. Hedlund's lack of financial contribution:

Who in the [expletive] does this court think it is? . . . [A] court cannot essentially order a man to pimp out his wife to pay his debts. It's one thing for a court to look at finances, but this crosses a line into judging the Hedlunds' marital relationship. It's disgusting. What's the next step? "While Mrs. Hedlund doesn't have a lot of skills, she is pretty and athletic enough to at least be a stripper, a fact that seems to not have occurred to Mr. Hedlund before filing for bankruptcy." 14

Many journalists proclaimed Hedlund's outcome a victory for student debtors, while others (as seen above) impudently bashed the court system for curbing discharge of student loans in bankruptcy. 15 Hedlund went to law school specifically to become a lawyer, and—as evidenced by his employment options and failure to pass the bar—one may conclude that his degree and his legal education failed him. By not being able to obtain a job in the legal field (and, accordingly, a higher salary), Hedlund faced "undue hardship" because he could not maintain a minimal standard of living while making repayments on his relatively high student loan debt. 16 Thus, in all fairness, he should have been entitled to discharge his student loans. Right?

Not so fast. Hedlund's case is an exception to the norm. A recent study estimated that only about 0.1 percent of debtors with educational loans who filed for bankruptcy attempted to discharge their student loans. 17 Why are there so few debtors who attempt discharge of student loans? The study presents three reasons: (1) private lenders often negotiate discharges outside of bankruptcy courts, (2) federal loans offer administrative remedies for assistance (e.g., the Income Contingent Repayment Program), and (3) the media dissuades debtors from thinking they have any chance of discharging their student loans in bankruptcy. 18 Hedlund's case, at most, proves to student

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14Id.
15See supra text accompanying notes 11-14.
16See infra text accompanying notes 79-80 and Part III generally.
17Jason Iuliano, An Empirical Assessment of Student Loan Discharges and the Undue Hardship Standard, 86 AM. BANKR. L.J. 495, 504-07 (2012) (according to a study which analyzed data from bankruptcy filings in 2007). In 2007, out of 822,590 consumer bankruptcy filings, approximately 238,446 (29%) owed student loans. Id. at 504. The study analyzed only the ten largest student loan creditors and Education Credit Management Corporation. Iuliano then multiplied the estimated number of student loan borrowers in bankruptcy (238,446) by 71.2% (the percent of student loan debt held by the all creditors in the study). Of those who filed bankruptcy with student loan accounts with the sampled creditors (169,774), "only 217 (0.1%) filed an adversary proceeding for the purpose of discharging their student loans." Id. at 505.
18Id. at 506-07 (noting that popular media and academic journals portray the undue hardship threshold as extremely difficult to meet) (citing as examples Diana Jean Schemo, With Few Limits and High
borrowers considering bankruptcy that it can be done. However, although one’s schooling may seem to fail its purpose, student debtors should realize the federal government and educational institutions make no guarantees.

This article will explore the topic of student loan discharge in bankruptcy and will also discuss what precedent Hedlund v. Educational Resources Institute Inc. sets for the future. In order to rationally analyze the effect of Hedlund, this article sets forth the basic foundation of knowledge necessary to understand student loans in general and the bankruptcy process when educational loans are in question. Part II of this article gives a brief, easy-to-understand history of federal student loan programs, setting the context for analyzing today’s student loan options. Next, Part III discusses the evolution of tests for determining undue hardship developed by courts over the years. Part IV fleshes out Michael Hedlund’s story and guides the reader through the lengthy litigation process of his bankruptcy case. Finally, Part V offers a recommendation on how Hedlund should be applied, along with an opinion on what precedent Hedlund will likely set for the future.

II. A BRIEF HISTORY OF FEDERAL STUDENT LOANS

A. THE COLD WAR AND THE NATIONAL DEFENSE EDUCATION ACT OF 1958

America’s higher education boom arose in response to the Cold War, the Space Race, and the 1957 launch of the Soviet satellite Sputnik. An urgent need arose to improve scientific research and technical education as policymakers realized that fundamental research could not be left to the private sector. President Dwight Eisenhower established a federally-funded, low interest college student loan program through the National Defense Education Act of 1958. Through this Act, the government made direct loans to student borrowers, capitalized through U.S. Treasury funds.

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Public colleges and universities soon flourished, backed by federal grants and loans, as economic competitiveness justified state expenditures.\textsuperscript{23} Under new federal policies, the government focused on expanding the labor pool of scientists and engineers while simultaneously increasing the quantity and quality of scientific research.\textsuperscript{24} However, "despite an attempt to democratize the dispersal of federal funds, the institutions that benefited the most from post-Sputnik legislation continued to be a select group of public and private universities."\textsuperscript{25} President Lyndon B. Johnson realized that in order to fulfill his Great Society vision, government needed to extend access to education and federal assistance beyond the select top of the hierarchy.\textsuperscript{26}

B. THE HIGHER EDUCATION ACT OF 1965

Among other proposals in his 1965 education message, President Johnson articulated the need "to bring better education to millions of disadvantaged youth who need it most" and "to put the best educational equipment and ideas and innovations within the reach of all students."\textsuperscript{27} Johnson assembled a task force to study the role of the federal government in student aid.\textsuperscript{28} The study revealed that one out of six students who took the National Merit Scholarship test in high school did not attend college.\textsuperscript{29} Of students from low-income families who did not attend college, "about 75 percent of the men and 55 percent of the women indicated that they would have attended college if they had more money available."\textsuperscript{30} Johnson perceived these findings to reveal a loss of human capital.\textsuperscript{31} He believed that by taking away cost as a barrier to educational attainment, all qualified individuals would be more likely to pursue some form of post-secondary education.\textsuperscript{32}

The Higher Education Act (HEA) was signed into law on November 8, 1965, "to strengthen the educational resources of our colleges and universities and to provide financial assistance for students in postsecondary and higher

\begin{thebibliography}{9}
\bibitem{23}Douglass, supra note 20, at 11.
\bibitem{24}\textit{Id.} at 13.
\bibitem{25}\textit{Id.} at 11 (noting that "[i]n 1963, 20 universities received nearly 80 percent of all federal research funding allocated to higher education . . . ").
\bibitem{27}\textit{Id.} (emphasis added).
\bibitem{29}\textit{Id.} at 18.
\bibitem{30}\textit{Id.}
\bibitem{31}\textit{Id.}
\bibitem{32}\textit{Id.}
\end{thebibliography}
education." President Johnson envisioned the HEA would help every willing individual receive a postsecondary education, which in turn would lead to higher incomes and economic prosperity for the nation. After signing the bill, Johnson declared, "[T]his nation could never rest while the door to knowledge remained closed to any American."

C. CASH-BASED: A FLAWED SYSTEM OF FEDERAL BUDGETING

The HEA introduced the Guaranteed Student Loan Program, in which the federal government guaranteed loans provided by banks and for-profit lenders. This program later became known as the Federal Family Education Loan Program (FFELP). Because President Johnson wanted to extend availability of student loans to all qualified individuals, the guarantee approach under the FFELP was more attractive to Congress than direct loans capitalized with U.S. Treasury funds. Under the federal budget rules at the time, a direct loan would need to be recorded as a total loss in the year of disbursement, even though most loans would be paid back in the future with interest. However, due to the nature of student loan repayment plans spanning over decades, this system of accounting was noticeably flawed. Guaranteed loans were "an economist's nightmare and a politician's dream come true." According to the U.S. General Accounting Office, since expenditures were recorded only when defaults occurred (on cash-based loan guarantees), no costs were recognized when the guarantees were made, despite the fact that guaranteed loans were likely to entail future losses related to borrower defaults. This cash-basis accounting system distorted costs and did not recognize the current economic realities of such transactions.

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37New Am. Found., supra note 22 (The Guaranteed Student loan program was renamed the Federal Family Education Loan Program in the 1992 HEA reauthorization.).

38Id.


D. The Federal Credit Reform Act of 1990

Not until the Federal Credit Reform Act of 1990 did the government switch to an accrual-based accounting system to manage guaranteed student loans (among other forms of interest on public debt). Accrual-based budgeting, which recognizes expected long term costs at the time the credit is extended, overcomes various deficiencies of cash-based budgeting by developing cost recognition. Under the Act, "cost" means the estimated long-term cost to the Government of a direct loan or loan guarantee... calculated on a net present value basis, excluding administrative costs and any incidental effect on government receipts or outlays." The Federal Credit Reform Act created a more transparent accounting system, which reflected estimated recoveries from borrowers, while also showing estimated expenses from defaults and administrative costs not previously accounted for under cash-based budgeting.

E. The Gradual Shift from Guaranteed Loans to Direct Loans

This more rational approach to federal budgeting soon sparked Congress to discuss policy concerns on student loan programs. Under the guaranteed loans system, "financial aid administrators had to deal with what the Government Accountability Office labeled 'a cumbersome, complicated process,' disconnected from other federal aid and involving thousands of middlemen." A budgetary analysis suggested that direct loans might be less costly and simpler to administer than privately-funded guaranteed loans.

Congress created a direct lending pilot program under the Higher Education Amendments of 1992. A year later, the Student Loan Reform Act created the William D. Ford Federal Direct Student Loan program. Under the new Direct Loan program, students borrowed funds directly from participating schools, which then received funds from the Department of Educa-

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43 Cheryl D. Block, Congress and Accounting Scandals: Is the Pot Calling the Kettle Black?, 82 Neb. L. Rev. 365, 406 (2003) (citing 2 U.S.C. § 661a(5)(A) (2000)). Guaranteed loans are accounted for "based upon the combined net present value of (i) estimated payments by the Government to cover defaults and delinquencies, interest subsidies, or other payments and (ii) the estimated payments to the Government including origination and other fees, penalties, and recoveries." Id. at 406 n.188.
44 See id.
45 New Am. Found., supra note 22.
46 Id.
47 Id.
48 Id.
The Direct Loan program commenced in the 1994-95 academic year, accounting for only seven percent of the overall loan volume. Between 1993 and 2010, student borrowers had the option to receive loans from either the FFELP or the Direct Loan program. However, colleges themselves largely determined which loans to offer students, and “the aggressively marketed bank loans were more popular than the lesser-known government alternative.” In fact, approximately seventy-three percent of all student loans continued to be funded through the FFELP.

The financial crisis of 2008 changed this lending trend. As lenders became more hesitant to make loans associated with a high risk of default, student loan money started drying up. Congress empowered the Department of Education to step in and buy loans from cash-strapped lenders. With fewer banks lending to students, significantly more colleges turned to Direct Loans.

F. THE STUDENT AID AND FISCAL RESPONSIBILITY ACT OF 2010

A major restructuring of education lending took place in 2010, with the enactment of the Health Care and Education Reconciliation Act. Under this Act, the Student Aid and Fiscal Responsibility Act (SAFRA) “removed private banks as middlemen in the student loan process,” which in turn saved the cost of subsidies and guarantees disbursed to for-profit lenders. SAFRA eliminated the FFELP for all new federally-backed loans as of July 1, 2010. Today, all federally-backed student loans are made under the Direct Loan program.

Banks and other for-profit lenders still make loans to student borrowers, albeit without a federal guarantee. Also, because for-profit lenders no longer receive any federal subsidies, government Direct Loans are the more attractive choice for students because they generally have lower interest rates.

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5120 U.S.C. 1087b(a).
54Cass, supra note 19.
55Austin, supra note 53.
56See infra Part II.F.
57Cass, supra note 19.
58Id.
59Id.
61Austin, supra note 53, at 340 (citing Pub. L. No. 111-152, 2201-05, 124 Stat. 1029 (2010)).
62New Am. Found., supra note 22.
63Id.
64Cass, supra note 19.
Additionally, government loans offer flexible payment options and default protection ordinarily unavailable through for-profit lenders. The majority of students now rely on federal loan programs to help close the gap between what their families can afford to pay ("estimated family contribution") and the cost of attendance (including tuition, fees, and room and board).

Establishing the federal government’s responsibility to finance education has created the popular train of thought that access to higher education should be determined by ability and ambition—not dollars and cents. President Johnson’s noble theory on education has undoubtedly helped establish America as one of the world’s leading industrial, technological, and military powers. However, such a far-reaching societal resource must inevitably face individual cases of abuse and failure.

III. JOHNSON, BRUNNER, AND OTHER TESTS TO DETERMINE UNDUE HARDSHIP

A. PROTECTING STUDENT LOANS FROM DISCHARGE UNDER THE BANKRUPTCY CODE

Under traditional bankruptcy laws, courts generally allowed debtors to discharge unsecured prepetition debts, including student loan debt. In the early 1970s, the media began to uncover extreme cases of student loan discharge abuse, "such as newly graduated doctors and lawyers discharging large student loan debts in bankruptcy on the eve of embarking on lucrative careers." The 1973 Commission on Bankruptcy Laws found such abuses to be threatening to the continuance of educational loan programs, although the small amount of discharges were unlikely to constrain federally-backed stu-

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65 Id.
67 Dep’t of Educ., supra note 52.
68 Califano, supra note 34.
69 Id.
70 11 U.S.C. § 727 ("The court shall grant the debtor a discharge, unless ... (2) the debtor with intent to hinder, delay, or defraud a creditor or an officer of the estate charged with custody of the property under this title, has transferred, removed, destroyed, mutilated, or concealed ... property of the debtor."). Other specific exceptions to discharge under the Bankruptcy Act included debts arising from taxes; judgments for fraud actions; property obtained by false pretenses; arising from willful and malicious injuries; and from fraud, embezzlement, misappropriation, or defalcation incurred while the debtor was acting in a fiduciary capacity. Frank T. Bayuk, The Superiority of Partial Discharge for Student Loans Under 11 U.S.C. § 523(a)(8): Ensuring a Meaningful Existence for the Undue Hardship Exception, 31 Fla. Sr. U. L. Rev. 1091, 1094 n.16 (2004) (citing Bankr. Act of 1898, ch. 541, § 17, 30 Stat. 544, repealed by Bankr. Reform Act of 1978, Pub. L. No. 95-598, 92 Stat. 2549 (codified as amended in 11 U.S.C.)).
71 Thad Collins, Note, Forging Middle Ground: Revision of Student Loan Debts in Bankruptcy as an Imperus to Amend 11 U.S.C. § 523(a)(8), 75 Iowa L. Rev. 733, 739 (1990). See also Bayuk, supra note 70.
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dent lending, which sustained enough profit to withstand losses from discharges.\textsuperscript{72} To combat these "potential abuses," in 1976, Congress passed the Education Amendments Act.\textsuperscript{73} Section 439A of this Act barred discharge of federally-guaranteed loans for five years prior to the bankruptcy filing, absent "undue hardship" on the debtor and his or her dependents.\textsuperscript{74} The Bankruptcy Reform Act of 1978 adopted these provisions in what was to become the Bankruptcy Code.\textsuperscript{75}

Over the next few decades, the government gradually expanded the coverage of the student loan dischargeability exception under the Bankruptcy Code.\textsuperscript{76} In 1984, the Bankruptcy Amendments and Federal Judgeship Act added educational loans made under programs financed by nonprofit institutions to the exception.\textsuperscript{77} Further, in 1990, dischargeability protection was extended to educational benefit overpayments.\textsuperscript{78} However, not until the signing of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (BAPCPA) did all qualified educational loans—including those made by private for-profit lenders—become nondischargeable.\textsuperscript{79} "[A]bsent an un-

\textsuperscript{72} Note, Ending Student Loan Exceptionalism: The Case for Risk-Based Pricing and Dischargeability, 126 Harv. L. Rev. 587, 607-08 (2012). This Note additionally argues that "[n]ot only did the National Bankruptcy Commission find no evidence of opportunism, but fears over such behavior also provide insufficient justification for § 523(a)(8) given that many debts can be opportunistically discharged . . . . [E]ducational debt accounts for only a fraction of the borrowing of debtors holding student loans, so it is unlikely to exclusively influence their bankruptcy decisions." Id. at 608. Specifically, the Commission found that less than one percent of federally insured student loans were discharged in bankruptcy. See H.R. Doc. No. 93-137, pt. 1, at 169 (1973). See also Rep. of the Comm'n on the Bankr. Laws of the U.S., H.R. Doc. No. 93-137, 93d Cong., 1st Sess. 94 (1973).


\textsuperscript{74} H.R. Doc. No. 93-137, pt. 2, at 136. For a more detailed explanation, see Bayuk, supra note 70, at 1094 n.16; Rafael I. Pardo & Michelle R. Lacey, Undue Hardship in the Bankruptcy Courts: an Empirical Assessment of the Discharge of Educational Debt, 74 U. Cin. L. Rev. 405, 419-21 (2005).

\textsuperscript{75} Bankr. Reform Act of 1978, supra note 70, see 124 Cong. Rec. 1791 (1978). However, § 439A did not take effect immediately. Congress did not effect the provision until September of 1977. Associate Professor Pardo and Assistant Professor Lacey of Tulane University state two primary reasons for this:

[F]irst, to allow Congress the opportunity to review forthcoming results of a General Accounting Office (GAO) study of the discharge of federally insured and guaranteed student loans in bankruptcy, . . . and second, to allow the house Judiciary Committee, in its development of legislation to reform the bankruptcy system, to reconsider the propriety of section 439A.


\textsuperscript{76} Note, supra note 72, at 596.


\textsuperscript{79} 11 U.S.C. § 523(a)(8) (2012). Around this time, there was an increase in private loans for student borrowers attending for-profit universities, which was necessitated by the differential between the maximum federal student loan disbursement and the higher tuition rates regularly charged at for-profit institu-
due hardship showing, any educational benefit or loan [is excepted from discharge] without regard to whether it was a debt to a profit making entity, government entity, or to a government creditor. In addition, any qualified educational loan, as broadly defined by Internal Revenue Code § 221(d)(1), is included in the exception."80

Furthermore, Congress progressively tightened the loopholes by which debtors could discharge student loans in bankruptcy.81 In 1990, Congress increased the nondischargeability period from five years to seven years while also extending nondischargeability protection to Chapter 13 proceedings.82 Later, in 1998, Congress eliminated the nondischargeability waiting period altogether; therefore, a showing of undue hardship became the sole discretionary mean of determining undue hardship.83 Under this expanded veil of nondischargeability, private lenders could more freely disburse large, unsecured student loans without worrying about incurring substantial losses from bankruptcy discharge.84

B. The Johnson Test

Although § 523(a)(8) of the Bankruptcy Code sets forth the standard of dischargeability of student loans, it fails to define “undue hardship.”85 Thus, Congress left it up to the courts to “utilize their discretion in defining what [the] term means after an analysis of the statute and a review of the applica-

81See infra text accompanying notes 82-84.
84Bankr. Abuse Prevention and Consumer Protection Act of 2005, Pub. L. No. 109-8, 119 Stat. 23. In order to discharge student loan obligations, debtors must file for bankruptcy under Chapter 7 or Chapter 13, and then pursue an additional adversary proceeding in which the debtor has the burden to prove that repayment of the obligation would impose undue hardship on the debtor and his or her dependents. Melear, supra note 79, at 7.
8511 U.S.C. § 523(a)(8). “A discharge under . . . this title does not discharge an individual debtor from any debt . . . unless excepting such debt from discharge under this paragraph would impose an undue hardship on the debtor and the debtor's dependents.” Id. See also Andrew M. Campbell, Bankruptcy Discharge of Student Loan on the Ground of Undue Hardship Under § 523(a)(8)(B) of Bankruptcy Code of 1978 (11 U.S.C.A. § 523(a)(8)(B)) Discharge of Student Loans, 144 A.L.R. Fed. 1.
ble legislative history," to determine how much hardship is "undue hardship," and what should be the test to determine this.\textsuperscript{86} Shortly after the introduction of the Bankruptcy Code, the Bankruptcy Court for the Eastern District of Pennsylvania made an attempt to define undue hardship in \textit{In re Johnson}.\textsuperscript{87}

The \textit{Johnson} court set forth a three-part test.\textsuperscript{88} The first prong of the test was a "mechanical test," which consisted of an analysis of the debtor's current and future ability to repay the student loan obligation while maintaining a minimum standard of living.\textsuperscript{89} The second prong analyzed whether the debtor made a "good faith" effort to repay the student loan obligation.\textsuperscript{90} Under this prong, the court makes a wholistic observation of the debtor's financial situation by measuring the debtor's attempts at securing employment, maximizing income, and minimizing expenses.\textsuperscript{91} The third prong's "policy test" analyzed whether a discharge of the loan obligation would conflict with the legislature's intent in restricting discharge of educational loans "primarily by looking at the percentage of the debtor's total debt represented by

\begin{footnotesize}
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\item \textsuperscript{88} See also Melear, supra note 79, at 12 n.38.
\item \textsuperscript{89} This prong looked at the debtor's present employment and income, future employment and income, educational level and skills, marketability of skills, personal health, and dependents. Future expenses are evaluated by estimating the expenses of a comparably situated debtor plus any extraordinary expenses the debtor may have to pay in the future (such as medical expenses, tax liabilities, child support, alimony, etc.). These factors are compared against the official Federal Poverty Guideline to determine if the debtor can maintain a "subsistence or poverty standard of living" while repaying the loan. If repaying the loans pushes the debtor to or below the poverty level, then the second prong of the test is evaluated. If the debtor can maintain a minimal standard of living while repaying the loan, the analysis stops and the case is dismissed without discharge of the debt.
\item \textsuperscript{90} Bayuk, supra note 70, at 1098. "[G]ood faith[ ] asks whether the debtor was irresponsible in limiting expenses, maximizing resources, and securing employment, and if so, whether more responsible behavior would have changed prong one's answer. If the answer to the first 'good faith' inquiry is 'no,' undue hardship is met and the loans are discharged. If both 'good faith' inquiries are answered affirmatively, a presumption of nondischargeability is created, which can then be rebutted by a negative answer to prong three's inquiry." See also \textit{In re Johnson}, 5 Bankr. Ct. Dec. at 544.
\item \textsuperscript{91} Stewart, supra note 89, at 27. The \textit{Johnson} court held that simply making minimum payments on the obligation was not, in and of itself, evidence of good faith. \textit{Id}.
\end{itemize}
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student loans to see if the dominant purpose of the debtor in filing for bankruptcy was to discharge student loans but also by determining whether the debtor benefited from the education financed by the student loans.\textsuperscript{92}

C. TOTALITY OF THE CIRCUMSTANCES TEST

The Eighth Circuit departed from the \textit{Johnson} test and has since traditionally followed the "Totality of the Circumstances" test articulated in \textit{In re Andrews} in 1981.\textsuperscript{93} The \textit{Andrews} court relied on \textit{In re Wegfehrt}, which held that a court should examine the specific facts and circumstances of the particular case to determine whether nondischargeability would impose an undue hardship on the debtor and his or her dependents.\textsuperscript{94} The bankruptcy court in \textit{Wegfehrt} held that:

\begin{quote}
[E]ach bankruptcy case involving a student loan must be examined on the facts and circumstances surrounding that particular bankruptcy for the Court to make a determination as to "undue hardship." The bankruptcy court must determine whether there would be anything left from the debtor's estimated future income to enable the debtor to make some payment on his/her student loan without reducing what the
\end{quote}

\textsuperscript{92}Campbell, \textit{supra} note 85, at 30. For a more detailed explanation of the third prong "policy analysis," see \textit{Stewart, supra} note 89, at 27.

\textsuperscript{93}Andrews v. S.D. Student Loan Assistance Corp. (\textit{In re Andrews}), 661 F.2d 702, 703 (8th Cir. 1981). In this case, a creditor argued that a bankruptcy court had erroneously granted a discharge of student loan debt based on undue hardship. \textit{Id.} The Eighth Circuit found that the bankruptcy court had made its determination of undue hardship on the basis of an incomplete record, and before making an undue hardship determination, the bankruptcy court should examine the debtor's necessary living expenses. \textit{Id.}

\textsuperscript{94}Wegfehrt v. Ohio Student Loan Comm'n (\textit{In re Wegfehrt}), 10 B.R. 826, 830 (Bankr. N.D. Ohio 1981). The \textit{Wegfehrt} court relied on the Commission of the Bankruptcy Laws of the United States' recommendation to Congress that student loans "should not as a matter of policy be dischargeable before (the debtor) has demonstrated that for any reason he (or she) is unable to earn sufficient income to maintain himself (or herself) and his (or her) dependents and to repay the educational debt." Comm'n on the Bankr. Laws of the U.S., Report, H.R. Doc. No. 137, 93d Cong., 1st Sess. (1973); H.R. REP. No. 95-595, 95th Cong., 1st Sess. (1977), reprinted in U.S. CODE CONG. & AD. NEWS 5787 (1978). In order to determine whether the nondischargeability of a student loan would impose an undue hardship, the Commission stated that:

\begin{quote}
... the rate and amount of (the debtor's) future resources should be estimated reasonably in terms of ability to obtain, retain, and continue employment and the rate of pay that can be expected. Any unearned income or other wealth which the debtor can be expected to receive should also be taken into account. The total amount of income, its reliability, and the periodicity of its receipt should be adequate to maintain the debtor and (the debtor's) dependents, at a minimal standard of living within their management capability, as well as to pay the educational debt.
\end{quote}

debtor and his/her dependents need to maintain a minimal standard of living.\textsuperscript{95}

The \textit{Andrews} court developed the "Totality of the Circumstances" test, which takes into consideration all factors relating to a debtor's ability to repay on a case-by-case basis.\textsuperscript{96} The test requires an analysis of "(1) the debtor's past, present, and reasonably reliable future financial resources; (2) calculation of the debtor's and his or her dependents' reasonable living expenses; and (3) any other relevant facts and circumstances related to the specific case."\textsuperscript{97} The Eighth Circuit adopted this test because the judges believed that examining all circumstances on a per case basis would better balance § 523(a)(8)'s undue hardship requirement with the fresh start goal outlined in the Bankruptcy Code.\textsuperscript{98} However fair and reasonable this approach may seem, it failed to set forth definitive, quantifiable guidelines, and consequently, the Totality of the Circumstances test only gained momentum in the Eighth Circuit.\textsuperscript{99}

D. The Bryant Poverty Test

Eight years after \textit{Johnson} set the standard to define undue hardship, the same Pennsylvania bankruptcy court added a new variant to the dischargeability analysis.\textsuperscript{100} To more objectively quantify a "minimal standard of living," the \textit{Bryant} court compared the income of the debtor to the federal poverty guidelines decided by the United States Census Bureau for the applicable area.\textsuperscript{101} The \textit{Bryant} test determined the dischargeability of student

\textsuperscript{95}In re Andrews, 661 F.2d at 704.
\textsuperscript{96}Id. at 704-05.
\textsuperscript{97}STEWART, \textit{supra} note 89, at 28. Stewart lists other factors courts have examined during the Totality of the Circumstances test: "whether or not the debtor is permanently or temporarily disabled; the ratio of the student loan debt to the debtor's total indebtedness; determining if the debtor's hardship is long-term; whether or not the debtor made payments on the student loans or sought other relief such as deferment or forbearance; and other conditions." \textit{Id}.
\textsuperscript{98}Id.
\textsuperscript{101}Report of the Comm'n on the Bankr. Laws of the U.S., H.R. Doc. No. 137, 93rd Cong., 1st Sess., II, 140, 141 app. 2 (1973) (stating that "t[he] total amount of income, its reliability, and the periodicity of its receipt should be adequate to maintain the debtor and his dependents at a minimal standard of living within their management capacity, as well as to pay the educational debt") (emphasis added). See also In re \textit{Bryant}, 72 B.R. at 915.
loans on the basis of whether the debtor's income was substantially over those amounts set forth under the poverty guidelines:

If not, a discharge would result only if the debtor can establish "unique" and "extraordinary" circumstances which should nevertheless render the debt dischargeable. If the debtor's income is below or close to the guideline, the lender can prevail only by establishing that circumstances exist which render these guidelines unrealistic, such as the debtor's failure to maximize his resources or clear prospects of the debtor for future income increases.102

The result of Bryant was what the court called "objective simplicity."103 The Bryant test simplified the Johnson analysis into a single step by comparing the debtor to an objective standard.104 Further, this test formally established the federal poverty guidelines as the quantitative mean to determine undue hardship.105

E. The Current Majority Standard: The Brunner Test

Not even six months after the Bryant court simplified the Johnson test, the Second Circuit Court of Appeals affirmed the use of a three-part test used in a federal district court in In re Brunner.106 The Brunner test garnered widespread judicial acceptance and became the most regularly used legal standard for determining undue hardship.107

In Brunner, a student debtor received a bachelor's degree in 1979 and a

102 In re Bryant, 72 B.R. at 915.
103 Id. at 915 n.2 ("[T]he complicated nature of [the Johnson] test has encouraged us, here, to strive for the result of objective simplicity.").
104 Bayuk, supra note 70, at 1099.
105 Stewart, supra note 89, at 27. Today, few courts rely solely on federal poverty guidelines as the primary means test for undue hardship. However, most courts include some type of consideration of the poverty level when making their analysis. Id.
106 Brunner v. N.Y. State Higher Educ. Servs. Corp. (In re Brunner), 831 F.2d 395, 396-97 (2d Cir. 1987) (affirming Judge Charles S. Haight's decision in the United States District Court of the Southern District of New York that it was error for the bankruptcy court to discharge Brunner's student loans based on undue hardship) (referring to the decision in 46 B.R. 752 (Bankr. S.D.N.Y. 1985)).
107 Bayuk, supra note 70, at 1099. As of 2014, Brunner is still good law in the Second Circuit and has been adopted in the Third, Fourth, Fifth, Sixth, Seventh, Ninth, Tenth, and Eleventh Circuits. See Penn. Higher Educ. Assistance Agency v. Faish (In re Faish), 72 F.3d 298, 306 (3d Cir. 1995); Ekenasi v. Educ. Resources Inst. (In re Ekenasi), 325 F.3d 541 (4th Cir. 2003); U.S. Dep't of Educ. v. Gerhardt (In re Gerhardt), 348 F.3d 89 (5th Cir. 2003); Cheesman v. Tenn. Student Assistance Corp. (In re Cheesman), 25 F.3d 356 (6th Cir. 1994); In re Roberson, 999 F.2d 1132 (7th Cir. 1993); United Student Aid Funds, Inc. v. Pena (In re Pena), 155 F.3d 1108 (9th Cir. 1998); Educ. Credit Mgmt. Corp. v. Polleys, 356 F.3d 1302 (10th Cir. 2003); Hemar Ins. Corp. of Am. v. Cox (In re Cox), 338 F.3d 1238 (11th Cir. 2003). The Eighth Circuit continues to embrace the "totality of circumstances" approach to the undue hardship inquiry. See Andrews v. S.D. Student Loan Assistance Corp. (In re Andrews), 661 F.2d 702 (8th Cir. 1981); see also Long v. Educ. Credit Mgmt. Corp. (In re Long), 322 F.3d 549 (8th Cir. 2003).
master's degree in social work in 1982.108 Approximately seven months after receiving her master's degree, Brunner filed for personal bankruptcy, and the bankruptcy court discharged her outstanding debts, excluding approximately $9,000 in student loan obligations.109 Just two months later, upon the expiration of the nine-month grace period suspending repayment of her student loans, Brunner filed a complaint seeking to discharge those loans.110

The Second Circuit judges acknowledged that there was very little appellate authority defining undue hardship in the context of § 523(a)(8).111 However, based on legislative history and precedent from numerous bankruptcy and district courts, the Second Circuit found the district court's method of determining undue hardship was fair and just.112 Instead of relying on the traditional Johnson test, Judge Haight adopted a modified standard for showing undue hardship using a new tripartite test showing: "(1) that the debtor cannot maintain, based on current income and expenses, a 'minimal' standard of living for herself and her dependents if forced to repay the loans; (2) that additional circumstances exist indicating that this state of affairs is likely to persist for a significant portion of the repayment period of the student loans; and (3) that the debtor has made good faith efforts to repay the loans."113

The first prong of this test has historically been applied as the minimum necessary to establish undue hardship.114 This prong contains two steps: "(1) observe the debtor's 'lifestyle attributes' to determine his or her current standard of living, and (2) determine if forcing the debtor to make loan repayments will prevent him or her from maintaining a minimal standard of living."115 The prong follows Bryant in that the debtor must have evidence showing that repaying the loan would force him or her to live at or below the poverty level, and not simply face financial hardship to maintain a current

109Id.
110Id.
111In re Brunner, 831 F.2d at 396.
112Id. (noting that the "first part of this test has been applied frequently as the minimum necessary to establish 'undue hardship[]" and "part two of the test is also reasonable in light of the clear congressional intent exhibited in section 523(a)(8) to make the discharge of student loans more difficult than that of other nonexcepted debt."). See also In re Brunner, 46 B.R. at 733 (noting that "[n]ot all courts have accepted that a debtor must at least satisfy the 'minimal standard of living' test before a discharge of his or her student loans will be granted").
113In re Brunner, 831 F.2d at 396.
115STEWART, supra note 89, at 29.
standard of living.\textsuperscript{116}

Yet, as the district court acknowledged, predicting future income—as required by the second prong—may be problematic.\textsuperscript{117} The court discussed that many § 523(a)(8) complaints are filed by debtors who only recently completed their education.\textsuperscript{118} Thus, their earning potential is still untested and, in all likelihood, will be substantially higher in the future.\textsuperscript{119} Therefore, an undue hardship determination based on current earnings “is likely to underestimate substantially their earning power over the whole term of the loan repayment.”\textsuperscript{120} It is for this reason that the second prong of the Brunner test requires evidence not only of current inability to pay, but also of “additional, exceptional circumstances, strongly suggestive of continuing inability to repay over an extended period of time.”\textsuperscript{121} For example, in Brunner, the debtor was neither disabled nor elderly, she had no dependents, and there was no indication of a total foreclosure of job prospects in her field.\textsuperscript{122} The debtor further did not exhibit any additional, exceptional circumstances demonstrating an inability to pay over an extended period of time.\textsuperscript{123} As such, she did not satisfy the second prong.

The third prong of the Brunner test—good faith effort to repay—was created with the legislative intent of preventing intentional abusers from filing bankruptcy immediately after graduation while not making a good faith effort to find employment or make payments on their loan obligations.\textsuperscript{124} In Brunner, the debtor did exactly this.\textsuperscript{125} Brunner filed for discharge of her student loans within one month of the date her first payment became due.\textsuperscript{126} The Second Circuit found that “[s]uch conduct does not evidence a good faith attempt to repay her student loans.”\textsuperscript{127}

Since its adoption by the Second Circuit in 1987, bankruptcy, district, and appellate courts across the country have consistently used the three-part

\textsuperscript{116}See In re Bryant, 72 B.R. at 915.
\textsuperscript{117}In re Brunner, 46 B.R. at 754.
\textsuperscript{118}Id.
\textsuperscript{119}Id. The district court referenced Judge Lifland of the Bankruptcy Court of the Southern District of New York, who wrote that “dischargeability of student loans should be based upon the certainty of hopelessness, not simply a present inability to fulfill financial commitment.” In re Briscoe, 16 B.R. 128, 131 (Bankr. S.D.N.Y. 1981).
\textsuperscript{120}Id. In re Brunner, 831 F.2d at 396 (emphasis added).
\textsuperscript{121}Id. at 396–97.
\textsuperscript{122}Id. In re Brunner, 46 B.R. at 755 (noting that “the stated purpose for § 523(a)(8) [is] to forestall students, who frequently have a large excess of liabilities over assets solely because of their student loans, from abusing the bankruptcy system to shed these loans”).
\textsuperscript{123}See In re Brunner, 831 F.2d at 397.
\textsuperscript{124}Id.
\textsuperscript{125}Id.
Brunner test as a means of determining undue hardship for purposes of determining the dischargeability of student loan debt in bankruptcy proceedings. When interpreting the Brunner prongs, courts have commonly held that the student loan debtor must have more than "temporary financial adversity," but the situation need not be one of "utter hopelessness." While some courts still maintain flexibility to use other hardship tests, the Brunner test prevails as the definitive and most simplified means for determining undue hardship.

IV. HEDLUND V. EDUCATIONAL RESOURCES INSTITUTE INC. OFFERS A NEW WRINKLE IN PRECEDENT TO DETERMINE UNDUE HARDSHIP

In May of 2013, one bankruptcy case in the Ninth Circuit began making headlines across the country. That case involved Michael Eric Hedlund, a law school graduate living in Klamath County, Oregon. However much the Hedlund appellate decision was portrayed as a victory for student debtors by the media, in reality, the case does little to relax the standard of showing undue hardship.

A. MICHAEL HEDLUND'S SERIES OF UNFORTUNATE EVENTS

Michael Hedlund obtained a Bachelor of Science degree in business administration from the University of Oregon in 1992, and he earned a Juris Doctor from Willamette University College of Law in 1997. He financed his education primarily with student loans, including six federal Stafford stu-

128See cited case law supra note 107. The First Circuit has not made a definitive ruling on which test to adopt, allowing courts there to use either the totality of circumstances test or the Brunner test. See In re Nash, 446 3d 188, 190 (1st Cir. 2006) ("We see no need in this case to pronounce our views of a preferred method of identifying a case of "undue hardship."). Only the Eighth Circuit continues to reject outright the Brunner test and instead uses the Totality of Circumstances test. See In re Reynolds, 425 F.3d 526 (8th Cir. 2005) (citing In re Andrews, 661 F.2d at 704, "We prefer a less restrictive approach to the 'undue hardship' inquiry. We are convinced that requiring our bankruptcy courts to adhere to the strict parameters of a particular test would diminish the inherent discretion contained in § 523(a)(8)(B). Therefore, we continue . . . to embrace a totality-of-the-circumstances approach to the 'undue hardship' inquiry."). Id.


130See Robinson v. U.S. Dep't of Educ. (In re Robinson), 193 B.R. 967, 969-70 (Bankr. N.D. Ala. 1996) (observing that there was really no difference between the Johnson and Brunner tests; the bankruptcy court held that the "policy" prong under the Johnson test—which addressed whether allowing discharge of a student loan would further the policies of the Bankruptcy Code—could instead be addressed under the "good faith" prong of the Brunner test).

131See supra notes 6-14 and accompanying text.


133See supra notes 11-13 and accompanying text.

dent loans guaranteed by Pennsylvania Higher Education Assistance Agency (PHEAA), totaling $85,254.87.\textsuperscript{135}

Hedlund resides in Klamath Falls, Oregon, where his father and brother are practicing attorneys.\textsuperscript{136} After graduating from law school at Willamette, he took a bar preparation course and sat for the Oregon bar exam in July 1997.\textsuperscript{137} While awaiting his results, Hedlund obtained an intern position with the Klamath County District Attorney’s office where he planned on working for a couple years before joining his father’s firm.\textsuperscript{138} He failed the bar exam, re-sat for the February 1998 exam, and failed again.\textsuperscript{139} After failing the second time, Hedlund was let go from his job at the District Attorney’s office.\textsuperscript{140}

Unable to practice law, Hedlund obtained full-time employment as a juvenile counselor at the Klamath County Juvenile Department.\textsuperscript{141} He enrolled in a different bar preparation course, and he took two months off from the Juvenile Department to study.\textsuperscript{142} On the day Hedlund was to take the bar exam for a third time, he stopped for coffee on the way to the exam, only to return to his car and discover he had locked his keys inside.\textsuperscript{143} He never made it to the exam, and subsequently, he made no further attempts to take the Oregon bar exam.\textsuperscript{144}

Because Hedlund was unable to utilize his law degree, he filed for several extensions on his loan obligations and was granted deferments.\textsuperscript{145} His loans

\textsuperscript{135}Id. (also noting that interest accrued on the loans at a rate of 4.22\% per annum). Hedlund’s federal Stafford loans were held in part by The Education Resources Institute and in part by the Pennsylvania Higher Education Assistance Agency. Hedlund, 718 F.3d at 849.

\textsuperscript{136}Id., 468 B.R. at 904.

\textsuperscript{137}Id., 718 F.3d at 849.

\textsuperscript{138}Id. at 849-50; Hedlund, 468 B.R. at 904.

\textsuperscript{139}Id., 718 F.3d at 850.

\textsuperscript{140}Id.

\textsuperscript{141}Id.

\textsuperscript{142}Id.

\textsuperscript{143}Id.

\textsuperscript{144}Id., 468 B.R. at 905.

\textsuperscript{145}Id. (noting that “[s]tudent loan recipients typically are not required to begin making payments to pay back their loans until some point after the borrower has completed his or her educational program”). The loan servicer or lender is required to provide the borrower with a loan repayment schedule that states when the first payment is due. Most often, there is a grace period after the borrower graduates, leaves school, or drops below half-time enrollment before he or she must begin repayment on the loan. Federal Stafford Loans—such that Hedlund used—have a six-month grace period before payments are due. Fed. Student Aid, Understanding Repayment, U.S. Dep’t of Educ. (2013), http://studentaid.ed.gov/repay-loans/understand#when-do-i-begin. Under certain circumstances, a student debtor may receive a deferment or forbearance that allows him or her to temporarily postpone or reduce the federal student loan payments. Postponing or reducing payments help the debtor to avoid default. “A deferment is a period during which repayment of the principal and interest of [the] loan is temporarily delayed[,]” while a forbearance may be granted when a student debtor does not qualify for a deferment but is yet unable to make his or her scheduled loan payments. A forbearance enables the debtor to stop making payments or reduce his or her monthly payments for up to 12 months, while interest continues to accrue. Fed. Student
eventually went into repayment status in January 1999.\(^{146}\) Hedlund owed loan servicer PHEAA over $85,000, on which payments exceeded $800 a month.\(^{147}\) Considering his modest wage of $10 per hour, he applied for and obtained various hardship forbearances.\(^{148}\) After the extensions ended, he submitted an application for loan consolidation in an effort to reduce his monthly payments.\(^{149}\) Hedlund claimed that while his application was being processed, PHEAA instructed him "not to worry if he got notices that his payments were late."\(^{150}\) Some months later, after receiving several delinquent payment notices, he called to verify the status of his consolidation application only to be informed that his application had never been received.\(^{151}\) Hedlund asked if he could re-apply for consolidation but was told that he was ineligible because he was not current on his payments.\(^{152}\) After conducting

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\(^{146}\) Hedlund, 468 B.R. at 905.

\(^{147}\) Id. at 905 n.2 (noting that "The Educational Resources Institute, Inc. settled with Hedlund prior to the trial in 2003; accordingly, they are not a party to this appeal"). A loan servicer is "[a] company that collects payments on a loan, responds to customer service inquiries, and performs other administrative tasks associated with maintaining a loan on behalf of a lender." Fed. Student Aid, Glossary, U.S. Dep’t of Educ. (2013), http://studentaid.ed.gov/glossary. Loan servicers will defer to the Standard Repayment Plan for federal Stafford Loans if the debtor does not select a different repayment plan. Under this plan, monthly payments are a fixed amount of at least $50 a month and made for up to 10 years. This repayment plan requires payments that are slightly higher than other plans, but due to the condensed repayment period, the debtor pays the least amount of interest over the life of the loan. Fed. Student Aid, Standard Plan, U.S. Dep’t of Educ. (2013), http://studentaid.ed.gov/repay-loans/understand/plans/standard.

\(^{148}\) Hedlund, 718 F.3d at 850. Forbearance is defined as "permitting the temporary cessation of payments, allowing an extension of time for making payments, or temporarily accepting smaller payments than were previously scheduled." 34 C.F.R. § 682.211(a). Lenders are encouraged to grant a forbearance for the benefit of the borrower in order to prevent the borrower from defaulting on the borrower's loan obligation. Id. But ultimately, forbearances for financial hardship are granted at the discretion of the lender. However, financial hardship may justify a mandatory forbearance when the total amount owed by the debtor for all student loans received is 20 percent or more of the debtor's total monthly gross income. Fed. Student Aid, Deferment and Forbearances, supra note 145.

\(^{149}\) Hedlund, 468 B.R. at 905. A Direct Consolidation Loan allows the debtor to combine one or more federal student loans into one new loan. As a result of consolidation, the debtor needs only to make one monthly payment on his or her loans, and the repayment period is extended accordingly. Private education loans are not eligible for consolidation. Student debtors are eligible to consolidate their loans after they graduate, leave school, or drop below half-time enrollment. Fed. Student Aid, Loan Consolidation, U.S. Dep’t of Educ. (2013), http://studentaid.ed.gov/repay-loans/consolidation; see also 34 C.F.R. § 685.220.

\(^{150}\) Hedlund, 468 B.R. at 905 (citing Excerpt of Record).

\(^{151}\) Hedlund, 718 F.3d at 850.

\(^{152}\) Id. In order to qualify for a Direct Consolidation Loan, a student debtor must have at least one Direct Loan or FFEL Program loan that is in a grace period or in repayment. "A borrower may obtain a Direct Consolidation Loan if . . . [o]n the loans being consolidated, the borrower is—[a] the time the borrower applies for a Direct Consolidation Loan—(1) in the grace period; (2) in a repayment period but not in default; or (3) in default but has made satisfactory repayment arrangements [with the loan servicer]."
some online research, Hedlund chose not to apply for the William D. Ford Income Contingent Repayment Program (ICRP), believing that he would not qualify due to the default.153

Although Hedlund was employed full-time as a juvenile counselor at the Klamath County Juvenile Department, he failed to make the requisite $800 per month payments to PHEAA.154 In fact, he made only one payment—of $954.72—in September 1999 when he received a $5,000 inheritance from his grandmother.155 Unable to make any subsequent payments, Hedlund attempted to negotiate a manageable payment schedule with more favorable loan terms and waiver of assessed fees.156 But PHEAA offered only two options: (1) make a down payment of $10,000, then $1,300 a month for ten months, followed by an adjusted monthly payment; or (2) pay a one-time lump sum of approximately $80,000.157 Hedlund could not feasibly manage either option, but he did offer to make a single $5,000 payment in exchange for a more lenient payment schedule.158 PHEAA declined this offer.159

In 2000, Hedlund got married, and about a year later, the couple had their first child.160 Hedlund's wife worked at a flower shop one day a week for six hours at a modest wage of $8.50 per hour.161 The district court noted, "Mrs. Hedlund has the potential to work more but chooses not to because she prefers to stay at home with their daughter."162

34 C.F.R. § 685.220(d) (emphasis added). A Direct Consolidated Loan has a fixed interest rate for the life of the loan, but there is no cap on Direct Consolidated Loan interest rates. "The fixed rate is based on the weighted average of the interest rates on the loan being consolidated, rounded up to the nearest one-eighth of 1%." Fed. Student Aid, Loan Consolidation, supra note 149. Loans consolidated into a Direct Consolidation Loan are discharged when the Direct Consolidation Loan is originated. 34 C.F.R. § 685.220(a).

153Hedlund, 718 F.3d at 850 n.2 (noting that "under the ICRP, the debtor pays the lesser of: (1) payments based on a 12-year amortization derived by application of an annually adjusted percentage of the debtor's adjusted gross income; or (2) 20% of the debtor's annually adjusted discretionary income, defined as adjusted gross income less applicable federal poverty guidelines) (citing 34 C.F.R. § 685.209). The ICRP is based on the debtor's adjusted gross income, family size, and the total amount of the debtor's Direct Loans. Fed. Student Aid, Income Contingent Repayment Plan, U.S. DEP'T OF EDUC. (2013), http://studentaid.ed.gov/repay-loans/understand/plans/income-contingent.

154Hedlund, 468 B.R. at 905.

155Id.

156Id.

157Hedlund, 718 F.3d at 850.

158Id. (indicating that Hedlund could have borrowed $5,000 from his parents to make this payment).

159Id.

160Hedlund, 468 B.R. at 905.

161Id.

162Id. The bankruptcy court found that "it would be reasonable and not unconscionable to require Ms. Hedlund to work three days rather than one day per week, particularly in light of the availability of free child care from grandparents." Transcript of Oral Argument at 18-19, Hedlund v. Educ. Res. Inst. Inc. (In re Hedlund), No. 03-06231-fra, 18-19 (Bankr. D. Or. May 19, 2011) ( Transcript of the digitally-recorded proceedings before the Honororable Philip H. Brandt in Tacoma, WA on May 19, 2011). The court calculated that working two extra days per week would add approximately $320 gross monthly income (around $265 after taxes) to their household income. Id.
In January 2002, PHEAA began administratively garnishing Hedlund’s wages after more than two years of nonpayment. PHEAA collected about $258 per month, for a total of $4,272.52. Hedlund did not contest the garnishments. In May 2003, Hedlund’s other student loan creditor, The Educational Resources Institute (TERI), obtained a collection action judgment against him and garnished $1,100 from his bank account. Unable to deal with both garnishments, Hedlund filed a petition for Chapter 7 bankruptcy on May 7, 2003.

B. HEDLUND GETS HIS DAY IN COURT

On June 16, 2003, Hedlund filed an adversary proceeding against both PHEAA and TERI, seeking partial discharge of his student loans pursuant to 11 U.S.C. § 523(a)(8). He came to a settlement agreement with TERI before trial, in which he agreed to pay down the outstanding debt of $17,718.15 at a rate of $50 per month. In pretrial negotiations with PHEAA, the loan servicer offered Hedlund his choice of three potential re-payment plans if the court determined the loans to be nondischargeable. However, all three reamortization offers required payment of the entire loan balance over the course of a thirty-year term, with monthly payments ranging between $307 and $446 per month. Hedlund rejected each of these

163Hedlund, 718 F.3d at 850.
164Id.
165Id.
166Id.
167Id.

Bankruptcy courts may exercise their equitable authority to partially discharge student loan debt, provided that debtors first satisfy the Brunner “undue hardship” test as to the portion of the debt to be discharged. 11 U.S.C. §§ 105(a), 523(a)(8). For a discussion of partial discharge, see Saxman v. Educ. Credit Mgmt. Corp. (In re Saxman), 325 F.3d 1168, 1173-75 (9th Cir. 2003). Ten years prior to hearing Hedlund, the very same Judge Tashima of the Ninth Circuit Court of Appeals opined Saxman, which addressed the issue of partial discharge—then, an issue of first impression in the circuit. The Saxman court relied on the Sixth Circuit’s analysis in Tenn. Student Assistance Corp. v. Hornsby (In re Hornsby), 144 F.3d 433 (6th Cir. 1998), concluding that “bankruptcy courts may exercise their equitable authority under 11 U.S.C. § 105(a) to partially discharge student loans.” Note that the Ninth Circuit’s holding in Saxman did not mirror Hornsby. In Hornsby, the Sixth Circuit held that even if a debtor fails to establish his or her burden under § 523(a)(8) of showing undue hardship, bankruptcy courts can still partially discharge educational loans pursuant to §105(a). Id at 439. The Ninth Circuit “respectfully disagree[d] with that aspect of the [Sixth Circuit’s] holding that partial discharge is sometimes warranted even if the substantive requirements for an undue hardship discharge have not been demonstrated.” In re Saxman, 325 F.3d at 1174.

168Hedlund, 718 F.3d at 850.
169Id. at 850-51.
170Hedlund, 468 B.R. at 905 n.3 (noting the following repayment options PHEAA offered to Hedlund: “Option 1: $417.67 per month for 359 months plus one payment of $414.79; option 2: $307.43 per month for 24 months, $432.56 per month for 335 months, and one payment of $430.88; option 3: $307.43 per month for 24 months, $374.11 per month for 36 months, $446.11 for 299 months, and one payment of $444.31”).
At the time, "Hedlund was thirty-three years old, married, with one dependent child; he was healthy, had no physical or mental disabilities, and had no drug or alcohol addictions." The small family lived in a two-bedroom duplex owned by Mr. Hedlund’s parents. They paid $375 a month for rent—$75 below the market rate. They owned a 1990 Chevrolet Blazer with about 150,000 miles on it, and the couple had recently leased a new 2002 Honda Accord for $354 a month. At the time of the trial, Hedlund enjoyed full-time employment, earning $19.17 per hour, with a gross annual income of $40,320.

Applying the Brunner test, the bankruptcy court granted a partial discharge of all but approximately $30,000 of Hedlund’s outstanding PHEAA loan. PHEAA appealed to the Bankruptcy Appellate Panel (BAP), which found Hedlund able to repay his debt and, therefore, reversed and reinstated the entire debt. The BAP held that "it would not be unconscionable for Hedlund to eliminate a number of claimed expenses," including his hefty payments on a brand new vehicle. It found the bankruptcy court “did not sufficiently consider whether Hedlund could reduce his expenses,” nor did it consider “whether Hedlund could increase his income either by taking on a part-time job or his wife working part time.” The BAP held that Hedlund and his wife did not take any steps to maximize their income, nor did they attempt to minimize their expenses.

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172Id. at 906.
173Id. at 905.
175Id.
176Id. at 20-21. Judge Brandt of the Ninth Circuit found the Chevrolet Blazer "not sufficiently reliable for out-of-town trips, and given that the family included at the time of the trial a two-year-old child, [it] was not reasonable to require a family not to have one non-luxury vehicle for reliable transportation." Id.
177Hedlund, 468 B.R. at 905; Transcript of Oral Argument at 16, In re Hedlund, No. 03-06231-fra (also noting that Hedlund “had benefits which included health, dental and life insurance, vacation and sick time, and a pension plan with mandatory contributions and a significant, roughly 6 percent match from the County”). An occupational expert testified “he was well-placed for his skills, that his wages and benefits were excellent for the Klamath Falls area, there were no higher paying jobs available to him, and that the area’s employment situation was unlikely to change in the near future.” Id.
178Hedlund, 468 B.R. at 906 (citing In re Brunner, 831 F.2d at 396).
179Hedlund, 718 F.3d at 851.
180Transcript of Oral Argument at 3, In re Hedlund, No. 03-06231-fra.
181Id. Judge Aiken of the U.S. District Court of the District of Oregon later agreed with Hedlund "that a debtor is not ordinarily required to prove maximization of income as a part of the first Brunner prong. Hedlund, 468 B.R. at 909 n.8 (citing Educ. Credit Mgmt. Corp. v. Mason (In re Mason), 464 F.3d 878, 882 n.3 (9th Cir. 2006)). However, if such a determination was error, it was harmless error, because the bankruptcy court found Hedlund did satisfy the first Brunner prong. Id. Black’s Law Dictionary defines “harmless error” as “A trial-court error that does not affect a party’s substantive rights or the case’s outcome.” BLACK’S LAW DICTIONARY 659 (10th ed. 2014).
182Transcript of Oral Argument at 4, In re Hedlund, B.R. No. 03-06231-fra.
Hedlund appealed to the Ninth Circuit, which vacated the BAP decision and remanded the proceeding to the bankruptcy court "to reconsider all of the evidence in light of the Brunner test, and to make more complete findings on each of the three factors under the Brunner test so as to facilitate appellate review of whether Hedlund has met the 'undue hardship' requirement of § 523(a)(8)." In the U.S. Bankruptcy Court for the District of Oregon, Judge Brandt found that Hedlund satisfied all three of the Brunner prongs. Hedlund had established that (1) he did not have the current ability to make the full $800 per month payments to PHEAA without undue hardship, but he was able to make partial payments; (2) "additional circumstances" indicated that his current financial situation was likely to persist for a significant portion of the loan repayment period; and (3) Hedlund had made a good faith effort to repay the loans, through his efforts to obtain employment, maximize income, and minimize expenses. As such, Hedlund was entitled to a discharge of approximately $55,000 of his loan obligation to PHEAA.

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183Id. at 3 (specifying that the bankruptcy court had discretion to reopen the record to receive additional evidence). Subsequently, Hedlund objected to reopening the record, and Judge Radcliffe sustained his objection. Id.

184Id. at 32–33. The case was originally reargued before Bankruptcy Judge Radcliffe on October 20, 2010. However, after briefing and argument, Judge Radcliffe passed away before entering his ruling, and the case was reassigned to Judge Brandt. Id. Judge Brandt was in recall status for the United States Bankruptcy Court in the Western District of Washington. Hedlund, 468 B.R. at 906 n.5.

Under Federal Rule of Civil Procedure 63, which applies in bankruptcy—or at least adversary proceedings and contested matters, via Federal Rule of Bankruptcy Procedure 9028, if a judge conducting a hearing or trial is unable to proceed, any other judge may proceed upon certifying familiarity with the record and determining that the case may be completed without prejudice to the parties. Transcript of Oral Argument at 6, In re Hedlund, No. 03-06231-fra. Rule 63 allows the substitute judge to make a finding of fact in a bench trial, based on the evidence heard by a different judge. Id. at 7.

185Transcript of Oral Argument at 22, 24, 27, In re Hedlund, No. 03-06231-fra. In order to determine whether "additional circumstances" are present, the Ninth Circuit has used the following list of factors:

1) serious mental or physical disability of the debtor or the debtor’s dependents which prevents employment or advancement; 2) the debtor’s obligations to care for dependents; 3) lack of, or severely limited education; 4) poor quality of education; 5) lack of usable or marketable job skills; 6) underemployment; 7) maximized income potential in the chosen educational field, and no other more lucrative job skills; 8) limited number of years remaining in work life to allow payment of the loan; 9) age and other factors that prevent retraining or relocation as a means for payment of the loan; 10) lack of assets, whether or not exempt, which could be used to pay the loan; 11) potentially increasing expenses that outweigh any potential appreciation in the value of the debtor’s assets and/or likely increases in the debtor’s income; 12) lack of better financial options elsewhere.

Educ. Credit Mgmt. Corp. v. Nys (In re Nys), 446 F.3d 938, 947 (9th Cir. 2006).

186Hedlund, 468 B.R. at 906.
C. The District Court Reprimands Hedlund for Living "A Lifestyle That Few Today Can Afford"

PHEAA appealed to the BAP, but Hedlund filed a timely election to have it proceed before the U.S. District Court for the District of Oregon. On appeal, PHEAA argued that "the bankruptcy court erred in ruling that a healthy thirty-three year old making $40,320 per year, married with one child, with an undergraduate degree in business administration and a juris doctorate, with no physical or mental disabilities, and with the potential to increase his household income and to decrease his expenses," is entitled to a partial discharge of his student loans through bankruptcy. PHEAA did not dispute the bankruptcy court's factual findings, but rather it argued that the bankruptcy court misapplied the legal standard when reviewing the good faith element. The district court found no error under the first two Brunner elements, but after a de novo review, Chief Judge Aiken concluded that the bankruptcy court's good faith ruling was clearly erroneous.

In reviewing the third Brunner prong to determine whether Hedlund affirmatively and in good faith attempted to repay his loans, the district court "analyzed a number of factors, including Hedlund's efforts to obtain employment, maximize income, minimize expenses, and to negotiate an alternative repayment plan, as well as his history of voluntary payments." First, although Hedlund's failure to obtain a second job to maximize income did not necessarily indicate a lack of good faith, the court did find that his wife could have worked more than six hours per week. Considering both sets of grandparents lived nearby and were "excited and delighted" to provide free childcare, the court found Mrs. Hedlund could have worked at least 12 hours more per week, which would have added about $350 a month to the family's net income. Thus, Judge Aiken held Hedlund "had not used his best efforts to maximize his income or minimize his expenses."

The district court also measured Hedlund's "effort—or lack thereof—to negotiate a repayment plan." It noted that Hedlund had made only one voluntary payment over the course of the loan while, by his own admission,
he was capable of making limited monthly contributions but chose not to.196 Additionally, although Hedlund contends that he believed he was not eligible for the ICRP, he never discussed the ICRP with PHEAA nor did he ever apply.197 Furthermore, Hedlund did not take any additional steps to negotiate a realistic repayment plan with PHEAA, and those offered by PHEAA, Hedlund rejected.198 The district court found Hedlund’s explanation that accepting an extended loan agreement would “obligate himself long past when his child or children would hopefully have had a chance to go to college” irrelevant.199 Chief Judge Aiken frankly explained that loan terms are extended “in order to reduce monthly payments on a debt[,] [which] is a commonplace, if not unfortunate, economic reality shouldered by thousands of students in circumstances similar or worse than Hedlund’s.”200 The district court found Hedlund’s situation to be no worse than those faced by the majority of today’s law school graduates.201 Moreover, Judge Aiken distinguished Hedlund’s circumstances to actually be more favorable than recent graduates: (1) he graduated in 1997, a period of rapid growth and economic prosperity; (2) even without passing the bar, Hedlund obtained relatively high-paying, full-time employment; and (3) Hedlund and his wife had chosen to live as single-income family, “a lifestyle that few today can afford . . . .”202 The district court found Hedlund’s financial circumstances to be the by-product of life choices within his own reasonable control.203 As such, Judge Aiken held the bankruptcy court erred as a matter of law in finding Hedlund had satisfied the third Brunner prong.204 Accordingly, the district court reversed the bankruptcy court below and reinstated Hedlund’s full debt of $85,254.87 owed to PHEAA.205

D. HEDLUND’S TAKEAWAY: BANKRUPTCY COURTS ARE ULTIMATELY RESPONSIBLE FOR DETERMINING THE GOOD FAITH BRUNNER PRONG

Hedlund timely appealed the district court’s ruling, and the parties submitted and argued the case before the United States Court of Appeals for the Ninth Circuit on March 11, 2013.206 Circuit Judge Tashima’s opinion ad-

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196Hedlund, 468 B.R. at 915.
197Id.
198Id.
199Id. at 916.
200Id.
201Hedlund, 468 B.R. at 916.
202Id. (emphasis added).
203Id.
204Id.
205Id.
206Hedlund, 718 F.3d at 848, 851.
addressed only the good faith prong of Brunner since the district court found error only in the bankruptcy court’s ruling on this last prong.\textsuperscript{207} Hedlund raised the standard of review applied in the court below as a threshold issue.\textsuperscript{208} The district court had reviewed the bankruptcy court’s finding on the issue of good faith under a \textit{de novo} standard of review.\textsuperscript{209} Hedlund contended that it instead should have applied a \textit{clear error} standard of review.\textsuperscript{210} The Ninth Circuit Court of Appeals agreed with Hedlund.\textsuperscript{211}

Although the Ninth Circuit traditionally reviews “the bankruptcy court’s interpretation of the Bankruptcy Code \textit{de novo} and its factual findings for clear error,” the court recognized that it has never expressly stated which standard applies to the good faith prong of Brunner.\textsuperscript{212} However, the court has consistently reviewed the good faith prong under a clear error standard.\textsuperscript{213} The Ninth Circuit has also applied the deferential clear error standard to good faith inquiries in other scenarios other than student loan repayment.\textsuperscript{214} Accordingly, the \textit{Hedlund} court confirmed that a finding under the Brunner good faith prong should indeed be reviewed for clear error—not \textit{de novo}.\textsuperscript{215}

To be clear, the Ninth Circuit explained that its opinion in \textit{Hedlund} in no way suggests that a reviewing court should not correct errors of law that

\textsuperscript{207}Id. at 852.
\textsuperscript{208}Id. at 854.
\textsuperscript{209}Id.; \textit{Hedlund}, 468 B.R. at 906 (stating, “Mixed questions of law and fact, such as the proper application of the legal standard in determining whether a student loan is dischargeable, are . . . reviewed \textit{de novo}.”). Black’s Law Dictionary defines “\textit{de novo} judicial review” as “[a] court’s nondeferential review of an administrative decision, [usually] through a review of an administrative record plus any additional evidence the parties present.” BLACK’S LAW DICTIONARY 976 (10th ed. 2014).
\textsuperscript{210}Hedlund, 718 F.3d at 854. Black’s Law Dictionary defines “clear error” as “[a] trial judge’s decision or action that appears to a reviewing court to have been unquestionably erroneous.” BLACK’S LAW DICTIONARY 659 (10th ed. 2014). Further, the “clearly-erroneous standard” is defined as “[t]he standard of review that an appellate court [usually] applies in judging a trial court’s treatment of factual issues.” Id. at 307.
\textsuperscript{211}Hedlund, 718 F.3d at 854.
\textsuperscript{212}Id. (citing Miller v. Cardinale (In re DeVille), 361 F.3d 539, 547 (9th Cir. 2004) (internal quotation marks and citations omitted)).
\textsuperscript{213}Id. See Educ. Credit Mgmt. Corp. v. Mason (In re Mason), 464 F.3d 878, 885 (9th Cir. 2006) (“[T]he bankruptcy court clearly erred in finding that Mason demonstrated good faith efforts to repay his loans.”); United Student Aid Funds, Inc. v. Pena (In re Pena), 155 F.3d 1108, 1114 (9th Cir. 1998) (“[T]he bankruptcy court did not clearly err in finding that the Penas exhibited good faith in attempting to pay back the student loans.”).
\textsuperscript{214}Hedlund, 718 F.3d at 854. See Figter Ltd. v. Teachers Ins. & Annuity Assoc. of Am. (In re Figter Ltd.), 118 F.3d 635, 638 (9th Cir. 1997) (noting that because good faith is “an essentially factual inquiry” this Court has “in various contexts, declared that [it] will review good faith determinations for clear error”).
\textsuperscript{215}Hedlund, 718 F.3d at 854 n.9 (noting that under the Ninth Circuit’s established standard of review of bankruptcy court rulings, “after review by the district court or by the BAP, . . . the district court’s ruling on the good faith issue would not have been entitled to any deference, but would be reviewed ‘independently’”). See Ragsdale v. Haller, 780 F.2d 794, 795 (9th Cir. 1986)).
may arise in a good faith analysis. The court gave the example of In re Birrane, where the BAP held that “the bankruptcy court erred as a matter of law in finding that Birrane met the good faith prong.” In contrast to Hedlund, the error in Birrane was one of law. The bankruptcy court in Birrane had failed to consider all factors relevant to the good faith analysis by finding good faith solely upon evidence of voluntary payments. Thus, the Birrane district court properly analyzed good faith under a de novo review. Judge Tashima concluded, “[A]lthough good faith is primarily a question of fact reviewed for clear error, it can encompass questions of law that must be reviewed de novo.”

Relying on its determination for the appropriate standard of review, the Court of Appeals found that “the bankruptcy court properly applied all three Brunner prongs, and it considered the various factors that are relevant to good faith.” Thus, the bankruptcy court’s ruling withstands a de novo review of questions of law, while its factual findings of good faith were not clearly erroneous. Judge Tashima found considerable evidence showing that Hedlund had maximized his income, despite not fully minimizing his expenses. Although a reviewing court might view certain expenses more skeptically — “such as the new car lease and the two cell phones” — the bankruptcy court permissibly interpreted these expenses as marginal. Hence, the lower court’s findings were not clearly erroneous.

Judge Tashima did find the evidence regarding Hedlund’s lack of effort to negotiate and make voluntary payments unfavorable for a showing good faith. Although such evidence could have been interpreted by a court to

216 Hedlund, 718 F.3d at 854.
218 In re Birrane, 287 B.R. at 500.
219 Id.
220 Id.
221 Id. at 845 n.10 (noting that the Hedlund court reviewed the application of Brunner de novo, i.e., “whether the bankruptcy court properly applied the three prong test. For instance, if the bankruptcy court had granted a discharge based only on the first two prongs of Brunner, [the court] would reverse under de novo review”).
222 Id. at 855 n.11 (noting that “[c]lear error applies even though Judge Brandt based his findings on the trial transcript and other documentary evidence”). “Where there are two permissible views of the evidence, the factfinder’s choice between them cannot be clearly erroneous. This is so even when the [trial] court’s findings do not rest on credibility determinations, but are based instead on physical or documentary evidence or inferences from other facts.” Anderson v. City of Bessemer City, N.C., 470 U.S. 564, 574 (1985). See FED. R. Civ. P. 52(a)(6) (“Findings of fact, whether based on oral or other evidence, must not be set aside unless clearly erroneous, and the reviewing court must give due regard to the trial court’s opportunity to judge the witnesses’ credibility”) (emphasis added).
223 Hedlund, 718 F.3d at 853.
224 Id.
225 Id.
226 Id. (noting that although Hedlund submitted a consolidation application, “his efforts thereafter were
support a finding of lack of good faith, "it was not so strong as to demand such a finding."227 Hedlund did have some affirmative evidence of good faith: he maximized his employment, he attempted to pass the bar exam three times, and he waited four years from the time his loan repayment period began before filing for bankruptcy.228

Although many courts (and perhaps even the Ninth Circuit appellate judges) might have disagreed with Judge Brandt's good faith finding, it was not clearly erroneous.229 The Court of Appeals found that the bankruptcy court "relied on substantial evidence in the record, and its factual inferences were permissible."230 Judge Tashima reversed and remanded Hedlund's case to the district court with instructions to reinstate the bankruptcy court's order for partial discharge.231 Michael Hedlund's ten-year legal battle had come to a close, and although his decision to go to law school did not quite have a fairy tale ending, he could sleep easier at night without the law school debt ball and chain.

V. CONCLUSION: SPARE ME THE LITIGATION—BANKRUPTCY IS FOR THE BANKRUPTCY COURTS

So what's the moral of this story? Don't go to law school? Don't take out student loans? Don't stop for coffee on the way to the bar exam? Answer: none of the above. Michael Hedlund's unique and unfortunate hardships do not reflect poorly on his life decisions, law school curriculum, the job market in the legal field, or student loan programs. Pursuing a legal education from an accredited law school has its risks and rewards, all of which must be carefully considered when deciding on a career path.

The Ninth Circuit's 2013 ruling in Hedlund v. Educational Resources Institute Inc. does, however, set forth an important precedent for the future. But, contrary to portrayals in the media, Hedlund's precedential value has little to do with defining undue hardship in the context of § 523(a)(8).232 Instead, Judge Tashima and the Ninth Circuit Court of Appeals set forth what should be the appropriate standard of review when reviewing a "good faith" decision from a lower court.233 As such, the Brunner good faith prong

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227Id.
228Hedlund, 718 F.3d at 855-56 (citing Brunner, 831 F.2d at 397, where the court found bad faith in part because the debtor filed for discharge in bankruptcy one month after the first payment became due).
229Id. at 856.
230Id.
231Id.
232See supra Part III.A.
233See supra text accompanying notes 212-15.
should be reviewed for clear error, and appellate courts cannot simply re-
determine the facts under a de novo standard.\textsuperscript{234}

\textit{Hedlund} empowers bankruptcy courts because their findings of fact on
good faith must stand absent a clear error of law. Assuming that a bank-
ruptcy court correctly applies the \textit{Brunner} test to all of the facts presented, a
BAP in the Ninth Circuit will no longer be able to reverse a finding on the
good faith element, whether in favor of discharge or not. Additionally, future
litigants should advocate for courts to apply \textit{Hedlund} to findings of fact for
the “minimal standard of living” and “additional circumstances” prongs of
\textit{Brunner} as well.\textsuperscript{235}

If other circuits follow \textit{Hedlund}, the case might eventually help reduce
the number of appeals involving student loan discharges in bankruptcy. Once
a bankruptcy court has made a proper determination of fact using the \textit{Brun-
nner} test, litigants will have little reason to appeal unless they feel there was a
clear error in the application of the law.\textsuperscript{236} The \textit{Hedlund} holding will likely
be adopted across most, if not all, U.S. circuits simply because most circuits
have established \textit{Brunner} as the prevalent and accepted test to determine
undue hardship.\textsuperscript{237} As \textit{Hedlund} directly addressed the \textit{Brunner} test, it seems
only plausible that other circuits utilizing the same \textit{Brunner} test will adopt
\textit{Hedlund}’s analysis to determine the correct standard of review. Further-
more, even the Eighth Circuit—which still uses the Totality of the Circum-
stances test—can apply \textit{Hedlund} when reviewing findings of fact made using
that test.\textsuperscript{238}

As for clarifying the definition of “undue hardship,” that will have to wait
for another day.\textsuperscript{239} Furthermore, any greater latitude the bankruptcy court
afforded Michael Hedlund in finding good faith is unlikely to carry any
weight outside the Oregon bankruptcy court itself. The judicial system al-
lows bankruptcy judges across the country to use their reasonable discretion
when applying the \textit{Brunner} test; thus, Hedlund’s original bankruptcy pro-
ceeding could have easily had a much different result. After reviewing Hed-
lund, it is improbable that any judge will have a change of heart and say,
“Well, maybe leasing a brand new car and living on a single income is main-
taining a minimal standard of living . . . .”

Hedlund’s story and the Ninth Circuit’s holding are anomalies. In the sea
of recent law school graduates, there are thousands more in worse situations
than Hedlund. Stories of living in parents’ basements, working at coffee

\textsuperscript{231}Id.
\textsuperscript{232}See supra text accompanying notes 113-16, 121-23, and Part III.E generally.
\textsuperscript{233}See supra text accompanying notes 216-20.
\textsuperscript{234}See supra notes 129-31 and accompanying text.
\textsuperscript{235}See supra text accompanying notes 96-99 and Part III.C generally.
\textsuperscript{236}See supra notes 85-86 and accompanying text.
shops, unemployment, couch surfing—you name it—have been chronicled in comments all over the legal blogs. However, asking taxpayers to foot the bill for students' federally-backed loans is not what President Johnson had in mind when he rolled out the Higher Education Act of 1965.240

In the interest of public policy, bankruptcy courts need to establish clear precedents that preserve the integrity of the federal student loan program and prevent bankruptcy litigation from resulting in windfalls to student loan debtors. Students in general—and law students especially—should take responsibility for their student debts absent a real and immediate undue hardship. *Hedlund* stands as important precedent for the future on the standard of review for findings of fact from bankruptcy courts. But *Hedlund* is unlikely to influence bankruptcy courts in other jurisdictions when dealing with determinations of undue hardship. As for the direction bankruptcy courts will head in shaping the standard for undue hardship, only time will tell. For now, just don't expect the bankruptcy judge to let your spouse off the hook so easy.

240 See supra discussion Part II.B.