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RECENT DEVELOPMENTS IN EDUCATIONAL-BENEFIT DISCHARGE LITIGATION

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I. INTRODUCTION

According to the conventional wisdom, student loans are forever. While a consumer bankruptcy filing can lift the weight of credit card and medical debt from a debtor's shoulders, a debtor's student loans generally survive the bankruptcy discharge.[1] The Bankruptcy Code permits debtors to escape student loans if they can show an "undue hardship," but that standard is notorious for its nearly unattainable bar.[2] This understanding of student loan non-dischargeability is firmly entrenched in the bankruptcy world, and it can become self-fulfilling: if debtors' attorneys believe that student loans are inescapable, they will not make the effort to seek discharge on behalf of their clients.[3]

Scholars and commenters have long questioned this conventional wisdom underlying student loan non-dischargeability. From the outset, legislators sought to bust the myth that highly educated professionals use the bankruptcy laws to escape their student loans before commencing lucrative careers.[4] More recently, academics have found that the undue hardship standard does not necessarily live up to its notorious reputation.[5] And now, creative attorneys have challenged the scope of student loan non-dischargeability—and creditors' attempts to collect educational debt after discharge—in class action cases across the nation.[6]

These recent cases focus on section 523(a)(8)(A)(ii) of the Bankruptcy Code, which excepts from discharge "an obligation to repay funds received as an educational benefit, scholarship, or stipend."[7] An increasing number of courts have interpreted this phrase narrowly, holding that it is limited to educational grants that are tied to an employment or other service obligation.[8] Under this reading, potentially billions of dollars in private loans that fail to qualify as "qualified educational loans" under subsection 523(a)(8)(B) are freely dischargeable.[9] A recent decision adopting this interpretation, *In re Crocker*,[10] also held that related claims for violation of the discharge injunction could be asserted in nationwide class actions.

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This issue of the BLL is the first in a two-part series examining the case law interpreting section 523(a)(8)(A)(ii), with particular attention to the class action cases that have been filed around the United States. This issue considers the proper scope of section 523(a)(8)(A)(ii), while a forthcoming issue will confront the unique challenge of seeking damages for discharge violations on behalf of a nationwide debtor class.

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II. NON-DISCHARGEABILITY OF STUDENT LOANS

A. STUDENT LOAN NON-DISCHARGEABILITY THROUGH THE AGES

Before 1976, student loans were, like any other unsecured debt, freely dischargeable. Congress first gave student loans their non-dischargeable status as part of a package of amendments to the Higher Education Act of 1965.[11] These amendments provided that certain student loans that first came due less than five years before the bankruptcy case were nondischargeable, unless repayment of the loan would impose an undue hardship on the debtor.[12] When Congress enacted the Bankruptcy Code in 1978, it retained these features of the Higher Education Act's treatment of student loans. As originally enacted, section 523(a)(8) excepted from discharge any debt:

> (8) to a governmental unit, or a nonprofit institution of higher education, for an educational loan, unless—
>
> (A) such loan first became due before five years before the date of the filing of the petition; or
>
> (B) excepting such debt from discharge under this paragraph will impose an undue hardship on the debtor and the debtor's dependents; . . ..[13]

This treatment of student loans has typically been explained as serving two policy goals: protecting the solvency of federal student loan programs, and limiting abuse by graduates.[14] Yet scholars who have studied the legislative history in detail argue that the enactment of these statutes was much more controversial and chaotic than is typically reported, making it difficult to identify an "unequivocal legislative intent."[15] In particular, legislators were deeply divided as to whether these amendments responded to real or illusory abuses of the federal student loan program.[16] One legislator dubbed the amendments "a discriminatory remedy for a 'scandal' which exists primarily in the imagination."[17] Passage of the Higher Education Act Amendments was initially delayed pending further empirical study by the General Accounting Office.[18] Yet, even though the study showed that fewer than 1% of federal student loans were discharged in bankruptcy, the non-dischargeability amendments became effective.[19]

Despite these troubled origins, Congress' amend-

ments to section 523(a)(8) over the last four decades have doubled down on non-dischargeability, consistently making student loan discharges more difficult to come by. In both 1979 and 1984, for example, Congress expanded the reach of section 523(a)(8) to encompass additional types of educational loans.[20] Then, as part of the Crime Control Act of 1990, Congress lengthened the lookback period for non-dischargeability from five to seven years.[21] It also added the language at issue in this *Law Letter*: "an obligation to repay funds received as an educational benefit, scholarship or stipend."[22] Next, in 1998, Congress dropped the seven-year limitation, making covered student loan debts non-dischargeable without regard to when they came due.[23] Finally, in 2005, Congress extended the scope of section 523(a)(8) to include private and for-profit educational loans that fall within the definition of "qualified educational loans" under section 221(d)(1) of the Internal Revenue Code.[24] At the same time, Congress reorganized section 523(a)(8) to create the subcategories (a)(i) and (a)(ii).[25]

B. THE STATUTORY TEXT

As it currently reads, section 523(a)(8) renders non-dischargeable the following categories of educational debt (unless excepting such debt from discharge would impose an undue hardship on the debtor or her dependents):

(1) "an educational benefit overpayment or loan made, insured, or guaranteed by a governmental unit, or made under any program funded in whole or in part by a governmental unit or nonprofit institution";[26]

(2) "an obligation to repay funds received as an educational benefit, scholarship, or stipend";[27]

(3) "any other educational loan that is a qualified education loan, as defined in section 221(d)(1) of the Internal Revenue Code of 1986, incurred by a debtor who is an individual."[28]

Our focus is on the second subcategory, which appears in section 523(a)(8)(A)(ii). Many courts have construed the phrase "obligation to repay funds received as an educational benefit, scholarship, or stipend" expansively, finding that it encompasses any type of obligation incurred for an educational purpose.[29] Under that broad reading, courts have declared non-dischargeable a variety of obligations, including private loans for bar review,[30] tutoring loans for a debtor's child,[31] and extensions under a general line of credit that were used for educational expenses.[32] These obligations do not fit easily into other subcategories of section 523(a)(8) because they are made by private lenders and do not meet the IRS definition of "qualified educational loan." Thus, they are exempted from discharge only if they qualify as an "obligation to repay funds received as an educational benefit, scholarship, or stipend" under section 523(a)(8)(A)(ii).

In recent years, a growing number of courts have challenged the broad reading of section 523(a)(8)(A)(ii), generating a body of case law that excludes these types of obligations from its scope. Under the narrow reading, an "obligation to repay funds received as an educational benefit, scholarship, or stipend" is limited to obligations incurred pursuant to conditional educational grants.[33]

The following section outlines two competing interpretations of section 523(a)(8)(A)(ii) and explains why the narrower interpretation better aligns with the statutory text, legislative history, and bankruptcy policy.

III. COMPETING INTERPRETATIONS OF SECTION 523(a)(8)(A)(ii)

A. A BROAD VIEW OF SECTION 523(a)(8)(A)(ii)

As noted above, many courts have held that section 523(a)(8)(A)(ii) broadly encompasses any obligations that are incurred for a stated educational purpose. Some courts that adopt this broad interpretation of section 523(a)(8)(A)(ii) do so with no explanation. These courts "perhaps inadvertently, imprecisely quote the provisions of the discharge exemption statute as applying to 'loans received,' as opposed to the 'obligation to repay funds received.' "[34] Accordingly, these courts do not address other possible interpretations of the phrase "obligation to repay funds received," or consider how such a broad interpretation of the provision would interact with other parts of section 523(a)(8).[35]

Other courts have, after a considered analysis, embraced a broad reading of section 523(a)(8)(A)(ii). These courts tend to attribute much to the fact that Congress has consistently expanded the scope of 523(a)(8) through its successive amendments to the Code, reasoning that they should follow Congress's lead by applying section 523(a)(8)(A)(ii) to the matter at hand.[36] For example, in *In re Roy*, the Bankruptcy Court for the District of New Jersey considered whether a debt owed to Sylvan Learning Center for tutoring services for the debtor's child qualified as a non-dischargeable "obligation to repay funds received as an educational benefit." The court noted:

> The term "educational benefit" is not defined in the Bankruptcy Code, but Congress through successive amendments to § 523(a)(8) has expended the scope of the section. In keeping with that, this Court finds that the loan at issue here, which provided an educational benefit to [the debtor's] child in the form of tutoring, is not dischargeable.[37]

A more refined take on this analysis pays particular attention to BAPCPA's amendments to section 523(a)(8). As part of BAPCPA, Congress separated the phrase "obligation to repay funds received as an educational benefit, scholarship, or stipend" into an independent subsection, untethered from any reference to government or non-profit organizations.[38] Several courts have held that this change indicates that the phrase "must be read as encompassing a broader range of educational benefit obligations,"[39] including, without qualification, educational loans by for-profit entities.[40] As noted in *In re Skipworth*, "BAPCPA amended § 523(a)(8) of the Bankruptcy Code to make student loans non-dischargeable . . . regardless of the nature of the lender, thus covering loans from both non-governmental and private lenders."[41] There, the court held that the debtor's bar-review loan owed to CitiBank Student Loan Corporation was non-dischargeable under 523(a)(8)(A)(ii).[42]

Courts have also relied on breadth of past judicial interpretations as an admonition to interpret the statute even more broadly.[43] For example, in *In re Corbin*, the court summarized past interpretations of section 523(a)(8)(A)(ii) as indicating "that almost any obligation incurred for the purpose of paying an education-related expense is excepted from discharge."[44] The court found "no reason or authority" to interpret the section in a narrower manner with respect to a matter of first impression before that court.[45] As such, the court held that an obligation that the debtor owed to the co-signer on her educational loans was a non-dischargeable "obligation to repay funds received as an educational benefit, scholarship, or stipend."[46]

B. A NARROWER VIEW

Over the last few years, an increasing number of courts have undertaken a more nuanced analysis of the statutory text and history of section 523(a)(8)(A)(ii), and concluded that the statute should be read more narrowly.[47] These courts hold that section 523(a)(8)(A)(ii)'s "obligation to repay funds received as an educational benefit, scholarship, or stipend" refers to educational grants provided on the condition of future service. Under this interpretation, section 523(a)(8)(A)(ii) would encompass military ROTC programs,[48] National Health Service Corps Scholarships,[49] and similar grants.[50] Thus, when a student fails to satisfy the condition, the obligation to repay the funds advanced under the grant is non-dischargeable under section 523(a)(8)(A)(ii). This interpretation excludes many private student loans, including bar-review loans,[51] loans for vocational school[52] and preparation for medical school,[53] and ad hoc borrowing that somehow relates to education.[54] The following sections explain how this interpretation of section 523(a)(8)(A)(ii) is more faithful to the statutory text, legislative history, and bankruptcy policy.

1. "OBLIGATION TO REPAY FUNDS RECEIVED"

In common parlance, section 523's reference to "obligation to repay funds received" might well encompass loans. After all, when we borrow money, we no doubt incur the obligation to repay it. Yet the term "loan" appears several times in subsection 523(a)(8), including in subsection (a)(i) ("an educational benefit overpayment or loan made")[55] and subsection (B) ("any other educational loan that is a qualified education loan").[56] "Where Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts

intentionally and purposely in the disparate inclusion or exclusion."[57] As such, many courts have found Congress' decision to use the phrase "obligation to repay funds received" suggests that it had something other than "loans" on its mind.[58] Other portions of this provision shed greater light on its meaning.

2. "EDUCATIONAL BENEFIT"

Section 523(a)(8)(A)(ii) also requires that the funds be received "as an educational benefit."[59] While "educational benefit" is not defined in the Bankruptcy Code, courts have applied two primary canons of statutory interpretation to help elucidate its meaning. The canon of *noscitur a sociis* indicates that "the meaning of an unclear phrase, [especially] one in a list, should be determined by the words immediately surrounding it."[60] "Educational benefit" appears in a series with the terms "scholarships" and "stipends," both of which are payments that the recipient is not generally required to repay. Construing the term "educational benefit" narrowly, to indicate conditional grants, allows it to have a similar function.[61]

Conversely, a broad construction of the term "educational benefit" would violate the canon against surplusage, a "cardinal rule of statutory interpretation."[62] Indeed, if "educational benefit" were meant to include any benefits extended for educational purposes, the term would obviate the need to separately list scholarships and stipends in subsection (a)(8)(A)(ii). In addition, such an interpretation renders the bulk of section (a)(8) unnecessary. As the court in *In re Campbell* noted, "[t]here would be no need to specifically identify . . . particular loans, extended by particular lenders, which are exempted from discharge, since § 523(a)(8)(A)(ii), if interpreted to extend to all education-related loans, would swallow both provisions."[63] There, the court held that the debtor's bar-review loan was dischargeable as it did not fall within the scope of section 523(a)(8)(A)(ii).[64]

In *Husky International Electronics v. Ritz*, the U.S. Supreme Court appeared largely unconcerned with redundancy within section 523(a), accepting overlap among the various exceptions to discharge as "inevitable."[65] There, the court held that the term "actual fraud" in section 523(a)(2)(A) encompassed fraudulent conveyances, rejecting the argument that such a reading created impermissible redundancy with sections 523(a)(4) and (a)(6).[66] Yet the Court in *Husky* underscored that its interpretation of section 523(a)(2)(A) preserved "meaningful distinctions" between the various subsections, despite the existence of some narrow overlap.[67] Interpreting section 523(a)(8)(A)(ii)'s use of "educational benefit" broadly does no such thing. While subsection 523(a)(2)(A)(i) governs public and nonprofit loans and subsection 523(a)(2)(B) governs for-profit loans that qualify under the IRS' definition of qualified educational loans, a broad interpretation of subsection 523(a)(2)(A)(ii) would encompass all such loans, subject only to the requirements that the funds be received and constitute an educational benefit.

Moreover, concerns of superfluity carried less weight in *Huskey* because the competing interpretation also created redundancy.[68] Here, the narrow interpretation of section 523(a)(8)(A)(ii) gives full, independent effect to each sub-provision. Finally, the redundancies at issue in *Husky* occurred across several different exceptions to discharge, each of which has followed an independent legislative path and responds to a distinct policy concern. Disregarding redundancies within the very same subsection and clause, as the broad view of section 523(a)(8)(A)(ii) would require, is another matter entirely.

Congress' use of the term "educational benefit" elsewhere in section 523(a)(8) lends further support to the narrow interpretation.[69] Section 523(a)(8)(A)(i) excepts from discharge "an *educational benefit* overpayment or loan made, insured, or guaranteed in whole or in part by a governmental unit, or made under any programs funded in whole or in part by a governmental unit or nonprofit institution."[70] Here, the disjunctive use of "educational benefit overpayment *or* loan" suggests that Congress believed these terms are distinct. Moreover, case law interpreting this provision has construed "educational benefit overpayments" to refer to overpayments made as part of educational grant programs.[71] For example, one court noted that "[e]ducational benefit overpayment occurs in

programs like the GI Bill where students receive periodic payment upon their certification that they are attending school. When a student receives funds but is not in school, this is an educational benefit overpayment."[72]

3. "AS AN"

A small handful of courts have found Congress' use of the phrase "*as* an educational benefit" to be significant.[73] As the Bankruptcy Court for the District of Maryland recently explained, the term "as" typically refers to the character of a thing, whereas "for" is more commonly used to describe its purpose.[74] For example, Congress used the term "as" in section 523(a)(17) to describe the "debtor's status *as* a prisoner," while section 523(a)(2)(C)(i)(l) it used "for" to describe debts incurred "*for* luxury goods or services."[75] As such, the court held that the debtor's private student loan for a Medical Educational Readiness Program did not qualify as "an obligation to repay funds received as an educational benefit."[76]

This grammatical distinction also supports the contention, raised in recent academic work, that section 528's use of the term "benefit" tracks the use of that term in the employment and insurance context.[77] Many dictionaries contain a secondary definition of the term "benefit" that references its use in these contexts. For example, Merriam Webster defines "Benefit" as, among other things, **"**financial help in time of sickness, old age, or unemployment," "a payment or service provided for under an annuity, pension plan, or insurance policy," or "a service (such as health insurance) or right (as to take vacation time) provided by an employer in addition to wages or salary."[78] When "educational benefit" is considered alongside phrases such as "insurance benefit" or "retirement benefits," it is reasonable to construe this term as indicating "educational funds that a student receives in exchange for agreeing to perform services in the future."[79]

4. LEGISLATIVE HISTORY AND POLICY

The prior parts have found ample support in the text of section 523(a)(8)(A)(ii) to follow the narrow interpretation of the phrase "obligation to repay funds received as an educational benefit." This section demonstrates that a narrow reading is consistent with the legislative foundations of this provision. As noted above, the language at issue, "funds received as an educational benefit," first appeared in section 523(a)(8) in 1990.[80] Before this point, each iteration of section 523(a)(8) used the term "educational loans."[81] The available legislative history suggests that this new language was added to ensure that educational support provided as a benefit of employment or other service received the same non-dischargeability treatment as student loans.[82]

This issue had come to the fore several years earlier, in the Eighth Circuit's decision in *U.S. Dep't of Health and Hum. Servs. v. Smith*.[83] In this case, the debtor Smith had received a grant under the Physician Shortage Area Scholarship Program, which provided financial assistance to medical students in exchange for their agreement to work in underserved geographical areas after graduation.[84] Smith did not comply with the terms of the scholarship and thus incurred an obligation to repay the grant, with interest.[85] The lower courts both held that Smith's obligation to repay the grant did not qualify as a "loan" under the terms of section 523(a)(8), and was therefore dischargeable.[86] The Eighth Circuit reversed, reasoning that the term "loan" could be construed to include an obligation to pay funds related to a conditional grant.[87]

The 1990 amendments, enacted four years later, appear to codify the ruling in *Smith* by affording conditional grants similar treatment to other student loans. Although the legislative record is slim, testimony from a Congressional hearing supports this reading. In particular, Bob Wortham, U.S. Attorney for the Eastern District of Texas, testified:

> This section adds to the list of non-dischargeable debts, obligations to repay *educational funds received in the form of benefits* (such as VA benefits), scholarships (such as medical service corps scholarships) and stipends. These obligations are often very sizeable and should receive the same treatment as a "student loan" with regard to restrictions on dischargeability in bankruptcy.[88]

After these amendments became effective, for-profit trucking schools and other creditors argued

that their private educational loans were excepted from discharge as "an obligation to repay funds received as an educational benefit."[89] The courts interpreting this new language overwhelmingly rejected this contention.[90] For example, after considering superfluity problems with this analysis, the Bankruptcy Court for the Eastern District of Missouri concluded that the phrase—

> clearly has a plain meaning. It does not need to be construed broadly to except all loans for educational benefits from discharge. The provision grants protection to "obligations to repay funds received as an educational benefit." An example of such an obligation would be for funds provided as grants that must be repaid only under certain conditions (like the failure of a medical student grant recipient to practice in a physician shortage area after graduation).[91]

Thus, the dominant understanding at the time this language was added to the Bankruptcy Code confined its application to conditional grants.

In 2005, Congress reorganized section 523(a)(8), breaking the former language into two subsections and adding subsection 523(a)(8)(B).[92] While the phrase "obligation to repay funds received as an educational benefit" previously shared a clause with the contents of current section 528(a)(8)(A)(i) ("an educational benefit overpayment or loan made, insured, or guaranteed by a governmental unit, or made under any program funded in whole or in part by a governmental unit or nonprofit institution,") it now occupies its own subsection. As noted above, several courts have concluded that this change indicates Congress' intent that for-profit loans should now be contained within the scope of section 523(a)(8)(A)(ii).[93]

This conclusion falters, however, when considered in the broader scheme of BAPCPA's amendments to section 523(a)(8). In addition to this organizational change, Congress drafted a new exception to discharge that targeted certain, but not all, for-profit student loans: section 523(a)(8)(B) excepts from discharge for-profit loans that meet the definition of "qualified education loans" under the Internal Revenue Code of 1986.[94] If Congress intended subsection 523(a)(8)(A)(ii) to broadly except all education-related loans from discharge, there would be no purpose to drafting the more restrictive exception in section 523(a)(8)(B).[95] Further, we presume that Congress drafts statutes with knowledge of prior judicial interpretations, which in this case exclude private loans from the definition of "educational benefit, scholarship, or stipend."[96] Yet Congress chose not to alter this language as part of its 2005 reorganization, which indicates that its construction should remain the same as it was before. As such, a better interpretation of Congress' decision to separate "funds received as an educational benefit" from the balance of section 523(a)(8) underscores the difference between an "educational benefit" and a "loan."[97] As one court put it, "[t]he fact that Congress amended Section 523(a)(8) in 2005 to contain three disjunctive subsections more likely indicates that Congress intended Section 523(a)(8)(A)(ii) to cover debts totally different from the other two subsections."[98]

Interpreting section 523(a)(8)(A)(ii) to cover conditional grants aligns with the strong policy to construe exceptions to discharge narrowly and in favor of the debtor's fresh start.[99] Further, it limits the risk that creditors might secure non-dischargeable status through creative draftsmanship. Courts that adopt the broad view often rely on signed acknowledgements[100] and other disclosures that the loan is non-dischargeable[101] when determining whether a loan had an educational purpose. While this evidence is no doubt probative of the purpose of the loan, it might permit creditors to contract their way into non-dischargeability *ex ante*, in a manner not permitted under any other exception to discharge. On the contrary, each of the twenty other exceptions to discharge carves out debts based on the identity of the creditor (including various governmental units, former spouses, and the like)[102] or a certain action of the debtor (such as fraud, malicious injury, driving under the influence, etc.).[103] The narrower reading of subsection (a)(8)(A)(ii) better aligns with this treatment, as it restricts the provision's application to particular types of student loan providers and programs.

IV. THE STUDENT LOAN NON-DISCHARGEABILITY CLASS ACTIONS

The narrow view of section 523(a)(8)(A)(ii), as described in the prior part, has recently taken hold

in a number of jurisdictions. And now, class actions involving section 523(a)(8)(A)(ii) have begun to arise in bankruptcy courts around the nation.[104] These cases allege that private lenders have taken advantage of the lack of clarity regarding subsection 523(a)(8)'s scope, intentionally misleading their borrowers into believing their debts are excepted from discharge.[105] They seek declaratory and injunctive relief, as well as money damages for violations of the discharge injunction.

These class actions require courts to grapple with the competing interpretations of section 523(a)(8) articulated above. They also involve complicated jurisdictional and remedial issues. The balance of this BLL profiles one such case, which is currently on appeal before the Fifth Circuit. It will briefly highlight the challenges that arise from the class-action nature of these cases, which I will handle in more detail in a forthcoming *Law Letter*.

A. CROCKER V. NAVIENT SOLUTIONS, LLC

Evan Crocker was a chapter 7 debtor in the Southern District of Texas with over $117,000 in student loan debt owing to Navient Solutions, LLC and Navient Credit Finance Corporation (collectively, "Navient").[106] These amounts included a bar-exam study loan originated by Sallie Mae Bank and subsequently transferred to Navient.[107] Neither Navient nor Sallie Mae is a government or non-profit lenders (subject to § 523(a)(8)(A)(i)), and the loans at issue in this case are not qualified educational loans under Code § 523(a)(8)(B).

Crocker received a discharge in his chapter 7 case on February 9, 2016.[108] After facing post-discharge collection activities from Navient, Crocker filed suit in the Bankruptcy Court for the Southern District of Texas seeking a determination that the debt owed to Navient was discharged in his bankruptcy case. He also sought an injunction barring Navient from further engaging in collection efforts.[109] Later that month, Crocker filed an amended complaint adding Michael Shahbazi as a plaintiff and seeking certification of a nationwide class of debtors. Shahbazi received a discharge in his chapter 7 case in the Eastern District of Virginia in 2011. His scheduled debts included a career training loan for tuition to an unaccredited technical school, which had been originated by Sallie Mae and later transferred to Navient.[110] The amended complaint alleged that Navient and affiliates have engaged in a scheme to collect discharged educational debt in violation of section 524. It sought damages for contempt in addition to declaratory and injunctive relief.[111]

Navient sought to compel arbitration of the claims, but that motion was denied.[112] Subsequently, Navient moved for summary judgment. It argued that the bankruptcy court lacks jurisdiction to enforce the discharge injunction in favor of Shahbazi and class members in other districts, and that the loans are excepted from discharge because they are obligations to repay funds received as educational benefits under section 523(a)(8)(A)(ii).[113] The Bankruptcy Court for the Southern District of Texas denied that motion.[114]

In so holding, the *Crocker* court joined the growing number of courts to adopt a narrow reading of section 523(a)(8)(A)(ii). The court ruled that this provision unambiguously excluded loans from its scope, and was instead designed to cover benefits such as "tuition advances by an employer that must be repaid if the employee leaves her employment within a certain period of time."[115] To support this interpretation, the court drew from several of the interpretive principles discussed above. It highlighted Congress' use of the terms "obligation to repay," in contrast to the use of "loan" in other provisions of section 523(a)(8).[116] The court further noted that Congress' decision to use the phrase "received *as* an educational benefit," instead of the more common parlance "received *for* an educational benefit" supported this limited definition.[117] Finally, the court observed the slippery slope created by the broad view. If all loans that were somehow used for education qualified for non-dischargeability under section 523(a)(8)(A)(ii), a car loan used by a commuting student to get to school would likewise be non-dischargeable.[118]

B. JURISDICTION AND AUTHORITY OVER A NATIONWIDE DEBTOR CLASS

Before reaching its decision on section 523(a)(8)(A)(ii), the *Crocker* court first ruled that it was permitted to adjudicate the claims of all class

members throughout the nation.[119] It rejected Navient's arguments that it lacked the authority to enforce discharge orders entered by bankruptcy courts of debtors on a nationwide basis. In so holding, it distinguished discharge orders from more bespoke court-ordered injunctions, likening its enforcement of discharge orders to "enforce[ing] a bankruptcy statute."[120] The court further held, briefly and in reliance on the extensive analysis in an earlier case within the district, that it has both subject matter jurisdiction under 28 U.S.C. § 1334 and the requisite constitutional authority to resolve the claims of the debtor class.[121]

Although the court disposed of this issue in a tidy fashion, the case law leading up to this decision is by no means tidy. Courts have long struggled with the varying jurisdictional dimensions of debtor-driven class action adversary proceedings.[122] The conflict is particularly sharp over discharge-injunction cases, because section 524 lacks an express private right of action to collect money damages for these types of violations.[123] A majority of courts have held that violations of the discharge injunction are enforceable only through contempt proceedings.[124] And most of those courts have held that the court that issued the order triggering section 524's injunction has sole authority to punish discharge violations.[125] While some such courts have permitted debtors to aggregate their claims on a district-wide basis, most have resisted nationwide class certification of the kind attempted in *Crocker*.[126] A forthcoming issue of the *Law Letter* will consider *Crocker*'s departure from this authority, alternative legal bases for reaching the same result, and other issues relating to adversary proceedings asserted on a class-wide basis.[127]

V. CONCLUSION

Much ink has been spilled on the topic of student loan debt—now a $1.5 trillion obligation in the U.S.—and the Bankruptcy Code's limited avenues of relief. Although most scholars and commenters have focused on the undue hardship exception, debtors' attorneys in particular should recognize that there may already be opportunities to rein in the scope of section 523(a)(8) in individual cases. *Crocker* is emblematic of this line of cases carving out certain private loans from the scope of section 523(a)(8). And because its reasoning is more faithful to the text, legislative history and bankruptcy policy, we should expect other courts to follow it.

ENDNOTES:

[1]See generally 11 U.S.C.A. § 523(a)(8).

[2]See Brunner v. New York State Higher Educ. Services Corp., 831 F.2d 395, 42 Ed. Law Rep. 535, Bankr. L. Rep. (CCH) P 72025 (2d Cir. 1987) (rejected by, In re Healey, 1993 WL 13000569 (Bankr. E.D. Mich. 1993)) (per curiam); see also In re Frushour, 433 F.3d 393, Bankr. L. Rep. (CCH) P 80433 (4th Cir. 2005) (interpreting the *Brunner* test to require a "certainty of hopelessness").

[3]Jason Iuliano, An Empirical Assessment of Student Loan Discharges and the Bankruptcy Undue Hardship Standard, 86 Am. Bankr. L.J. 495 (2012) (arguing that too few lawyers attempt to obtain hardship-based discharges).

[4]See John A.E. Pottow, The Nondischargeability of Student Loans in Personal Bankruptcy Proceedings: The Search for a Theory, 44 Canadian Bus. L.J. 245, 248-49 (2007) (describing this legislative history and noting the "*lack* of empirical evidence supporting routine abuse by rich-career students using bankruptcy just out of school").

[5]On the contrary, studies have shown a higher-than-expected rate of hardship discharges. See, e.g., Rafael I. Pardo & Michelle R. Lacey, The Real Student-Loan Scandal: Undue Hardship Discharge Litigation, 83 Am. Bankr. L.J. 179 (2009) (Approximately 57% of the 115 studied cases resulted in some discharge of student loans); 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, 479 (2005) (45% of sample resulted in a discharge of student loans). This is not to say that the system functions well. Both of these papers highlight imbalance in the application of the standard, giving rise to significant access-to-justice concerns. See id.

[6]*See infra* note 94. These cases have been championed by attorney Austin Smith, who charted the argument for the American Bankruptcy Institute Consumer Bankruptcy Newsletter in 2014. *See* Austin C. Smith, The Misinterpretation of 11 U.S.C.A. § 523(a)(8), Amer. Bankr. Inst. Cons. Bankr. Newsletter, July 2014.

[7]11 U.S.C.A. § 523(a)(8)(A)(ii).

[8]For a more thorough treatment of this trend, see the forthcoming work, Jason Iuliano, Student Loan Bankruptcy and the Meaning of Educational Benefit, 92 American Bankruptcy Law Journal (forthcoming 2019) (draft on file with author).

These cases fit into a broader judicial trend to relax, where possible, their treatment of student loan debt. Katy Stech Ferek, Judges Wouldn't Consider Forgiving Crippling Student Loans—Until Now, WALL STREET JOURNAL June 14, 2018, at 1.

[9]Iuliano, supra note 8 (estimating that non-qualified career training loans comprise 3% of the overall student loan market, or $4.5 billion).

[10]585 B.R. 830, 832 (Bankr. S.D. Tex. 2018)

[11]See Education Amendments of 1976, Pub. L. No. 94-482, § 127(a), 90 Stat. 2081, 2099 (repealed 1978).

[12]Education Amendments of 1976, Pub. L. No. 94-482, § 127(a), 90 Stat. 2081, 2099 (repealed 1978).

[13]Bankruptcy Reform Act of 1978, Pub. L. No. 95-598, 92 Stat. 2549 (1978).

[14]See, e.g., In re Johnson, 218 B.R. 449, 451-53, Bankr. L. Rep. (CCH) P 77655 (B.A.P. 8th Cir. 1998).

[15]Pardo & Lacey, supra note 5 at 420-28 (summarizing conflicting congressional testimony and suggesting that courts' interpretation of the legislative intent of the provision has placed too much weight on certain statements in the legislative record).

[16]*See* Pardo and Lacey, *supra* note 5, at 421-24.

[17]H.R. Rep. No. 94-1232 (1976), reprinted in 1978 U.S.C.C.A.N. 5963, 6109.

[18]Pardo and Lacey, *supra* note 5, at 421-23.

[19]Pardo and Lacey, *supra* note 5, at 421-23 (positing that the law ultimately became effective in a "do or die fashion" based on the expiration of the student loan program then in effect).

[20]See Act of August 14, 1979, Pub. L. No. 96-56, § 3(1), 93 Stat. 387, 387 (1979) (replacing the phrase "to a governmental unit, or a nonprofit institution of higher education, for an educational loan" with "for an educational loan made, insured, or guaranteed by a governmental unit, or made under any program funded in whole or in part by a governmental unit or a nonprofit institution of higher education"); Bankruptcy Amendments and Federal Judgeship Act of 1984, Pub. L. No. 98-353, § 454(a)(2), 98 Stat. 333, 375 (removing the phrase "of higher education" from the foregoing quotation). The 1979 amendments also clarified the five-year limitation, by adding the phrase "exclusive of any applicable suspension of the repayment period" to subsection 523(a)(8). See Act of August 14, 1979, Pub. L. No. 96-56, § 3(1), 93 Stat. 387, 387 (1979).

[21]Crime Control Act of 1990, Pub. L. No. 101-647, § 3621(1), 104 Stat. 4789, 4964.

[22]The full text of the revised language reads as follows: "for an educational benefit overpayment or loan made, insured or guaranteed by a governmental unit, or made under any program funded in whole or in part by a governmental unit or nonprofit institution, or for an obligation to repay funds received as an educational benefit, scholarship or stipend." Crime Control Act of 1990, Pub. L. No. 101-647, § 3621(1), 104 Stat. 4789, 4964.

[23]Higher Education Amendments of 1998, Pub. L. No. 105-244, § 971(a), 112 Stat. 1581, 1837.

[24]Bankruptcy Abuse Prevention and Consumer Protection Act (BAPCPA), Pub. L. No. 109-8, 119 Stat. 23 (2005).

[25]Pub. L. No. 109-8, 119 Stat. 23 (2005).

[26]11 U.S.C.A. § 523(a)(8)(A)(i).

[27]11 U.S.C.A. § 523(a)(8)(A)(ii).

[28]11 U.S.C.A. § 523(a)(8)(B).

[29]See, e.g., In re Maas, 497 B.R. 863, 869 (Bankr. W.D. Mich. 2013), aff'd, 514 B.R. 866 (W.D. Mich. 2014) ("Although the breadth of this term has been the subject of some debate, a majority of courts determine whether a loan qualifies as an "educational benefit" by focusing on the stated purpose for the loan when it was obtained, rather than on how the loan proceeds were actually used.").

[30]See, e.g., In re Brown, 539 B.R. 853 (Bankr. S.D. Cal. 2015); In re Vuini, 2012 WL 5554406 (Bankr. M.D. Fla. 2012); In re Skipworth, 2010 WL 1417964 (Bankr. N.D. Ala. 2010).

[31]See, e.g., In re Roy, 2010 WL 1523996, at *1 (Bankr. D. N.J. 2010).

[32]See, e.g. In re Belforte, 68 Collier Bankr. Cas. 2d (MB) 829, 2012 WL 4620987, at *2 (Bankr. D. Mass. 2012).

[33]*See* Belforte, 2012 WL 4620987, at *2.

[34]In re Christoff, 527 B.R. 624, 635, 73 Collier Bankr. Cas. 2d (MB) 689, 315 Ed. Law Rep. 900, Bankr. L. Rep. (CCH) P 82795 (B.A.P. 9th Cir. 2015) (collecting examples); see also In re Campbell, 547 B.R. 49, 55, 328 Ed. Law Rep. 858 (Bankr. E.D. N.Y. 2016) ("Some courts have decided without explanation, or assumed, that 'educational benefit,' as used in § 523(a)(8)(A)(ii), encompasses any loan which relates in some way to education.").

[35]In re Nypaver, 581 B.R. 431, 435 & n.6 (Bankr. W.D. Pa. 2018).

[36]See, e.g., In re Roy, 2010 WL 1523996, at *1 (Bankr. D. N.J. 2010); In re Carow, 2011 WL 802847, at *4 (Bankr. D. N.D. 2011); In re Beesley, 2013 WL 5134404, at *4 (Bankr. W.D. Pa. 2013).

[37]In re Roy, 2010 WL 1523996, at *1 (Bankr. D. N.J. 2010) (citations omitted).

[38]Pub. L. No. 109-8, 119 Stat. 23.

[39]The origin of this oft-quoted phrase is In re Baiocchi, 389 B.R. 828, 831-832, 59 Collier Bankr. Cas. 2d (MB) 1618, 234 Ed. Law Rep. 162, Bankr. L. Rep. (CCH) P 81260 (Bankr. E.D. Wis. 2008), a case that applied section 523(a)(8)(A)(ii) to a

conditional educational grant.

[40]In re Corbin, 506 B.R. 287, 295 (Bankr. W.D. Wash. 2014); In re Roy, 2010 WL 1523996, at *1 (Bankr. D. N.J. 2010) ("Under the current version of the statute it is immaterial whether Sylvan [Learning Center] is government supported, a school, or a for-profit institution."); In re Carow, 2011 WL 802847, at *4 (Bankr. D. N.D. 2011)("[E]ven if the loans were not a qualified educational loan [sic] . . . it is enough that the debt at issue be 'an obligation to repay funds received as an educational benefit.' "); In re Belforte, 68 Collier Bankr. Cas. 2d (MB) 829, 2012 WL 4620987, at *6 (Bankr. D. Mass. 2012) ("Although § 523(a)(8)(A)(i) requires that the loan be made by a governmental unit or nonprofit institution, § 523(a)(8)(A)(ii) no longer has any such requirement.").

[41]In re Skipworth, 2010 WL 1417964, at *1 (Bankr. N.D. Ala. 2010).

[42]In re Skipworth, 2010 WL 1417964, at *3 (Bankr. N.D. Ala. 2010).

[43]See, e.g., In re Carow, 2011 WL 802847, at *4 (Bankr. D. N.D. 2011) ("Given the breadth afforded to the phrase 'educational benefit,' these facts clearly establish that the Chase loans were used to provide Debtor an educational benefit."); In re Brown, 539 B.R. 853, 858 (Bankr. S.D. Cal. 2015) ("Thus, the trend in the Ninth Circuit and elsewhere is to interpret § 523(a)(8)(A)(ii) broadly."); In re Beesley, 2013 WL 5134404, at *4 (Bankr. W.D. Pa. 2013) (referencing courts adopting very broad interpretation).

[44]Corbin, 506 B.R. at 296.

[45]Corbin, 506 B.R. at 297.

[46]Corbin, 506 B.R. at 297.

[47]Although this interpretation of section 523(a)(8)(A)(ii) has gained significant ground in recent years, it is not novel. On the contrary, several decisions predating BAPCPA construed the phrase "funds received as an educational benefit" consistently with the description that follows. See, e.g., London-Marable v. Sterling, 2008 WL 2705374 (D. Ariz. 2008); In re Scott, 287 B.R. 470 (Bankr. E.D. Mo. 2002); In re Meinhart, 211 B.R. 750, 31 Bankr. Ct. Dec. (CRR) 382, Bankr. L. Rep. (CCH) P 77524 (Bankr. D. Colo. 1997); In re McClure, 210 B.R. 985, 38 Collier Bankr. Cas. 2d (MB) 851 (Bankr. N.D. Tex. 1997).

[48]See, e.g., Army ROTC Scholarships, https://www.goarmy.com/rotc/college-students/four-year-scholarships.html (describing the scholarship and its commitment to serve for four years after graduation).

[49]See, e.g., National Health Service Corps., https://bhw.hrsa.gov/loansscholarships/nhsc ("If we award you a scholarship, we pay your tuition, eligible fees, other reasonable educational costs, and a living stipend. In return, you will work at an NHSC-approved site in a high-need urban, rural or frontier community for at least two years.").

[50]See, e.g., In re Baiocchi, 389 B.R. 828, 59 Collier Bankr. Cas. 2d (MB) 1618, 234 Ed. Law Rep. 162, Bankr. L. Rep. (CCH) P 81260 (Bankr. E.D. Wis. 2008) (describing a program in which debtor's employer reimbursed the debtor for a portion of the costs of attending law school); see also Iuliano, *supra* note 8 (collecting examples).

[51]Campbell, 547 B.R. at 55 (loan for bar review did not fall within the scope of § 523(a)(8)(A)(ii)).

[52]In re Crocker, 585 B.R. 830, 832 (Bankr. S.D. Tex. 2018) (loan to attend unaccredited technical school did not fall within the scope of § 523(a)(8)(A)(ii)).

[53]In re Essangui, 573 B.R. 614, 624 (Bankr. D. Md. 2017) (loan to participate in Medical Education Readiness Program did not fall within the scope of § 523(a)(8)(A)(ii)).

[54]See, e.g., In re Nypaver, 581 B.R. at 440 (obligation that debtor owed to her father to reimburse father for "Parent PLUS" loans did not fall within the scope of § 523(a)(8)(A)(ii)).

[55]11 U.S.C.A. § 523(a)(8)(A)(i).

[56]11 U.S.C.A. § 523(a)(8)(B).

[57]Duncan v. Walker, 533 U.S. 167, 173, 121 S. Ct. 2120, 150 L. Ed. 2d 251 (2001); see also Connecticut Nat. Bank v. Germain, 503 U.S. 249, 253-54, 112 S. Ct. 1146, 117 L. Ed. 2d 391, 22 Bankr. Ct. Dec. (CRR) 1130, 26 Collier Bankr. Cas. 2d (MB) 175, Bankr. L. Rep. (CCH) P 74457A (1992) ("[I]n interpreting a statute a court should always turn first to one, cardinal canon before all others. We have stated time and again that courts must presume that a legislature says in a statute what it means and means in a statute what it says there.") (citations omitted).

[58]See, e.g., In re Essangui, 573 B.R. at 624 ("Although common usage of the word "funds" could (as argued by the Defendant) include the proceeds of a loan, the structure of section 523(a)(8) suggests a more limited and tailored definition.").

[59]11 U.S.C.A. § 523(a)(8)(A)(ii).

[60]Black's Law Dictionary; *see also* McDonnell v. U.S., 136 S. Ct. 2355, 2368, 195 L. Ed. 2d 639 (2016) (noting that "a word is known by the company it keeps").

[61]See, e.g., Campbell, 547 B.R. at 55; Nypaver, 581 B.R. at 438.

[62]See, e.g., Campbell, 547 B.R. at 59-60; Essangui, 573 B.R. at 623. The canon against surplusage requires that courts "give effect, if possible, to every clause and word of a statute." N.L.R.B. v. SW General, Inc., 137 S. Ct. 929, 941, 197 L. Ed. 2d 263, 208 L.R.R.M. (BNA) 3397, 167 Lab. Cas. (CCH) P 10994 (2017) (internal quotation omitted).

[63]See, e.g., Campbell, 547 B.R. at 54-55; see also

In re Scott, 287 B.R. 470, 474 (Bankr. E.D. Mo. 2002) ("If the third provision of section 523(a)(8) were interpreted to mean that all educational loans were excepted from discharge then the first two categories . . . would certainly be rendered meaningless and superfluous . . . . The third category would subsume the first two provisions and make them completely unnecessary. Such an interpretation is contrary to statutory interpretation and to common sense."); Nypaver, 581 B.R. at 438; Nunez, 527 B.R. at 415; In re Schultz, 2016 WL 8808073, *3 (Bankr. D. Minn. 2016).

[64]Campbell, 547 B.R. at 60.

[65]See, e.g., Husky Intern. Electronics, Inc. v. Ritz, 136 S. Ct. 1581, 1588, 194 L. Ed. 2d 655, 62 Bankr. Ct. Dec. (CRR) 156, 75 Collier Bankr. Cas. 2d (MB) 943, Bankr. L. Rep. (CCH) P 82943 (2016).

[66]Huskey, 136 S. Ct. at 1588.

[67]Huskey, 136 S. Ct. at 1588.

[68]Huskey, 136 S. Ct. at 1588 ("noting that the competing interpretation of "actual fraud" "does not avoid duplication").

[69]*See generally* Iuliano, *supra* note 8 (discussing the use of educational benefit throughout section 523(a)(8)).

[70]11 U.S.C.A. § 523(a)(8)(A)(i) (emphasis added).

[71]In re Murphy, 282 F.3d 868, 871, 48 Collier Bankr. Cas. 2d (MB) 88, Bankr. L. Rep. (CCH) P 78604 (5th Cir. 2002) (collecting authority for the proposition that "[c]ourts have interpreted the phrase "educational benefit overpayment" to include a category of governmental programs that pay students for the anticipated cost of future tuition").

[72]In re Renshaw, 229 B.R. 552, 556 (B.A.P. 2d Cir. 1999), aff'd, 222 F.3d 82, 146 Ed. Law Rep. 675, Bankr. L. Rep. (CCH) P 78241 (2d Cir. 2000) (collecting authority).

[73]Essangui, 573 B.R. at 623.

[74]Essangui, 573 B.R. at 623 (referencing the definitions of "as" ("in the capacity or character of") and "for" ("toward the purpose or goal of") in Merriam Webster dictionary).

[75]Essangui, 573 B.R. at 623.

[76]Essangui, 573 B.R. at 626.

[77]Iuliano, *supra* note 8, at 16.

[78]"Benefit." *Merriam-Webster.com*. Merriam-Webster, n.d. Web. 6 Sept. 2018.

[79]Iuliano, *supra* note 8, at 17.

[80]Crime Control Act of 1990, Pub. L. No. 101-647, § 3621(1), 104 Stat. 4789, 4964.

[81]Campbell, 547 B.R. at 55.

[82]This history is discussed in detail in Campbell, 547 B.R. at 55-58.

[83]U.S. Dept. of Health and Human Services v. Smith, 807 F.2d 122, 15 Bankr. Ct. Dec. (CRR) 610, 15 Collier Bankr. Cas. 2d (MB) 1405, 36 Ed. Law Rep. 560 (8th Cir. 1986).

[84]Smith, 807 F.2d at 123.

[85]Smith, 807 F.2d at 123.

[86]Smith, 807 F.2d at 123.

[87]Smith, 807 F.2d at 127.

[88]Federal Debt Collection Procedures of 1990: Hearing on P.L. 101-647 Before the H. Subcomm. on Econ. and Commercial Law, H. Judiciary Committee 101st Cong. 42 (June 14, 1990) 74-75 (emphasis added).

[89]See In re Meinhart, 211 B.R. 750, 31 Bankr. Ct. Dec. (CRR) 382, Bankr. L. Rep. (CCH) P 77524 (Bankr. D. Colo. 1997) (educational loan for truck driving school tuition); In re Jones, 242 B.R. 441, 43 Collier Bankr. Cas. 2d (MB) 1093 (Bankr. W.D. Tenn. 1999) (same); In re McClure, 210 B.R. 985, 38 Collier Bankr. Cas. 2d (MB) 851 (Bankr. N.D. Tex. 1997)(same).

[90]See Campbell, 547 B.R. at 56 (collecting authority).

[91]In re Scott, 287 B.R. 470, 474 (Bankr. E.D. Mo. 2002).

[92]Bankruptcy Abuse Prevention and Consumer Protection Act (BAPCPA), Pub. L. No. 109-8, 119 Stat. 23 (2005).

[93]See, e.g., In re Belforte, 68 Collier Bankr. Cas. 2d (MB) 829, 2012 WL 4620987, at *6 (Bankr. D. Mass. 2012) ("Although § 523(a)(8)(A)(i) requires that the loan be made by a governmental unit or nonprofit institution, § 523(a)(8)(A)(ii) no longer has any such requirement").

[94]11 U.S.C.A. § 523(a)(8)(B).

[95]Nunez, 527 B.R. at 415.

[96]*See* Nunez, 527 B.R. at 415 (collecting cases).

[97]In re Christoff, 527 B.R. at 634 (interpreting this change to evince Congress' understanding that this language refers to "a separate category delinked from the phrases 'educational benefit or loan' in § 523(a)(8)(A)(i) and 'any other educational loan' in § 523(a)(8)(B)") (internal quotation omitted).

[98]Nypaver, 581 B.R. at 439 (italics in original omitted).

[99]See, e.g., Bullock v. BankChampaign, N.A., 569 U.S. 267, 133 S. Ct. 1754, 1760, 185 L. Ed. 2d 922, 57 Bankr. Ct. Dec. (CRR) 265, 69 Collier Bankr. Cas. 2d (MB) 456, Bankr. L. Rep. (CCH) P 82481 (2013) (noting the "long-standing principle that exceptions to discharge should be confined to those plainly expressed") (internal citations and quotations omitted); see also Christoff, 527 B.R. at 633 (explaining how a narrow interpretation better aligns with this policy).

[100]In re Vuini, 2012 WL 5554406, *3 (Bankr. M.D. Fla. 2012).

[101]In re Maas, 497 B.R. at 871.

[102]See, e.g., 11 U.S.C.A. § 523(a)(1), (5), (7), (16), (17), (18), (19), (20).

[103]See, e.g., 11 U.S.C.A. § 523(a)(2), (3), (4), (6), (9), (10), (11), (12), (13), (14), (21).

[104]See, e.g., Golden v. JP Morgan Chase (In re Golden), Adv. Pro. No. 17-01005 (Bankr. E.D.N.Y. 2017); Henry v. Educ. Fin. Servs. (In re Henry), Adv. Pro. No. 18-03154 (Bankr. S.D. Tex. 2018); Homaidan v. SLM Corporpation (In re Homaidan), Adv. Pro. No. 17-01085 (Bankr. E.D.N.Y. 2017); Crocker v. Navient Solutions, LLC (In re Crocker), Adv. Pro. No. 18-20254 (Bankr. S.D. Tex. 2018).

[105]See id. Some of the class action complaints juxtapose the creditors' collection actions against language in prospectuses regarding asset-backed securities, alleging that creditors were well aware of the risks to dischargeability when they attempted to collect non-qualified private educational loans after discharge. See id.

[106]In re Crocker, 585 B.R. 830, 832 (Bankr. S.D. Tex. 2018).

[107]Crocker, 585 B.R. at 832.

[108]Crocker, 585 B.R. at 832.

[109]Crocker, 585 B.R. at 833.

[110]Crocker, 585 B.R. at 832.

[111]Crocker, 585 B.R. at 833.

[112]Crocker, 585 B.R. at 833.

[113]Crocker, 585 B.R. at 833.

[114]Crocker, 585 B.R. at 837.

[115]Crocker, 585 B.R. at 836.

[116]Crocker, 585 B.R. at 836.

[117]Crocker, 585 B.R. at 836.

[118]Crocker, 585 B.R. at 836.

[119]Crocker, 585 B.R. at 835.

[120]Crocker, 585 B.R. at 835.

[121]See Crocker, 585 B.R. at 835 (relying on In re Cano, 410 B.R. 506 (Bankr. S.D. Tex. 2009)).

[122]See generally Kara Bruce, The Debtor Class, 88 Tul. L. Rev. 21 (2013).

[123]See 11 U.S.C.A. § 524; see also Molloy v. Primus Automotive Financial Services, 247 B.R. 804, 815 (C.D. Cal. 2000) ("The express language of § 524 does not reveal an intent on the part of Congress to create a private right of action for its enforcement.").

[124]See, e.g., Cox v. Zale Delaware, Inc., 239 F.3d 910, 916, 37 Bankr. Ct. Dec. (CRR) 112, Bankr. L. Rep. (CCH) P 78358 (7th Cir. 2001); Pertuso v. Ford Motor Credit Co., 233 F.3d 417, 422-23, 37 Bankr. Ct. Dec. (CRR) 2, 45 Collier Bankr. Cas. 2d (MB) 257, Bankr. L. Rep. (CCH) P 78314, 2000 FED App. 0399P (6th Cir. 2000); Pereira v. First North American Nat. Bank, 223 B.R. 28, 30-31, Bankr. L. Rep. (CCH) P 637 (N.D. Ga. 1998); In re Sullivan, 90 B.R. 307, 308 (M.D. Tenn. 1988).

[125]See, e.g., Cox, 239 F.3d at 917 ("But once [the debtor] has paid the debt in full and is not in jeopardy of being sued, affirmative relief can be sought only in the bankruptcy court that issued the discharge"); In re Williams, 244 B.R. 858, 867, 43 Collier Bankr. Cas. 2d (MB) 1450 (S.D. Ga. 2000), aff'd, 34 Fed. Appx. 967 (11th Cir. 2002) ("The Court, therefore, lacks jurisdiction to enforce violations of § 524's discharge injunction . . . through civil contempt proceedings unless the debtor received his discharge from the Southern District of Georgia."); see also Baker by Thomas v. General Motors Corp., 522 U.S. 222, 236, 118 S. Ct. 657, 139 L. Ed. 2d 580 (1998) ("Sanctions for violations of an injunction . . . are generally administered by the court that issued the injunction."); Waffenschmidt v. MacKay, 763 F.2d 711, 716 (5th Cir. 1985) ("Enforcement of an injunction through a contempt proceeding must occur in the issuing jurisdiction because contempt is an affront to the court issuing the order.").

[126]See, e.g., In re Cline, 282 B.R. 686, 690, 48 Collier Bankr. Cas. 2d (MB) 1527 (W.D. Wash. 2002); see also In re Death Row Records, Inc., 2012 WL 952292, at *12 (B.A.P. 9th Cir. 2012) (finding that the bankruptcy court had jurisdiction over a nationwide class for claims other than claims punishable by contempt); Guetling v. Household Financial Services, Inc., 312 B.R. 699, 704 (M.D. Fla. 2004) ("To the extent those alleged out-of-district class members have claims arising from their bankruptcy proceedings in other districts, those districts are the proper locations to bring those claims or to potentially pursue actions for contempt of any court orders."); Barrett v. Avco Financial Services Management Co., 292 B.R. 1, 8, R.I.C.O. Bus. Disp. Guide (CCH) P 10463 (D. Mass. 2003) ("The court believes that it lacks jurisdiction over the claims of putative class members whose bankruptcies were discharged outside the District of Massachusetts."); In re Singleton, 284 B.R. 322, 325 (D.R.I. 2002) ("Subject matter jurisdiction in this case is determined by the . . . legal principle that only persons subject to a court's authority may be found in contempt by that court."); Bessette v. Avco Financial Services, Inc., 279 B.R. 442, 449, R.I.C.O. Bus. Disp. Guide (CCH) P 10283 (D.R.I. 2002) ("[T]he Court only has jurisdiction over claims that are related to bankruptcy estates in the District of Rhode Island."); In re Williams, 244 B.R. at 867 ("The Court . . . has no jurisdiction to grant declaratory relief for members of the putative class unless the specific discharge injunction . . . was entered by the Southern District of Georgia."); In re Montano, 2007 WL 2688606, at *2 (Bankr. D. N.M. 2007) ("As

a general rule, only the court that issues the disobeyed order or injunction has jurisdiction to hold a violator in contempt."); In re Porter, 295 B.R. 529, 539 (Bankr. E.D. Pa. 2003) ("[B]efore a class action may be maintained under federal bankruptcy court jurisdiction, the class representative must demonstrate that the court has subject matter jurisdiction over each class member's claims, including the claims of the unnamed members."); In re Nelson, 234 B.R. 528, 534, 41 Collier Bankr. Cas. 2d (MB) 1746 (Bankr. M.D. Fla. 1999) ("[T]he bankruptcy court has no jurisdiction to entertain a private cause of action for damages by debtors who obtained their discharge in a court other than this one.").

[127]The bankruptcy court recently certified this case for direct, interlocutory appeal, and briefing has commenced before the Fifth Circuit. Crocker, 585 B.R. at 837.

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