

**IN THE UNITED STATES BANKRUPTCY COURT FOR THE
EASTERN DISTRICT OF TENNESSEE**

In re

Case No. 01-31452

MARC ETHAN CASTELLANI
JODIE SUTTON CASTELLANI
a/k/a JODIE A. SUTTON

Debtors

MARC ETHAN CASTELLANI and
JODIE SUTTON CASTELLANI

Plaintiffs

v.

Adv. Proc. No. 01-3065

EDUCATIONAL CREDIT MANAGEMENT
CORPORATION, SALLIE MAE SERVICING
CORPORATION, UNIVERSITY OF
TENNESSEE

Defendants

MEMORANDUM

APPEARANCES: BAILEY, ROBERTS & BAILEY, P.L.L.C.
N. David Roberts, Jr., Esq.
Post Office Box 2189
Knoxville, Tennessee 37901
Attorneys for Plaintiffs

CHAMBLISS, BAHNER & STOPHEL, P.C.
Bruce C. Bailey, Esq.
1000 Tallan Building
Two Union Square
Chattanooga, Tennessee 37402
Attorneys for Defendant Educational Credit
Management Corporation

BAKER, DONELSON, BEARMAN & CALDWELL
James A. McIntosh, Esq.
Post Office Box 1792
Knoxville, Tennessee 37901
Attorneys for Defendant Sallie Mae Servicing Corporation

OFFICE OF GENERAL COUNSEL
J. Robert Walker, Esq.
Assistant General Counsel
University of Tennessee
719 Andy Holt Tower
Knoxville, Tennessee 37996-0170
Attorney for Defendant University of Tennessee

RICHARD STAIR, JR.
UNITED STATES BANKRUPTCY JUDGE

This matter is before the court on the Debtors' Complaint and Amended Complaint (collectively, Complaint) filed May 9, 2001, and September 28, 2001, respectively.¹ Both Debtors seek a discharge of their individual student loan obligations pursuant to 11 U.S.C.A. § 523(a)(8) (West Supp. 2002).

The court held the trial of this adversary proceeding on July 30, 2002. Along with the testimony of the Debtors and Dr. Lance T. Laurence, Ph.D., a total of fifteen exhibits were stipulated into evidence.

This is a core proceeding. 28 U.S.C.A. § 157(b)(2)(I) (West 1993).

I

The Debtors filed their Joint Chapter 7 Petition on March 22, 2001. Prior to the bankruptcy filing, each Debtor accumulated a substantial level of student loan debt in order to finance their respective post-graduate studies.

(a) The Student Loans

Debtor Jodie Castellani, age 40, took graduate courses at Middle Tennessee State University and the University of Tennessee (U.T.) from 1990 through 1999. She graduated from U.T. in 1999 with a Ph.D. specializing in clinical psychology. In 2000, Mrs. Castellani

¹ Also before the court is the related Counter Complaint of Sallie Mae Servicing Corporation filed June 20, 2001, as amended by a First Amended Counter Complaint of Sallie [sic] Mae Servicing Corporation (collectively, Counter Complaint) filed on May 15, 2002. The Counter Complaint seeks a declaration that the education loans owed to Sallie Mae Servicing Corporation by Debtor Marc Castellani are nondischargeable. Sallie Mae Servicing Corporation also seeks attorney fees and costs of collection.

consolidated her graduate educational loans into a single obligation with the Pennsylvania Higher Education Assistance Agency (PHEAA) in order to obtain a more favorable interest rate. PHEAA subsequently assigned the consolidation loan to Defendant Educational Credit Management Corporation (ECMC).

As of July 18, 2002, Mrs. Castellani owed ECMC \$102,274.02 in interest and principal (\$94,907.49), with additional interest accruing at the rate of \$19.50 per day. Mrs. Castellani testified that she has made two full monthly payments and two partial \$50.00 payments to ECMC. Debtor Marc Castellani is not obligated on the ECMC loan.

Mr. Castellani, age 32, has been enrolled in U.T.'s Ph.D. program since 1992. He anticipates receiving his Ph.D. in August 2002, also specializing in clinical psychology. As of February 19, 2002, Mr. Castellani's student loan indebtedness to Sallie Mae Servicing Corporation (SMSC) totaled \$92,226.03 in interest and principal (\$83,637.00).² Mr. Castellani has made no payments to SMSC and each of his loans is in default. Mrs. Castellani is not obligated on her husband's debt to SMSC.

² Mr. Castellani also has a student loan obligation to U.T. in excess of \$13,000.00. U.T. was named as a Defendant in the Amended Complaint but was later dismissed without prejudice, pursuant to the court's November 8, 2001 Pretrial Order, pending Sixth Circuit or U.S. Supreme Court resolution of the issue of state sovereign immunity to proceedings in bankruptcy.

(b) Employment

At trial, Dr. Laurence testified at length regarding the current job market for newly-graduated clinical psychologists.³ He stated that the advent of managed care in the late 1980s and early 1990s brought about lower fees and higher overhead, negatively impacting both earnings and employment opportunities for psychologists.⁴ He testified that this nationwide obstacle is slightly more severe in Tennessee.⁵ Therefore, over the past few years, the emphasis of U.T.'s psychology Ph.D. program has gradually shifted away from clinical practice and toward academics and research.⁶ Both Debtors are trained in applied psychology and not in the academic and research side. Thus, according to Dr. Laurence, their employment and corresponding financial opportunities are limited in Tennessee.

Dr. Laurence further explained that in 47 states, including Tennessee, newly-graduated psychologists must complete one year of supervised post-doctorate work before becoming licensed. After the supervised year, a psychologist must then accrue at least four more years of relevant experience before most managed care organizations will consider placing him or her on the

³ Dr. Laurence is, among other things, a practicing psychologist and the Director of U.T.'s Psychological Clinic. He is also Mrs. Castellani's therapist and, admittedly, a friend of both Debtors. Nonetheless, the court finds Dr. Laurence to be a competent and informative expert witness. Additionally, and of great import, his testimony was uncontroverted.

⁴ For example, managed care programs generally will not pay for stays at residential alcohol and drug treatment centers. As a result, most or all such centers in this area have closed.

⁵ Dr. Laurence testified that, in Tennessee, ninety percent of mental health care is now provided by professionals who have only a Master's Degree. He further stated that ninety percent of recent Ph.D. graduates leave this area due to the lack of employment opportunity.

⁶ Mr. Castellani was admittedly aware of managed care's impact when he began his graduate studies in 1992. However, he credibly testified of a counseled belief that the managed care system would fail by the time he earned his degree.

organization's panel of psychologists eligible for reimbursement as a preferred provider. During the early years of their career, most psychologists must therefore "piece together" a practice performing tasks such as testing, educational and competency evaluations, disability ratings, and parenting classes.

Since 2000, Mr. Castellani has been employed as a psychometrician by Ridgeview Psychiatric Hospital and Center (Ridgeview) in Oak Ridge, Tennessee. His present annual salary is approximately \$34,000.00.⁷ His position is, in part, federally funded and is therefore at least partially dependent on continued funding from the federal government. Mr. Castellani intends to stay at Ridgeview for at least one more year because that employer is able and willing to provide his required one-year post-doctorate supervision. Mr. Castellani also earns \$25.00 per hour teaching guitar lessons three hours per week.

Dr. Laurence testified that, in the current job market, Mr. Castellani is "fortunate" to have his position at Ridgeview. The witness further stated that Mr. Castellani's future is bright and described him as "very capable," "responsible," and "solid." Dr. Laurence also testified that Mr. Castellani is currently at the lowest-paying point in his career. Mr. Castellani similarly acknowledged that he will be "much more marketable" once he is licensed.

After receiving her Ph.D., Mrs. Castellani worked full-time for Ridgeview and as an independent clinical psychologist. She currently works part-time performing psychological

⁷ Dr. Laurence indicated that typical salaries for recent Ph.D. graduates in this area are as follows: assistant professor of psychology - \$32,000.00; employment in public hospital - \$40,000.00; employment in private hospital - \$50,000.00.

evaluations and testing for a number of companies including Ridgeview. Her income varies, depending on the frequency of referrals she receives. From January 1, 2002, through July 16, 2002, Mrs. Castellani has earned approximately \$12,000.00.

(c) Health Issues

As noted, Mrs. Castellani is presently treated by Dr. Laurence. He has diagnosed her as suffering from bipolar disorder, post-traumatic stress, and borderline personality disorder. Dr. Laurence described her emotional difficulties as "chronic," "serious," "lifelong," and primarily biological in origin.⁸ He further stated that Mrs. Castellani has a history of poor biological responses to psychotropic medication. Mrs. Castellani testified that she also presently suffers from sleep apnea and heart arrhythmia.

Mrs. Castellani stopped working full-time in either late 1999 or early 2000 due to physical problems resulting from a difficult pregnancy. She tried to resume full-time work in 2001 but did not succeed, according to Dr. Laurence, due to difficulties with her emotional problems including mood and stress management. Mrs. Castellani spent one month in a psychiatric hospital in the spring of 2002.

⁸ Dr. Laurence testified that Mrs. Castellani, who was raised by adoptive parents, was taken from her biological family early in life due to abusive problems; that her biological family had a series of nervous and emotional disorders, including schizoaffective, schizophrenia, and drug and alcohol abuse; that she was formerly married to an abusive husband; that she began seeing a psychologist in the early 1990s but that her therapy did not work and she became psychotic for a period of time; and that she started seeing him (Dr. Laurence) in August 1996.

Dr. Laurence recommends that Mrs. Castellani continue working, but only on a half-time or less basis due to her emotional difficulties. He describes Mrs. Castellani professionally as extremely bright with a great deal of talent.

The Debtors have not seriously considered higher-paying employment in another area. According to Dr. Laurence, such a move would be "stressful," "difficult," and "taxing" on Mrs. Castellani due to the change in physical and professional environs and due to the loss of her present support network.

The Debtors have two children. Jordan, age four and a half, is presently under a psychologist's care because of mood swings and rage. Jordan possibly suffers from attention deficit hyperactivity disorder and the Debtors fear that he may have emotional problems that are biological/genetic in origin.

The Debtors' younger son, Michael, is age two. Michael suffers from Hirschsprung's disease⁹ and has already undergone five surgeries. The initial surgery resulted in a colostomy which has since been reversed. Michael sees a specialist in Cincinnati every two to three months.

9

. . . Hirschsprung's disease is an abnormality of the enervation of the large intestine. In Michael's case it was of the lowest portion of the large intestine that was affected with this absence of nerve cells within the wall of the bowel. And without these [nerve] cells the colon and the rectum are not capable of functioning normally

. . . .

In that instance the patient becomes distended, the abdomen becomes distended that is, and vomiting occurs, and if left untreated this functional bowel obstruction can be life threatening.

Deposition of Thomas H. Inge, M.D., Ph.D., at *12.

Although the specialist anticipates that Michael's health problems will disappear by the teenage years, the child continues to experience unexplained internal bleeding.

(d) Financial Considerations

The Debtors reside in a house which they are purchasing. The residence is valued at approximately \$90,000.00, with mortgage payments of \$668.00 per month. SMSC suggests that the house is an unnecessary luxury, but Mrs. Castellani's uncontroverted testimony was that the cost of rental housing for a family of four in the Debtors' area generally approaches or exceeds the current mortgage amount.

The Debtors maintain cable television, internet service, and a cellular telephone. The latter two items are purportedly necessary for Mrs. Castellani's work.

Since filing bankruptcy, the Debtors have accumulated more than \$25,000.00 in new debt. The largest expenditures have been medical bills, car repairs, and the acquisition of a replacement vehicle for Mrs. Castellani. The recently-purchased vehicle, a 1999 Toyota Corolla, replaced a 1992 Plymouth Voyager which had allegedly broken down beyond repair. Mr. Castellani drives a 1994 Ford Taurus with more than 140,000 miles on its odometer.

II

A central purpose of the Bankruptcy Code is to provide a procedure by which certain insolvent debtors can reorder their affairs, make peace with their creditors, and enjoy a new opportunity in life with a clear field for future effort, unhampered by the pressure and

discouragement of preexisting debt.” *Grogan v. Garner*, 111 S. Ct. 654, 659 (1991) (citation and quotation omitted). Congress decided, however, to exclude most educational loan obligations from the Code’s general policy of dischargeability. This decision was based on “the conclusion that the public policy in issue, availability and solvency of educational loan programs for students, outweighs the debtor’s need for a fresh start.” *Andrews Univ. v. Merchant (In re Merchant)*, 958 F.2d 738, 740 (6th Cir. 1992).¹⁰ Accordingly, Congress enacted § 523(a)(8), which provides that most¹¹ student loan debts are nondischargeable unless “excepting such debt from discharge . . . will impose an undue hardship on the debtor and the debtor’s dependents[.]” 11 U.S.C.A. § 523(a)(8).

Section 523(a)(8) requires hardship that is “actually ‘undue,’ as opposed to the garden variety financial hardship experienced by all debtors who file for bankruptcy relief.” *Kirchhofer v. Direct Loans (In re Kirchhofer)*, 278 B.R. 162, 167 (Bankr. N.D. Ohio 2002). Undue hardship is most frequently found in cases involving illness or incapacity. See 4 KING, COLLIER ON BANKRUPTCY ¶ 523.14[2], at 523-97 (15th ed. rev. 2002).

The term “undue hardship” is not defined within the Bankruptcy Code. Courts are therefore left with the arduous task of distinguishing “garden variety” hardship from that which is genuinely “undue.” See *Kirchhofer*, 278 B.R. at 167; see also *Tenn. Student Assistance Corp.*

¹⁰

The student loan program (at least in concept) is one of the kindest and gentlest programs ever devised by our government. Ideally it allows those less fortunate economically to lift themselves to a better economic future by financing their education and training and only then repaying the funds advanced to them for educational needs from the enhanced income that said education allows them to earn. Theoretically, it provides the financial backup for those with the desire to better their prospects.

Cardwell v. Higher Educ. Assistance Found. (In re Cardwell), 95 B.R. 121, 122 (Bankr. W.D. Mo. 1989).

¹¹ The Debtors do not dispute that their educational loans are of the type covered by § 523(a)(8).

v. Hornsby (In re Hornsby), 144 F.3d 433, 437 (6th Cir. 1998). The Sixth Circuit has offered guidance through its ratification of the Second Circuit’s *Brunner* test, under which a debtor may prove undue hardship by 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 . . .; and
- (3) that the debtor has made good faith efforts to repay the loans.

Id. (quoting *Cheesman v. Tenn. Student Assistance Corp. (In re Cheesman)*, 25 F.3d 356, 359 (6th Cir. 1994) (quoting *Brunner v. N.Y. State Higher Educ. Servs. Corp.*, 831 F.2d 395, 396 (2d Cir. 1987) (per curiam))).¹² Debtors bear the burden of proof by a preponderance of the evidence. See *Grogan*, 111 S. Ct. at 660 n.14.

In beginning its *Brunner* analysis, the court must examine a debtor’s overall living situation, focusing closely on the necessity of expenses and the maximization of income opportunities. See *Afflitto v. United States of America (In re Afflitto)*, 273 B.R. 162, 170 (Bankr. W.D. Tenn. 2001). A finding of abject poverty is not required. See *Hornsby*, 144 F.3d at 438.

The court should consider the income of the debtor’s spouse in determining whether the debtor’s household income and expenses are in such a dire condition that a discharge of student

¹² The Sixth Circuit has suggested that courts should also consider “the amount of the debt . . . as well as the rate at which interest is accruing and the debtor’s claimed expenses and current standard of living, with a view toward ascertaining whether the debtor has attempted to minimize the expenses of himself and his dependents.” *Hornsby*, 144 F.3d at 437 (citation and quotations omitted). To the court, however, these considerations are subsumed within the *Brunner* analysis and therefore do not necessitate an additional or expanded “undue hardship” test.

loans is warranted.” *Mitchell v. U.S. Dept. of Educ. (In re Mitchell)*, 210 B.R. 105, 108 (Bankr. N.D. Ohio 1996). A spouse’s income is, however, but one consideration, and in joint cases the court must undertake a separate *Brunner* analysis for each debtor. See *Wilcox v. Educ. Credit Mgmt. (In re Wilcox)*, 265 B.R. 864, 870 (Bankr. N.D. Ohio 2001); see also 2 KING, COLLIER ON BANKRUPTCY ¶ 302.07, at 302-20 (15th ed. rev. 2002) (“[11 U.S.C.A.] Section 302, in authorizing a joint case, does not create a single joint debtor.”).

Under *Brunner*’s second prong, a debtor must show that his financial adversity is “more than a temporary state of affairs.” *Swinney v. Academic Fin. Servs. (In re Swinney)*, 266 B.R. 800, 805 (Bankr. N.D. Ohio 2001). If it is likely that the debtor’s financial situation will improve, then the debt should not be discharged. See *Elebrashy v. Student Loan Corp. (In re Elebrashy)*, 189 B.R. 922, 927 (Bankr. N.D. Ohio 1995). Conversely, “if the inability to repay will extend well into the future, then it is likely that requiring payment would be an undue hardship.” *Markley Educ. Credit Mgmt. Corp. (In re Markley)*, 236 B.R. 242, 247 (Bankr. N.D. Ohio 1999).

Lastly, factors relevant to a debtor’s good faith repayment efforts include:

- (1) the portion of the loan actually repaid;
- (2) whether the debtor's failure to repay the obligation is truly from factors beyond her reasonable control;
- (3) whether the debtor has realistically used all her available financial resources to pay the debt;
- (4) whether the debtor has, in fact, attempted to repay the student loan at all;
- (5) the length of time after the student loan first becomes due that the debtor seeks to discharge the debt; and

(6) the percentage of the student loan in relation to the debtor's total indebtedness.

See *Wilcox*, 265 B.R. at 870.

(a) Mr. Castellani

Because Mr. Castellani cannot satisfy *Brunner's* second and third prongs, his obligations to SMSC will not be discharged in full. Based on the promising professional future discussed above, the court cannot find that Mr. Castellani's inability to pay will continue for a significant portion of his repayment period. Further, Mr. Castellani has not made a good faith effort - or any effort whatsoever - to repay his educational debts. See *Douglass v. Great Lakes Higher Educ. Servicing Corp. (In re Douglass)*, 237 B.R. 652, 657 (Bankr. N.D. Ohio 1999).

(b) Mrs. Castellani

Mrs. Castellani cannot maintain a minimal standard of living for herself and her dependents if forced to repay her ECMC obligation. The more than \$25,000.00 in debt incurred by the Debtors postbankruptcy is telling. The Debtors' monthly budget shows only one possible extravagance - cable television - the cost of which is dwarfed by Mrs. Castellani's most minimal repayment option.¹³ Further, the court is satisfied that the Debtors are currently maximizing their income in light of Mrs. Castellani's medical limitations and Mr. Castellani's licensing constraints.

¹³ The Debtors purport to have paid \$217.50 for cable television from January 1, 2002, through July 16, 2002, which is less than \$37.00 per month. Conversely, under the 25 year Income Contingent Repayment Plan (ICRP) offered by ECMC, Mrs. Castellani's initial payments would begin at \$460.78 per month.

Because Mrs. Castellani suffers from a permanent condition that prevents her from successfully maintaining full-time employment, the inability to repay her student loans is likely to extend well into the future. Although her husband's income, and thus the family's income, should steadily increase, Mr. Castellani has his own student loan burden. It is unlikely that an additional \$460.78 (or more) would remain in this family's budget to meet Mrs. Castellani's monthly ICRP payment.

Lastly, the court finds that Mrs. Castellani made a good faith effort to repay her educational loan. She made a series of full or partial payments until prevented from doing so by medical factors beyond her reasonable control. *See Wilcox*, 265 B.R. at 870.

In sum, Mrs. Castellani has satisfied each element of the *Brunner* test. Her student loan obligation to ECMC will therefore be discharged pursuant to 11 U.S.C.A. § 523(a)(8). However, because her husband has not satisfied *Brunner's* second and third prongs, his debt to SMSC is not fully dischargeable.

III

Although Mr. Castellani is not entitled to a full discharge of his SMSC obligation, it is nonetheless within the court's discretion to partially discharge that debt. *See Hornsby*, 144 F.3d at 438-440. A partial discharge may occur:

by discharging an arbitrary amount of the principal, interest accrued, or attorney's fees; by instituting a repayment schedule; by deferring the debtor's repayment of the student loans; or by simply acknowledging that a debtor may reopen bankruptcy proceedings to revisit the question of undue hardship.

Id. at 440. While Mr. Castellani has a seemingly bright professional future, he also heads a family with numerous, significant, and ongoing medical concerns. His parenting responsibilities are and will continue to be greater than those of most professionals. The court therefore finds a partial discharge warranted by the facts of this case.

Because Mr. Castellani's post-doctorate supervision requirement will be met through continued employment with Ridgeview, it is understandably unlikely that he will move on to a higher-paying employer within the coming year.¹⁴ Further, once the licensing supervision requirement is satisfied, it is likely that additional time will be necessary for Mr. Castellani either to find a different job or to acquire significant sources of income to supplement his Ridgeview employment. The court will therefore partially stay repayment of the principal of his SMSC

¹⁴ As noted, Dr. Laurence testified that it would not be advisable for the Castellanies to relocate to another state in an attempt for Mr. Castellani to find a higher paying job. Mrs. Castellani has family support and mental health care providers here. To remove her from that support coupled with the stress of a move could be emotionally catastrophic.

obligation, \$83,637.00, for two years, during which time Mr. Castellani will be required to make payments of only \$100.00 per month commencing September 1, 2002.¹⁵

In the court's mind, Mr. Castellani's future employment opportunities will be limited to some degree by the additional responsibilities that will invariably flow from the emotional and physical difficulties of his wife and children. Accordingly, the court will further reduce Mr. Castellani's student loan obligation by: (1) discharging all accrued and future interest; and (2) declining to award collection costs or attorney fees in this adversary proceeding. In two years, Mr. Castellani will begin repayment of his principal SMSC indebtedness, reduced by the \$2,400.00 paid during the next two years, upon which no further interest shall accrue, under one of the standard repayment options offered by the Department of Education.¹⁶

A judgment consistent with this Memorandum will be entered.¹⁷

FILED: August 8, 2002

BY THE COURT

/s/

RICHARD STAIR, JR.
UNITED STATES BANKRUPTCY JUDGE

¹⁵ Mr. Castellani presently contributes \$100.00 per month to a retirement account. At trial, counsel for the Debtors conceded that this amount could instead be paid toward Mr. Castellani's educational debt.

¹⁶ The Debtors' counsel suggested a full or partial 18-month stay, at the end of which time the court would revisit anew the SMSC obligation. To the court, however, such an open-ended resolution would severely restrict Mr. Castellani's motivation to increase his earnings.

¹⁷ This ruling is also dispositive of SMSC's Counter Complaint.

**IN THE UNITED STATES BANKRUPTCY COURT FOR THE
EASTERN DISTRICT OF TENNESSEE**

In re

Case No. 01-31452

MARC ETHAN CASTELLANI
JODIE SUTTON CASTELLANI
a/k/a JODIE A. SUTTON

Debtors

MARC ETHAN CASTELLANI and
JODIE SUTTON CASTELLANI

Plaintiffs

v.

Adv. Proc. No. 01-3065

EDUCATIONAL CREDIT MANAGEMENT
CORPORATION, SALLIE MAE SERVICING
CORPORATION, UNIVERSITY OF
TENNESSEE

Defendants

J U D G M E N T

For the reasons stated in the Memorandum filed this date containing findings of fact and conclusions of law as required by FED. R. CIV. P. 52(a), it is ORDERED, ADJUDGED and DECREED as follows:

1. The student loan obligations of the Plaintiff Jodie Sutton Castellani to the Defendant Educational Credit Management Corporation are discharged in their entirety.
2. The student loan obligations of the Plaintiff Marc Ethan Castellani to the Defendant Sallie Mae Servicing Corporation are nondischargeable up to the principal amount of \$83,637.00. Any remaining

obligation, including all accrued and future interest together with costs of collection and attorneys fees, is discharged.

3. The Plaintiff Marc Ethan Castellani will repay the \$83,637.00 nondischargeable student loan owing the Defendant Sallie Mae Servicing Corporation as follows: \$100.00 monthly for twenty-four (24) consecutive months commencing September 1, 2002, and continuing on the first day of each month thereafter through August 1, 2004; the remaining principal balance to be paid under one of the repayment options offered by the United States Department of Education.

4. The Plaintiff Marc Ethan Castellani's \$83,637.00 nondischargeable student loan obligation owing the Defendant Sallie Mae Servicing Corporation will not accrue interest.

ENTER: August 8, 2002

BY THE COURT

/s/

RICHARD STAIR, JR.
UNITED STATES BANKRUPTCY JUDGE