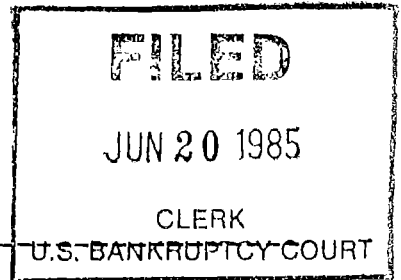


UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF WISCONSIN



In re:

Case Number:

GEORGE ROBERT THEISS
CHRISTINA MARIE THEISS

WF7-83-00876

Debtors.

GEORGE ROBERT THEISS

Plaintiff,

Adversary Number:

v.

83-0311-7

STATE OF WISCONSIN, HIGHER
EDUCATION AIDS BOARD,

Defendant.

FINDINGS OF FACT, CONCLUSIONS OF LAW
AND
ORDER FOR PAYMENT

Debtor George Robert Theiss having filed a Complaint seeking discharge of a student loan debt he has incurred; Wisconsin Higher Education Corporation having filed an Answer and Counterclaim; a trial having been held with Debtor appearing personally and by Attorney Van Buren Wake, Jr., and Defendant appearing by Attorney William H. Olson; the Court being fully advised in the premises, FINDS THAT:

1. Plaintiff on August 20, 1981, borrowed \$2,500 in a student loan from Defendant.
2. Plaintiff has not paid any of the due amount on the loan obligation, either principal or interest. Through May 22, 1985,

the total amount of principal and interest due on this loan was \$3,064.25.

3. On May 31, 1983, Plaintiff and his wife Christina Marie Theiss filed a Chapter 7 Bankruptcy Petition with this Court. On December 14, 1983, Plaintiff filed the complaint in the present action seeking to discharge his student loan obligations.

4. Plaintiff is currently employed in the Pension Department of Employers Insurance of Wausau. His present gross pay on a monthly basis is approximately \$1,861, with net pay of approximately \$1,126. An amount of \$45 is deducted from Plaintiff's before-net biweekly pay. This amount which is directly deposited into Plaintiff's credit union account is used for certain necessities according to Plaintiff. Christina Theiss is not employed. Plaintiff receives a Veteran's disability benefit of \$260 a month. The Debtors possess no significant assets.

5. The Debtors current budget, excluding the \$45 biweekly deductions, includes monthly expenditures of \$1,218. However, Plaintiff testified that this figure is likely to rise by approximately \$100 because of the necessity to rent a larger apartment. Debtors recently had twin babies. They now have four dependent children.

DISCUSSION

6. A student loan, such as Plaintiff's, which has first become due within five years of the bankruptcy filing is not dis-

chargeable unless excepting such debt from discharge will impose an undue hardship on the debtor and the debtor's dependents. 11 U.S.C. §523(a)(8).

7. In discussing this statute it has been stated that, "[s]ome hardship may be expected by the statute; it is the 'undue,' the unreasonable, unconscionable hardship which the debtor is not expected and required to bear.'" In re Tobin, 18 B.R. 560, at 562 (Bankr.W.D.Wis. 1982). The court further noted that:

In deciding whether the repayment of a student loan would constitute undue hardship, the court is to consider the facts and circumstances of each individual debtor to determine "whether there are such unique circumstances as to render it less likely or likely only with extreme difficulty, or unlikely at all that the bankrupt will within the foreseeable future be able to honor his commitment."

Id. at 561.

8. As a court of equity a bankruptcy court may extend the terms of loans, declare only a portion of the loans dischargeable or retain jurisdiction to ensure fairness. Annot., 63 A.L.R. Fed. 570, sec. 5[c](1983).

9. Plaintiff's current monthly take-home pay amounts to approximately \$1,386, including his disability pension. His expenses on a monthly basis are approximately \$1,318. This figure includes the extra \$100 for rent required by the recent birth of twins.

10. For the 1984 tax year Plaintiff received a combined federal and state tax refund amount of \$1,533.

11. Plaintiff's monthly take-home pay is slightly above his monthly expenses. However, the amount of his income tax refund

for 1984 (\$1,533) suggests that Plaintiff has a larger amount of financial resources at his disposal than his monthly take-home pay would suggest. With two additional deductions for his new-born twins plaintiff will in all likelihood be in a more favorable tax position in 1985.

12. After considering Plaintiff's monthly budget, his total available financial resources and the costs of raising a family, the Court concludes that Plaintiff is able to pay \$20 a month on his student loan obligations.

CONCLUSIONS OF LAW

1. Plaintiff is able to pay \$20 a month on his student loan obligations without undue hardship within the meaning of 11 U.S.C. §523(a)(8)(B).

2. The Court should retain jurisdiction of this matter. At the conclusion of one year either party may petition the Court for modification of its order.

3. If no party petitions this Court for modification before July 1, 1986, the final order of this Court shall be that Plaintiff pay \$20 a month on this student loan for a period of 180 months beginning with a July, 1985 payment. The amount of this student loan which will not be paid by the end of this 180 month period is discharged.

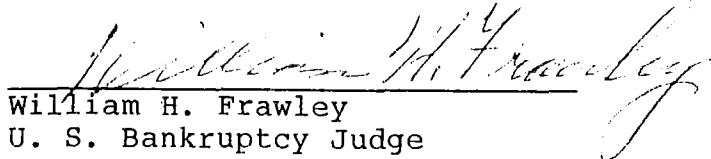
ORDER

IT IS ORDERED that Plaintiff pay \$20 a month on this student

loan for a period of 180 months beginning in July, 1985, unless modified by this Court at the conclusion of one year.

Dated: June 20, 1985.

BY THE COURT:



William H. Frawley
U. S. Bankruptcy Judge

cc: Attorney Attorney Van Buren Wake, Jr.
Attorney William H. Olson