

There is no getting around it; student loans are difficult to discharge through the bankruptcy system.

It wasn't always this way; once upon a time, student loans could be discharged as unsecured debt, just so long as a specified period of time (about 7 years) had elapsed since the student's graduation or last enrollment. This was a sensible procedure, since it allowed debtors truly in a jam a way out, while still preventing people from abusing the college aid system by getting rid of their loans right after graduation.

All this changed in the mid-'90's, when the bankruptcy code was amended to require debtors to prove that the student loan payments were causing them "undue hardship" before they could be eliminated.

But the most fiendish part of the new law was the procedure it required: to get a hardship discharge, debtors need to file an actual lawsuit against their lenders, and have a bankruptcy judge decide who wins and loses.

Of course most debtors aren't civil litigators, and have no clue about how to go about doing this. Therefore, they need an attorney, who has to charge an hourly rate (often of hundreds of dollars per hour) to compensate for his effort. If the debtor doesn't have that kind of dough, they are stuck being amateur litigators for themselves. And if they do, they may not seem like hardship cases after all. Voila! -- a Catch-22 worthy of novelist Joseph Heller's classic tale of military bureaucracy.

If the debtor plunges on regardless, he will soon discover that the hardship case is something of an odd duck in the litigation system. Lawsuits are usually about blaming someone else -- "he hit me from behind at the stop light!" -- but this one is essentially about one's own troubles -- "I'm too poor to pay off my student loans!"

The loan company, having been sued, will hire a law firm to defend itself. Their lawyer will then bury the debtor in "discovery" requests -- demand for documents, answers to written questions, maybe even a deposition at the other side's law office. There are two reasons for this; first, they do have to try and find out why you think you are a special hardship case, and most important, it's how the law firm makes money -- billing by the hour for discovery!

And if the case ever does go to trial, you will find that there is no uniform definition of what "hardship" really means -- its completely in the eye of the beholder, in this case, your bankruptcy judge. Some judges might be easy on debtors, others would tell Jonah to crawl back inside his whale and stop complaining.

With that in mind, debtors determined to wipe the student loan slate clean should 1) hire an attorney if it is at all possible, 2) explore any deferment and forgiveness programs that may be available, and 3) when heading to court alone, steel themselves for a long, wild ride!