

# In the United States Bankruptcy Court

## for the Northern District of Iowa

---

KIP BOYD IRELAND and LESLIE A. IRELAND  
Debtors.

Bankruptcy No. 96-40218XM  
Chapter 13

---

### DECISION RE: CONFIRMABILITY OF CHAPTER 13 PLAN

---

Kip and Leslie Ireland, husband and wife, filed their joint chapter 13 petition on February 5, 1996. They proposed their plan on February 16, 1996 (docket no. 6). It is presented to the court for confirmation. Hearing was held April 10, 1996 in Mason City.

Mr. Ireland is employed as a salesman by a radio station in Mason City. Also, he sells Amway products part-time. Mrs. Ireland is not employed, but she hopes to start a babysitting service in the couple's home. At present, the couple's expenses exceed their income by \$200.00 per month. Nonetheless, they have been able to make their first payment under the plan.

The plan divides claims into four classes: (1) priority claims; (2) unsecured claims arising from nondischargeable student loans; (3) general unsecured claims; and (4) a secured claim. For priority claims, debtors have only administrative claims arising in this case. These would include the standing trustee's fees and their attorney's fees, if any. Under the plan, these claims would be paid in full. The only secured creditor is Norwest Bank Iowa, N.A. which holds a security interest in debtors' automobile. Debtors propose to pay regular monthly payments on the car directly to Norwest.

There are three claims in the student loan classification. Leslie Ireland is indebted to Minot State University in the approximate amount of \$2,000.00 on an allegedly nondischargeable student loan. Leslie is indebted also to SLND--Bank of North Dakota, in the approximate amount of \$22,000.00 for an allegedly nondischargeable student loan. Kip Ireland is indebted to Student Loan Finance Corp. in the approximate amount of \$5,500.00 for an allegedly nondischargeable student loan. These debts total approximately \$29,500.00.

Debtors have scheduled seven general unsecured claims totaling \$8,858.00. Student loans and general unsecured claims together total \$38,358.00.

In their plan, debtors propose to pay the trustee \$50.00 per month for the first year, \$230.00 per month for the second year, and \$325.00 per month for the third year. Their total contribution, therefore, would be \$7,260.00. From this amount, the standing trustee would take her statutory fee. 28 U.S.C.

586(e)(1)(B) and 586(e)(2). Accordingly, the trustee's payments on claims would be \$6,600.00.

Assuming no additional attorney's fees, this sum would be distributed pro rata to the student loan creditors. General unsecured creditors would receive no dividend. If all student loan creditors file claims as scheduled, each would receive a dividend of 22 per cent. General unsecured claims would receive zero per cent. If all unsecured claimants were to receive a pro rata share of the money to be distributed under the plan, each would receive a dividend of 17 per cent. After completion of payments to the trustee, the student loan debt would be reamortized and paid over a six-year period.

Debtors, as they have, may designate more than one class of unsecured claims, and they may discriminate in their treatment of them. However, they may not discriminate unfairly against a designated class. 11 U.S.C. 1322(b)(1); Mickelson v. Leser (In re Leser), 939 F.2d 669, 671-72 (8th Cir. 1991). Debtors have designated two classes of

unsecured claims--unsecured claims arising from nondischargeable student loans and general unsecured claims. They discriminate by providing for at least a 22 per cent dividend for the former, with no dividend for the latter. No creditor objects to the plan. Carol Dunbar, the standing trustee, did not object.

On my own, I raise the issue of unfair discrimination, and on that basis, deny confirmation of the plan. I find the discrimination proposed by the debtors to be unfair because it inures solely to their benefit. The debtors, by channeling all plan payments to the student loan creditors, reduce the balance of the nondischargeable debt that will be due after completion of the plan. The student loan creditors must be paid in any event as they are allegedly nondischargeable claims. The debtors, by their plan, improve their own position, but they offer nothing to the other unsecured creditors. By the discrimination, student loan creditors gain five per cent in dividends, and other unsecured creditors lose 17 per cent in dividends. Such disparate treatment is not necessary to carry out the plan as the debtors are apparently contributing all their disposable income to the plan, and they will have to pay the student loan creditors after completion of the plan. From the standpoint of the general unsecured creditors, the plan unfairly discriminates and should not be confirmed. In re Chapman, 146 B.R. 411, 419 (Bankr. N.D. Ill. 1992).

I agree with the proposition that the court should not confirm a plan which treats student loans more favorably than other unsecured creditors merely because they are nondischargeable debts. McCullough v. Brown (In re Brown), 162 B.R. 506, 517

(N. D. Ill. 1993); In re Colfer, 159 B.R. 602, 609 (Bankr. D. Me. 1993). I agree also with Judge Haines' observation in Colfer that "[t]he courts should not approve as 'fair' discriminatory classification schemes 'needed' only for the purpose of mitigating the consequences of statutory discharge exceptions." Id. at 610. Accordingly, I conclude that the debtors' plan unfairly discriminates against general unsecured creditors and should not be confirmed.

IT IS ORDERED that confirmation of debtors' plan filed February 16, 1996 is denied. Judgment shall enter accordingly.

SO ORDERED THIS 10th DAY OF MAY 1996.

William L. Edmonds  
Chief Bankruptcy Judge

I certify that on \_\_\_\_\_ I mailed a copy of this order and a judgment by U.S. mail to: Larry Eide, Carol Dunbar, Education Assistance Corp. and U. S. Trustee.