

SIGNED.



Dated: July 17, 2007

*Randolph J. Haines*

RANDOLPH J. HAINES  
U.S. Bankruptcy Judge

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF ARIZONA

In re	)	Chapter 7
CHRISTEN WOOD,	)	CASE NO. 2:05-bk-12617-RJH
	)	
Debtor.	)	
_____	)	
CHRISTEN WOOD,	)	ADVERSARY NO. 2:05-ap-00866-RJH
	)	
Plaintiff,	)	
	)	
v.	)	
UNIVERSITY ACCOUNTING	)	MEMORANDUM DECISION
SERVICES LLC, et al.,	)	GRANTING THE DEFENDANT'S
	)	PARTIAL MOTION TO DISMISS
Defendants.	)	
_____	)	

United States Department of Education dba Direct Loans Servicing Center has moved for partial dismissal of the Debtor's amended § 523(a)(8) complaint on the ground that a post-petition consolidation made the student loans a post-petition debt that cannot be discharged in this bankruptcy. The motion has been fully briefed. Although the Court has set oral argument for July 23<sup>rd</sup>, upon review of the memoranda and case law the Court has determined that oral argument is unnecessary, and therefore vacates that hearing.

It is undisputed that the Department of Education consolidation loan was made post petition and its proceeds were disbursed to the pre-petition lenders in September, 2005, a little over two months post petition. In *McBurney*,<sup>1</sup> the Ninth Circuit Bankruptcy Appellate Panel held that the disbursement of a post-petition consolidation loan extinguishes the debtor's

<sup>1</sup>*In re McBurney*, 357 B.R. 536 (9th Cir. BAP 2006).

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1 liability on the pre-petition student loan debts and constitutes a new post-petition debt that  
2 cannot be discharged in a pending bankruptcy case.

3 Debtor attempts to distinguish *McBurney* by alleging that in this case the  
4 application for the consolidation had been submitted pre-petition, that Department of Education  
5 had knowledge of the Debtor's bankruptcy when it made the consolidation loan, and that the  
6 liability to the pre-petition lenders was discharged when they defaulted by failing to answer the  
7 Debtor's original adversary complaint against them. But even if all of these factual distinctions  
8 were proven, they would not escape the effect of *McBurney's* holding.

9 Nothing in *McBurney* turns on the timing of the application for the consolidation  
10 loan; *McBurney's* holding rests solely on the post-petition timing of the disbursement of the  
11 consolidation loan proceeds and the consequent extinguishment of the debtor's debt to the pre-  
12 petition lenders. Nothing in the rationale of *McBurney* turns on whether the consolidation  
13 lender had knowledge of the pending bankruptcy. Debtor argues on the basis of *Cohen*<sup>2</sup> that the  
14 lender's knowledge rather than the disbursement date should be controlling. The rationale of  
15 *Cohen*, however, does not apply here because it did not involve a new lender and did not hinge  
16 upon the lender's knowledge but rather on the timing of when the Debtor incurred the debt.  
17 Finally, the discharge of the pre-petition lender's debts (which had already been extinguished by  
18 disbursement of the consolidation loan proceeds) has no effect on *McBurney's* holding that the  
19 consolidation loan is a new post-petition debt.

20 For the foregoing reasons, the Department of Education's motion for partial  
21 dismissal is granted. This ruling has no effect on the one National Direct Student Loan in the  
22 principal amount of \$1,000 that was not consolidated. The Court determines, however, that  
23 there is no just reason for delay of entry of final judgment as to the nondischargeability of the  
24 consolidated loans. Department of Education is therefore requested to upload a form of  
25 judgment including the appropriate Rule 54(b) language.

26 DATED AND SIGNED ABOVE

27  
28 <sup>2</sup>In re Cohen, 122 B.R. 755, 758 (Bankr. S.D. Cal. 1991).

1 Copy of the foregoing e-mailed  
2 this 17th day of July, 2007, to:

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