QUESTIONS:

Q: How do the student loan trusts file suits in Louisiana?

A: National Collegiate Student Loan Trust Collection Lawsuits - Defendant must file an exception. Trustees not Trusts as a Party. Plaintiff identifies itself as NATIONAL COLLEGIATE STUDENT LOAN TRUST ****. It does not further describe itself beyond stating that it is "domiciled" in Delaware. The word "TRUST" appears in its name yet the suit is not filed by a Trustee as required by Louisiana law. La. C.C.P. art. 699; Joe Conte Toyota, Inc. v. Toyota Motor Sales, U.S.A., Inc., 689 So.2d 650 [La. App. 4 Cir. 1997] ["The Family Trust lacks procedural capacity to assert any claims on its own behalf because it was never properly joined in this action. Article 699 of the Louisiana Code of Civil Procedure provides that the Trustee of an express trust is the proper plaintiff to sue to enforce a right of the trust estate. Louisiana courts regularly enforce this rule, and grant Exceptions of No Right of Action dismissing claims brought on behalf of trusts by parties other than the trustees. See, Huber v. Calcasieu Marine National Bank of Lake Charles, 262 So.2d 404, 407 (La. App. 3 Cir.1972); Succession of Hines, 341 So.2d 42, 45 (La. App. 3 Cir.1976)."].

Q: Are student loans subject to a statute of limitations?

A: No. Congress removed limitations periods for collection of student loans. Public Law 102-26 eliminated the prior limitations periods for collection of a student loan under a federal loan program. The prior limitations were found in 20 USC 1091a[a]. Some courts have allowed a laches defense despite removal of the statutes of limitations. See, ex., US v. Robbins, 819 F.Supp. 672 [E.D. Mich. 1991]. Other courts disapprove of laches as inapplicable against the government based on sovereign immunity. US v. Summerlin, 310 US 414, 60 S.Ct. 1019. Courts have held that laches was eliminated as well as the liberative statutes. US v. Smith, 862 F.Supp. 257 [D.Ha.].

Q: Can student loans be discharged due to undue hardship?

A: Possibly, Hardship Discharge, at least as to the interest component, possibly more. Hardship discharge is an affirmative defense and required to be pled. The reasoning of *Brunner v. New York State Higher Education Services Corp.,* 831 F.2d 395 (2d Cir.1987), which was embraced by the Fifth Circuit in *In re Gerhardt,* 348 F.3d 89 (5th Cir.2003), requires a three-part showing to discharge a student loan obligation on the ground of undue hardship:
(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 of the student loans; and
(3) that the debtor has made good faith efforts to repay the loans. 831 F.2d at 396. "The

Richardsons offered absolutely no evidence demonstrating that they have met the *Brunner* test. Therefore, plaintiffs have not proven that they are entitled to a discharge of any portion of their obligation on the basis of undue hardship." In re Richardson, No. 03-1168, 2005 WL 4677829, at *4–5 (Bankr. E.D. La. June 20, 2005).

Q: If I can prove that the student loan debtor is physically or mentally disabled, can the debtor obtain a discharge?

A: Yes. It is a conditional discharge, upon proper proof, and after three years pass a final discharge may be approved. 65 Fed. Reg. 65,680-65,695 [11-1-2000]. A physician's certification is required proof that debtor cannot work and is unable to earn monies due to illness or injury that is expected to continue indefinitely or result in death.

Q: If a school goes out of business [All of the time you see news stories "Students and faculty members arrived for classes only to find that the school abruptly closed their doors..."], can the student-debtor obtain a complete refund of all monies paid under their student loans?

A: Yes.

Q: If the student loan servicer is reporting your student loan and you are not in default, can you obtain injunctive and declaratory relief to stop the credit reportings [since you are not in default]?

A: The FCRA does not permit inj/decl relief but you can use state law inj/decl mechanisms. The HEA is unclear whether you can seek those private rights of action under that federal statute.

Q: How would you prove an inability to benefit to obtain cancellation?

A: Prove that students graduating fail to obtain employment or obtain employment that does not economically justify obtaining loans to attend the school. Show that student drop out rates are high. Show market conditions for the curricula are poor. Show misleading/deceptive oral and written promises. Show poorly qualified instructors. Show that the school is aware of low demands for their graduates. Show poor supervision of the faculty and student/graduate employment rates and exit wages.

Q: If the student/graduate or their guarantor[s] die, are the loans able to be canceled?

A: Yes, absent unusual conditions. Death of the borrower is a defense to Stafford, SLS, Perkins, and Federal Direct Loans. 20 USC 1087; 34 CFR 674.58, 682.04, 685.212.[a]. Death of the student or both parents discharges PLUS loans. 34 CFR 682.402[a][2].

Q: If the student loan servicer is reporting your student loan and you are not in default, can you show damages [since the reporting is a positive rating]?

A: Yes. Just because a trade line is not "negative" in its rating does not mean your economic rations and rating is not negatively impacted. Added debt skews your debt to income ratio and other ratings, score and risk factors.

Q: A student loan can only be reported on my credit until it is paid in full? But if, under the Higher Education Act, the credit bureaus are responsible for the reportings, how do I insure changes to my report to remove the defaulted on but now paid in full loan?

A: Two things: The HEA requires "prompt" updates [but at least annually] by the "furnisher" [the student loan creditor]. More significant, you should lodge written [by mail, CMRR] dispute letters to the national credit bureaus demanding "reinvestigation" of outdated reportings on the student loan and updates to remove the loan from your reports. In actuality, the bureaus merely suppress [mask] the data from further reporting. Reinsertion of supposed previously deleted data issues have plagued consumers. See Cousins v. Trans Union, US 5th Cir., as one of many examples. Written disputes are required to trigger your private rights of action under 15 USC 16811[a] and 1681s-2[b], of the FCRA. The HEA private right of action lies only against the credit bureau. See Seamons v. Temple [although plaintiff should have followed written dispute process to obtain a claim under 1681s-2[b]].

Q: If I enter a repayment plan and make payments, I can ask that the creditor remove the credit reporting of delinquency [since I defaulted and got a Notice of Default]?

A: Yes. Get that in writing. Remember, the credit bureaus may ignore the removal request since they may claim it is historically "accurate" that you were in default. Same game played by debt collectors to induce payments [promise to take the paid collection item off your report]. A lie but also a potential FDCPA violation.

Q: How can I get my credit reports and get reports for my clients?

A: www.AnnualCreditReport.com - 15 USC 1681 - Consumers are entitled to one free credit report a year under FACTA. If denied credit or if you sustained adverse action, you are entitled to a free credit report. Check your credit reports: Statistics show that 50%-90% have errors and 25%-45% have errors so serious that the error[s] will cause a credit denial or adverse action. One of the most sensitive topics involves a credit bureau's obligation to delete information once commanded to do so by the subscriber. This can arise in various settings: [1] the data is actually false and must be deleted; and/or [2] the consumer is negotiating the debt and settles the debt with specific assurances that the bureau reports will no longer report derogatory data. The latter

scenario can involve good faith, legitimate disputes or consumers trying to "repair" their accurate, derogatory credit rating[s]. Bureaus, as true adversaries to consumers, do not want to delete data. It is their only stock. They tout their ability to sell and report volume, even if it includes inaccurate data. Bureaus believe they may still report data even if instructed by the settling creditor to delete. Of course, the reporting is no longer "verifiable."
