

# Post-*Espinosa*

## *Espinosa* (Review)

- “Scream or Die” Case
- Ch. 13 Plan – treatment of student loan
  - Repaid principal of loan through Ch. 13 Plan
  - Discharged interest
    - No Adversary Proceeding was filed
    - No “undue hardship” determination made by the Court
  - Creditor (United Student Aids Fund Inc.)
    - Served with Plan
    - Filed Proof of Claim (asserting both principal and accrued interest)
    - Received Notice of Plan but did not Object to Plan Confirmation

# ***Espinosa***

## **(Review)**

- Absent Objections – Bankruptcy Court confirmed Plan (1992)
- Debtor completed all plan payments and received discharge (1997)
- Creditor attempted to collect unpaid interest (2003)
  - Debtor filed Motion to enforce discharge (2003)
  - Creditor cross-moved under Fed. R. Civ. P. 60(b)(4) to set aside Confirmation Order as void because it violates §§523(a)(8) and 1328.

# ***Espinosa***

## **(Review)**

- Supreme Court granted *certiorari*
  - to determine whether a confirmation order, which discharges student loan debt without a finding of undue hardship or an adversary proceeding (or both), is a “void” judgment under Fed. R. Civ. P. 60(b)(4)
  - The issue of “Silence” of creditor was NOT before the Supreme Court

# ***Espinosa***

## **(Review)**

- Supreme Court held (Parts I & II of the Opinion):
  - Creditor was bound by Confirmation
  - Rule 60 is not a license for litigants to sleep on their rights
  - Creditor forfeited its many arguments because Creditor failed to file a timely object to confirmation of the Plan
  - Order and Discharge were effective to discharge the interest even though the Plan violated §§ 523(a)(8) and 1328
  - Had a timely objection been made, the Plan could NOT have been confirmed
  - The above was clearly addressed in parts I and II of the *Espinosa* opinion (and parts I and II of the opinion are not controversial)

# ***Espinosa***

## **(Part III of Opinion)**

- Let the Controversy and Debate Begin . . .

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36<sup>th</sup> Annual Jay L. Westbrook Bankruptcy Conference session  
"*Espinosa* Update and Other Post-Confirmation Chapter 13 Matters"