

Bankruptcy Trustees Seek to Recover Tuition Payments

A developing trend in our nation's bankruptcy courts has been the increase in lawsuits filed or threatened by bankruptcy trustees to recover tuition payments made by a student's parents when the parents later file for bankruptcy protection. The consequences of allowing this type of lawsuit to succeed are rather profound. The school that is compelled to refund a tuition payment could suspend the student's ability to take courses or sue the student for recovery of the tuition that had to be refunded.

The firm is currently representing two universities in defending these so-called "tuition clawback" suits, which rely on fraudulent transfer law as the theory for recovery. That law generally provides that a payment for which the debtor does not receive "reasonably equivalent value" and that is made when the debtor is insolvent may be recovered as a fraudulent transfer, irrespective of the payor's intent. One of the cases tests the cutting edge defense that "reasonably equivalent value" to the parent is established based on the societal expectation of parental support with college tuition and actual economic and other value received from a child's higher education.

With many families already strapped by the mounting costs of higher education, the idea that a trustee of parents who files for personal bankruptcy can recover tuition they previously paid, putting their student-child at financial and educational risk, seems quite unsettling. It remains to be seen whether Congress or the courts will allow this burgeoning type of suit to continue.

Professionals

Irve J. Goldman