

Pomp and Circumstances, Part II: Evidence in Student Loan Dischargeability Claims

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Pomp and Circumstances, Part II:
Evidence in Student Loan Dischargeability Claims

Materials created by

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Hypothetical Debtor

Debtor Anna Legalese filed a chapter 7 bankruptcy petition on January 12, 2013. The Debtor has been diagnosed with fibromyalgia, irritable bowel syndrome, and depression, and has been dealing with these illnesses for several years. Ms. Legalese graduated from college in May 1995 and graduated from law school in May 2003. She took out several private loans with Zombie Loans, Inc. totaling approximately \$120,000 with an interest rate of 6.5% to attend law school.

Ms. Legalese began experiencing symptoms of fibromyalgia while in her second year of law school. She began experiencing pain in her hips, lower back, neck, and shoulders as well as extreme fatigue at the end of the first semester. Ms. Legalese was not diagnosed with fibromyalgia. She was treated for the pain with different pain killers. She finished law school and passed the bar exam in 2003.

In September 2003, Ms. Legalese began working full time for a fifteen attorney law firm. The pain and fatigue continued to affect her while working for the law firm. Ms. Legalese again saw several doctors and specialists, and after nineteen months of tests, she was finally diagnosed by one doctor with fibromyalgia and irritable bowel syndrome. Her doctor prescribed several medications to handle the pain, instructed Ms. Legalese to reduce her hours at work to help with the extreme fatigue, and recommended that she meet with a nutritionist.

The law firm initially worked with Ms. Legalese and allowed her to reduce her work schedule to four days in the office and one day at home. She worked these reduced hours for approximately two years. Despite the reduced hours and the different medications, Ms. Legalese continued to experience pain and discomfort which caused her to miss even more work. Eventually, her hours were reduced to two days per week, and her responsibilities were changed to clerical support. Her income switched from salary to hourly. After this financial reduction, Ms. Legalese entered into a 12 month forbearance agreement with Zombie Loans, Inc. After ten months of only working two days a week, the law firm terminated Ms. Legalese.

She tried holding several different jobs over the next four and half years. These included as a hostess for a café, as a supervisor and sales associate at a local book store, as a check out person at a grocery store, and as clerical support in a dentist office. Unfortunately, the fibromyalgia and the irritable bowel syndrome prevented her from keeping any job for an extended time. With all of the difficulties Ms. Legalese was experiencing while trying to maintain a job and her increasing inability to pay her bills, including her student loans, she became very depressed. She began seeing a professional therapist and taking anti-depression medication. She entered into a second forbearance agreement with Zombie Loans, Inc.

Ms. Legalese has even looked into jobs that would allow her to work from home. Unfortunately, none of her efforts have resulted in a job where she could work from home. She has not made any payments on her student loans since the second forbearance agreement. Ms. Legalese currently works as clerical support for a local library. Ms. Legalese has started the process of seeking social security disability benefits.

Pretrial/Discovery Issues in a Student Loan Discharge Case

1. Think about the discharge case when preparing the bankruptcy petition:
 - A. Discuss the issue at the initial intake
 - B. Make sure I and J are consistent with a discharge case
 - C. Will there be additional income/SSI/SSDI going forward? Is it ripe yet?
 - D. Pro Forma/Amended Schedules

2. Initial Considerations
 - A. Do you need medical testimony? Expert or Treating Physician?
 - B. Is a doctor's affidavit or opinion letter sufficient? Hearsay?
 - C. Other fact witnesses

3. Discovery from the Lender
 - A. Loan File – Past communications with Lender
 - B. Lender Expert Witness (unlikely)

4. Preparing Client for Deposition (See attached preparation summary)
 - A. Truthfulness, but brief, answer only what is asked
 - B. Know your case
 - C. Don't over exaggerate condition
 - D. Importance of meeting to discuss demeanor, testimony, documents
 - E. Depositions are not intended to prove your case

5. Preparing Client as a Trial Witness
 - A. Consistency with deposition testimony
 - B. But, chance to tell story
 - C. Focus on inability to earn

Top 10 Preparation Points for Deposition Witnesses

The following points are my “Top 10” essentials to discuss with your client as part of a comprehensive session preparing for a deposition. There are several articles and treatises that fully discuss these and other important points:

1. Tell the Truth. Aside from the obvious perjury issues, telling the truth is important because untruths can be easily twisted at trial.
2. Answer only the question that is asked, not the question you think should have been asked. How do you answer the question: “Do you know what time it is?”
3. Along those lines, answer in the shortest way possible that is consistent with a good faith response. “Yes, No, I don’t know” are all preferable answers.
4. Never Volunteer. This is not your opportunity to educate the other side. You are here only because they are trying to get information from you. You will have your chance to tell your side of things. Never say: “I don’t know, but I can get that information for you,” or “I’ll have to check my files and get back to you.” That just leads to more questions and more follow-up.
5. Do not engage in casual discussion with the other side, on or off the record. It’s just easier than trying to figure out what type of conversation is OK.
6. Do not guess. If you do not know for sure, just say that that. Let the examiner follow up if he or she is so inclined. Questions about what “would happen if” always require a guess.
7. Never be sarcastic or funny. Even in the rare cases when the deposition is videotaped, sarcasm does not come through on the record.
8. Give your attorney time to object to questions, and listen to the objections to see how they affect your answer.
9. When your health or emotional state is at issue, don’t “play it up”. Lawyers have seen it all before; you are not going to change their minds or their demeanors by limping, sighing or moaning.
10. Show no emotion. Getting upset will be seen as a victory to the other side; it will not garner fear, regret or sympathy.

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B 6A (Adapted from Official Form 6A) (12/07)

In re: **Legalese, Anna**

Case No.

PRO-FORMA SCHEDULE A - REAL PROPERTY

Except as directed below, list all real property in which the debtor has any legal, equitable, or future interest, including all property owned as a cotenant, community property, or in which the debtor has a life estate. Include any property in which the debtor holds rights and powers exercisable for the debtor's own benefit. If the debtor is married, state whether the husband, wife, both, or the marital community own the property by placing an "H," "W," "J," or "C" in the column labeled "Owner." If the debtor holds no interest in real property, write "None" under "Description and Location of Property."

Do not include interests in executory contracts and unexpired leases on this schedule. List them in Schedule G - Executory Contracts and Unexpired Leases.

If an entity claims to have a lien or hold a secured interest in any property, state the amount of the secured claim. See Schedule D. If no entity claims to hold a secured interest in the property, write "None" in the column labeled "Amount of Secured Claim."

If the debtor is an individual or if a joint petition is filed, state the amount of any exemption claimed in the property only in Schedule C - Property Claimed as Exempt.

DESCRIPTION AND LOCATION OF PROPERTY	NATURE OF DEBTOR'S INTEREST IN PROPERTY	O W N E R	CURRENT VALUE OF DEBTOR'S INTEREST IN PROPERTY, WITHOUT DEDUCTING ANY SECURED CLAIM OR EXEMPTION	AMOUNT OF SECURED CLAIM
(None)				

NORTHEAST CONSUMER FORUM 2013

B 6B (Adapted from Official Form 6B) (12/07)

In re: **Legalese, Anna**

Case No.

PRO-FORMA SCHEDULE B - PERSONAL PROPERTY

Except as directed below, list all personal property of the debtor of whatever kind. If the debtor has no property in one or more of the categories, place an "x" in the appropriate position in the column labeled "None." If additional space is needed in any category, attach a separate sheet properly identified with the case name, case number, and the number of the category. If the debtor is married, state whether the husband, wife, both, or the marital community own the property by placing an "H," "W," "J," or "C" in the column labeled "Owner." If the debtor is an individual or a joint petition is filed, state the amount of any exemptions claimed only in Schedule C - Property Claimed as Exempt.

Do not list interests in executory contracts and unexpired leases on this schedule. List them in Schedule G - Executory Contracts and Unexpired Leases.

If the property is being held for the debtor by someone else, state that person's name and address under "Description and Location of Property." If the property is being held for a minor child, simply state the child's initials and the name and address of the child's parent or guardian, such as "A.B., a minor child, by John Doe, guardian." Do not disclose the child's name. See, 11 U.S.C. §112 and Fed. R. Bankr. P. 1007(m).

TYPE OF PROPERTY	N O N E	DESCRIPTION AND LOCATION OF PROPERTY	O W N E R	CURRENT VALUE OF DEBTOR'S INTEREST IN PROPERTY, WITHOUT DEDUCTING ANY CLAIM OF EXEMPTION
1. Cash on hand.		Spending money		\$3.95
2. Checking, savings or other financial accounts, certificates of deposit or shares in banks, savings and loan, thrift, building and loan, and homestead associations, or credit unions, brokerage houses, or cooperatives.		Big Bank checking account -1234		\$127.00
3. Security deposits with public utilities, telephone companies, landlords, and others.	X			
4. Household goods and furnishings, including audio, video, and computer equipment.		18" TV Basic household furnishings kitchen table & 2 chairs (purchased at yard sale), sofa, dresser, misc. pots & pans, cooking utensils, dishware, desk & swivel chair. No single item with resale value over \$200. Bed		\$100.00 \$2,300.00 \$100.00
5. Books; pictures and other art objects; antiques; stamp, coin, record, tape, compact disc, and other collections or collectibles.	X			
6. Wearing apparel.		Debtor's clothing Includes 3 suits for business wear. Basic clothing, most purchased at Goodwill or on sale, nothing with resale value over \$200.		\$1,000.00

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Legalese, Anna

TYPE OF PROPERTY	N O N E	DESCRIPTION AND LOCATION OF PROPERTY	O W N E R	CURRENT VALUE OF DEBTOR'S INTEREST IN PROPERTY, WITHOUT DEDUCTING ANY CLAIM OF EXEMPTION
7. Furs and jewelry.	X			
8. Firearms and sports, photographic, and other hobby equipment.	X			
9. Interests in insurance policies. Name insurance company of each policy and itemize surrender or refund value of each.	X			
10. Annuities. Itemize and name each issuer.	X			
11. Interests in an education IRA as defined in 26 U.S.C. § 530(b)(1) or under a qualified State tuition plan as defined in 26 U.S.C. § 529(b)(1). Give particulars. (File separately the record(s) of any such interest(s). 11 U.S.C. § 521(c).)	X			
12. Interests in IRA, ERISA, Keogh, or other pension or profit sharing plans. Give particulars.		Big Investment Co. IRA		\$1,200.00
13. Stock and interests in incorporated and unincorporated businesses. Itemize.	X			
14. Interests in partnerships or joint ventures. Itemize.	X			
15. Government and corporate bonds and other negotiable and nonnegotiable instruments.	X			
16. Accounts receivable.	X			
17. Alimony, maintenance, support, and property settlements to which the debtor is or may be entitled. Give particulars.	X			
18. Other liquidated debts owed to debtor including tax refunds. Give particulars.	X			
19. Equitable or future interests, life estates, and rights or powers exercisable for the benefit of the debtor other than those listed in Schedule A – Real Property.	X			
20. Contingent and noncontingent interests in estate of a decedent, death benefit plan, life insurance policy, or trust.	X			
21. Other contingent and unliquidated claims of every nature, including tax refunds, counterclaims of the debtor, and rights to setoff claims. Give estimated value of each.	X			
22. Patents, copyrights, and other intellectual property. Give particulars.	X			

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NORTHEAST CONSUMER FORUM 2013

Legalese, Anna

TYPE OF PROPERTY	N O N E	DESCRIPTION AND LOCATION OF PROPERTY	O W N E R	CURRENT VALUE OF DEBTOR'S INTEREST IN PROPERTY, WITHOUT DEDUCTING ANY CLAIM OF EXEMPTION
23. Licenses, franchises, and other general intangibles. Give particulars.	X			
24. Customer lists or other compilations containing personally identifiable information (as defined in 11 U.S.C. § 101(41A)) provided to the debtor by individuals in connection with obtaining a product or service from the debtor primarily for personal, family, or household purposes.	X			
25. Automobiles, trucks, trailers, and other vehicles and accessories.		199 Volvo V70 Station wagon with 150,000 miles, fair condition		\$1,500.00
26. Boats, motors, and accessories.	X			
27. Aircraft and accessories.	X			
28. Office equipment, furnishings, and supplies.	X			
29. Machinery, fixtures, equipment, and supplies used in business.		2 filing cabinets Acer laptop purchased 2005 HP LasetJet 400 printer/scanner/fax Purchased 2010 for \$400		\$100.00 \$300.00 \$150.00
30. Inventory.	X			
31. Animals.	X			
32. Crops - growing or harvested. Give particulars.	X			
33. Farming equipment and implements.	X			
34. Farm supplies, chemicals, and feed.	X			
35. Other personal property of any kind not already listed. Itemize.	X			
Total				\$6,880.95

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B 6F (Adapted from Official Form 6F) (12/07)

In re: **Legalese, Anna**

Case No.

**PRO-FORMA SCHEDULE F - CREDITORS HOLDING UNSECURED
NONPRIORITY CLAIMS**

State the name, mailing address, including zip code, and last four digits of any account number, of all entities holding unsecured claims without priority against the debtor or the property of the debtor, as of the date of filing of the petition. The complete account number of any account the debtor has with the creditor is useful to the trustee and the creditor and may be provided if the debtor chooses to do so. If a minor child is a creditor, state the child's initials and the name and address of the child's parent or guardian, such as "A.B., a minor child, by John Doe, guardian." Do not disclose the child's name. See, 11 U.S.C. §112 and Fed. R. Bankr. P. 1007(m). Do not include claims listed in Schedules D and E. If all creditors will not fit on this page, use the continuation sheet provided.

If any entity other than a spouse in a joint case may be jointly liable on a claim, place an "X" in the column labeled "Codebtor," include the entity on the appropriate schedule of creditors, and complete Schedule H - Codebtors. If a joint petition is filed, state whether the husband, wife, both of them, or the marital community may be liable on each claim by placing an "H," "W," "J," or "C" in the column labeled "Obligor."

If the claim is contingent, place an "X" in the column labeled "Contingent." If the claim is unliquidated, place an "X" in the column labeled "Unliquidated." If the claim is disputed, place an "X" in the column labeled "Disputed." (You may need to place an "X" in more than one of these three columns.)

Report the total of all claims listed on this schedule in the box labeled "Total" on the last sheet of the completed schedule. Report this total also on the Summary of Schedules and, if the debtor is an individual with primarily consumer debts, report this total also on the Statistical Summary of Certain Liabilities and Related Data.

Check this box if debtor has no creditors holding unsecured nonpriority claims to report on this Schedule F.

CREDITOR'S NAME AND MAILING ADDRESS INCLUDING ZIP CODE AND ACCOUNT NUMBER (See Instructions Above.)	C O D E B T O R	O B L I G O R	DATE CLAIM WAS INCURRED AND CONSIDERATION FOR CLAIM. IF CLAIM IS SUBJECT TO SETOFF, SO STATE.	C O N T I N G E N T	U N L I Q U I D A T E D	D I S P U T E D	AMOUNT OF CLAIM
Account No.: 0002 Bank of Avarice One Vacant Plaza Boston, MA 02114			2009 Credit Card				\$8,000.00
Account No.: 9999 Big Hospital 1000 Hospital Blvd. Portland, ME 04101			2004 Medical services				\$4,000.00
Account No.: 0000 Chase Me If You Want 80 Staniford St., 36th Fl. Boston, MA 02114			2003 Credit Card				\$11,000.00
Account No.: 2222 Lab Specialists 1 Lab Way Portland, ME 04101			2007 Medical services				\$1,400.00

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NORTHEAST CONSUMER FORUM 2013

Legalese, Anna

CREDITOR'S NAME AND MAILING ADDRESS INCLUDING ZIP CODE AND ACCOUNT NUMBER (See Instructions Above.)	C O D E B T O R	O B L I G O R	DATE CLAIM WAS INCURRED AND CONSIDERATION FOR CLAIM. IF CLAIM IS SUBJECT TO SETOFF, SO STATE.	C O N T I N G E N T	U N L I Q U I D A T E D	D I S P U T E D	AMOUNT OF CLAIM
Account No.: 6666 Medium Sized Hospital 100 Hospital Blvd. Augusta, ME 04330			2010 Medical services				\$12,000.00
Account No.: 0000 SiliBank P.O. Box 666 Jacksonville, FL 32232			2005 Credit Card				\$12,000.00
Account No.: 5555 SiliBank P.O. Box 12345 Sioux Falls, SD 57117			2009 Serious Credit Card				\$3,500.00
Account No.: 3333 What's In Your Wallet 1680 Capital One Dr. Mc Lean, VA 22102			2005 Credit Card				\$13,000.00
Account No.: 4444 What's In Your Wallet 1680 Capital One Dr. Mc Lean, VA 22102			2006 Credit Card				\$9,000.00
Account No.: 1111 What's In Your Wallet 1680 Capital One Dr. Mc Lean, VA 22102			2002 Credit Card				\$15,000.00
Account No.: 1234 Zombie Loans, Inc. 10000 Gotcha Forever Lane New York, NY 10002			2001 Student Loan				\$200,000.00
Total							\$288,900.00

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B 6I (Adapted from Official Form 6I) (12/07)

In re: **Legalese, Anna**

Case No.

PRO-FORMA SCHEDULE I - CURRENT INCOME OF INDIVIDUAL DEBTOR(S)

The column labeled "Spouse" must be completed in all cases filed by joint debtors and by every married debtor, whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed. Do not state the name of any minor child. The average monthly income calculated on this form may differ from the current monthly income calculated on Form 22A, 22B, or 22C.

Debtor's Marital Status:	RELATIONSHIP(S) OF DEPENDENTS	AGE(S)
Single	(None)	
Employment:	DEBTOR	SPOUSE
Occupation	Clerk	N/A
Name of Employer	Local Library	N/A
How long employed	6 months	N/A
Address of employer	1 Main St. Brownfield, ME 04010	N/A

INCOME: (Estimate of average or projected monthly income at time case filed)	DEBTOR	SPOUSE
1. Monthly gross wages, salary, and commissions (Prorate if not paid monthly)	\$1,083.33	
2. Estimate monthly overtime	\$0.00	
3. SUBTOTAL	\$1,083.33	
4. LESS PAYROLL DEDUCTIONS		
a. Payroll taxes and social security	\$117.04	
b. Insurance	\$0.00	
c. Union dues	\$0.00	
d. Child support	\$0.00	
5. SUBTOTAL OF PAYROLL DEDUCTIONS	\$117.04	
6. TOTAL NET MONTHLY TAKE HOME PAY	\$966.29	
7. Regular income from operation of business or profession or farm (Attach detailed statement)	\$0.00	
8. Income from real property	\$0.00	
9. Interest and dividends	\$0.00	
10. Alimony, maintenance or support payments payable to the debtor for the debtor's use or that of dependents listed above	\$0.00	
11. Social security or government assistance		
a. Food stamps	\$90.00	
12. Pension or retirement income	\$0.00	
13. Other monthly income	\$0.00	
14. SUBTOTAL OF LINES 7 THROUGH 13	\$90.00	
15. AVERAGE MONTHLY INCOME (Add amounts on lines 6 and 14)	\$1,056.29	
16. COMBINED AVERAGE MONTHLY INCOME:(Combine column totals from line 15)	\$1,056.29	

17. Describe any increase or decrease in income reasonably anticipated to occur within the year following the filing of this document:

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NORTHEAST CONSUMER FORUM 2013

B 6J (Adapted from Official Form 6J) (12/07)

In re: **Legalese, Anna**

Case No.

PRO-FORMA SCHEDULE J - CURRENT EXPENDITURES OF INDIVIDUAL DEBTOR(S)

Complete this schedule by estimating the average or projected monthly expenses of the debtor and the debtor's family at time case filed. Prorate any payments made biweekly, quarterly, semi-annually, or annually to show monthly rate. The average monthly expenses calculated on this form may differ from the deductions from income allowed on Form 22A or 22C.

1. Rent or home mortgage payment (include lot rented for mobile home)	\$390.00
Real-estate taxes included?	No
Property insurance included?	No
Homeowner's association or condominium dues	\$0.00
2. Utilities:	
a. Electricity and heating fuel	\$0.00
b. Water and sewer	\$0.00
c. Telephone	\$40.00
d. Internet, satellite, and cable	\$49.99
3. Home maintenance (repairs and upkeep)	\$0.00
4. Food	\$150.00
5. Clothing	\$10.00
6. Laundry and dry cleaning	\$10.00
7. Medical and dental expenses	\$150.00
8. Transportation (not including car payments)	\$250.00
9. Recreation, clubs and entertainment, newspapers, magazines, etc.	\$15.00
10. Charitable contributions	\$0.00
11. Insurance (not deducted from wages or included in home mortgage payments)	
a. Homeowner's or renter's	\$5.00
b. Life	\$0.00
c. Health	\$0.00
d. Auto	\$45.00
12. Taxes	
a. Property taxes on your primary residence	\$0.00
13. Installment payments: (In chapter 11, 12, and 13 cases, do not list payments to be included in the plan)	
a. Auto	\$0.00
14. Alimony, maintenance, and support paid to others	\$0.00
15. Payments for support of additional dependents not living at your home	
16. Regular expenses from operation of business, profession, or farm (attach detailed statement)	\$0.00
17. Other	
a. Childcare and children's education costs	\$0.00
b. Personal care products and services	\$0.00
18. AVERAGE MONTHLY EXPENSES	\$1,114.99
19. Describe any increase or decrease in expenditures reasonably anticipated to occur within the year following the filing of this document:	
20. STATEMENT OF MONTHLY NET INCOME	
a. Average monthly income from Line 15 of Schedule I	\$1,056.29
b. Average monthly expenses from Line 18 above	\$1,114.99
c. Monthly net income (a. minus b.)	(\$58.70)

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UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MASSACHUSETTS

In re)	Chapter 7
ANNA LEGALESE)	Case No. 13-12345-snn
Debtor)	
-----)	
ANNA LEGALESE,)	Adv. No. 13-9876
Plaintiff)	
v.)	
ZOMBIE LOANS, INC.)	
Defendant)	

JOINT PRE-TRIAL MEMORANDUM

Pursuant to ¶5 of this court’s order of April 1, 2013, the parties respectfully submit this Joint Pre-Trial Memorandum.

(a) The name, address and telephone number of each witness, separately identifying those whom the party expects to present and those whom the party may call if the need arises, together with any objection to the calling of the witness, see (E) below.

For the Plaintiff:

The Plaintiff herself, 79 Wistful Vista, Cambridge, MA 02139. Telephone number withheld for reasons of privacy.

For the Defendant

Lila Lemur, 81 Wistful Vista, Cambridge, MA 02139, 617-555-3333.

(b) A list of witnesses whose testimony is expected to be presented by means of a deposition and, if taken stenographically, a transcript of the pertinent portions of the deposition testimony, together with objection to such testimony, see (E) below.

None.

(c) A list of witnesses intended to be called as experts, together with any objection to the calling of such expert, see (E) below.

For the Plaintiff:

David Dingo, M.D.
50 Staniford St.
Boston, MA 02114

For the Defendant:

Frank Foxx, Ph.D.
99-44/100 Cambridge St.
Boston, MA 02114

The Plaintiff objects to allowing Dr. Foxx to testify as an expert on the ground that the report required by Fed. R. Civ. P. 26(a)(2)(B) was not timely provided.

- (d) An appropriate identification (pre-numeration) of each document or other exhibit, other than those to be used for impeachment, in the sequence in which they will be offered, including summaries of other evidence, separately identifying those exhibits which the party expects to offer and those which the party may offer if the need arises.**

Plaintiffs' Exhibits:

- P1: Certified copies of records of treatment of the Plaintiff at the Taxachusetts Law School Student Health Clinic 2002-2003.
- P2: Certified copies of records of treatment of the Plaintiff by Dr. Andrew Aardvark 2004-2013.
- P3: Certified copies of records of treatment of the Plaintiff by Dr. Barry Buffalo 2004-2013.
- P4: Certified copies of records of treatment of the Plaintiff by Dr. Cathy Capybara 2004-2013.
- P5: Certified copies of records of treatment of the Plaintiff by Dr. David Dingo 2004-2013.
- P6: Pro-forma Schedules A, B, I and J summarizing Plaintiff's assets, income and expenses on the date of trial.
- P7: Certified copy of Discharge Application/Total and Permanent Disability, signed on March 1, 2013 by David Dingo, M.D.

Defendant's Exhibits:

- D1: Promissory notes executed by the Plaintiff, as maker, and evidencing the debts sought to be discharged in this proceeding.
- D2: Transcript of Plaintiff's grades at Taxachusetts University Law School.
- D3: Employee performance review by Zoe Zebra, Esq., of Dewey, Cheatham & Howe, LLP, Boston, MA.
- D4: Copies of Plaintiff's federal income tax returns for the years 2003 through 2012.
- D5: Copies of all pay stubs received by the Plaintiff since commencing the associated bankruptcy case.

- (e) A specific statement of any objection, together with the grounds therefor, reserved as to the admissibility of deposition testimony designated by another party and/or to the admissibility of documents or exhibits. Objections not so disclosed, other than objection under Rules 402 and 403 of the Federal Rules of**

Evidence, shall be deemed waived unless excused by the Court for good cause shown.

The Plaintiff objects to Exhibit D3 on the ground that it is rank hearsay. Plus it's really prejudicial, and the Plaintiff doesn't want the court to even see it. [Della—be sure to take this last sentence out of the final draft. EJF]

(f) A statement confirming that the parties have exchanged copies (either electronic or paper copy) of the exhibits.

The parties have exchanged copies of all exhibits.

(g) A statement indicating the parties' positions on attempting to resolve their dispute by mediation. In the event the parties agree to mediation, the Court will liberally consider any motion to postpone the trial to accommodate the mediation.

The parties do not believe that mediation of this dispute would be productive.

(h) Facts to which the parties have stipulated.

1. Each of the loans sought to be discharged in this proceeding is an "educational loan" within the meaning of 11 U.S.C. § 523(a)(8)(B).
2. Each of the promissory notes evidencing a loan sought to be discharged in this proceeding is a valid and subsisting obligation of the Plaintiff, as maker.
3. The Plaintiff defaulted on her obligation to pay each such note.
4. The Defendant is a holder in due course of each such note.
5. The Plaintiff's obligations to pay such notes are not subject to any defense.
6. The Plaintiff is a member in good standing of the bars of the Supreme Judicial Court of Taxachusetts, the United States District Court for the Eastern District of Taxachusetts, the United States Court of Appeals for the Thirteenth Circuit, and the United States Supreme Court.

(i) The issues of fact which remain to be litigated (evidence at trial shall be limited to these issues).

1. Whether the Plaintiff suffers from fibromyalgia and irritable bowel syndrome.
2. Whether the Plaintiff is permanently and totally disabled.
3. Whether repayment of the loans sought to be discharged in this proceeding would constitute an undue hardship for the Plaintiff or her dependents.

(j) The issues of law to be determined.

1. What legal standard should the court use to assess undue hardship in this case?

(k) A brief statement summarizing the Plaintiff's case.

The Plaintiff borrowed \$120,000 at 6.5% interest to attend law school during the period 2001-2004. She presently suffers from fibromyalgia and irritable bowel syndrome. Her symptoms began in 2002, while she was in law school, but were not diagnosed correctly until 2004. As a consequence of her diagnosis, she is in constant pain throughout her body. She has frequent severe headaches. She suffers from extreme fatigue, which has gotten worse over time. These symptoms have prevented her from holding a job as a lawyer. After trying a number of different kinds of non-legal jobs during the past two and one-half years, she has ended up working part-time providing clerical support at a local library for \$15.00 per hour with no benefits. She is currently unable to work more than 20 hours per week, and is frequently unable to work even that many hours. Palliative treatments have not enabled her to work more hours or to hold jobs that would utilize her training, and the prognosis for improvement is very poor. In fact, the side effects from her prescribed medications (which include Cymbalta and Lyrica) have been debilitating in themselves. Consequently, she contends that she will never be able to make any significant dent in a student loan debt that has grown to more than \$200,000.

(l) A brief statement summarizing the Defendant's case.

The Plaintiff is exaggerating her symptoms and the degree to which they impair her ability to work. The Defendant's expert, Dr. Foxx, performed a physical examination and concluded that the Plaintiff experiences pain in only 10 of the 18 "tender points" that fibromyalgia patients typically present with. Since the American College of Rheumatology guidelines mandate that a patient experience pain in at least 11 tender points to be diagnosed with fibromyalgia, Dr. Foxx concluded that the Plaintiff does not suffer from fibromyalgia at all. The Plaintiff received glowing recommendations from the law firm at which she worked until 2007. She left the full-time practice of law because she wanted to pursue a hobby interest in origami rather than because of any health reason. The Plaintiff's neighbor, Lila Lemur, is expected to testify to seeing the Plaintiff shoveling snow and digging in her garden on a frequent basis. The Plaintiff has not demonstrated that she has exhausted all possibilities to work at home or that her diet is not the cause of whatever gastrointestinal distress she suffers. In short, the Plaintiff has the ability to pay her student loans but has chosen not to. Her obligation should not be discharged.

(m) Any revisions of the estimated length of trial since the filing of the written report required under ¶ 3 of the pre-trial order.

None.

Dated: June 1, 2013

ANNA LEGALESE, by her attorney
/s/ Elmer J. Fudd

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NORTHEAST CONSUMER FORUM 2013

CERTIFICATE OF SERVICE

I state on information and belief that the court will transmit a Notice of Electronic Filing relative to this document electronically to the persons and parties listed below as being served electronically and that such transmittal will, pursuant to Electronic Filing Rule 9(a), constitute service hereof on such persons and parties. I certify that I served this document on the persons and parties listed below as being served by mail by mailing a copy of this document, including this Certificate of Service, via prepaid first-class mail to the indicated address.

Persons and Parties served electronically:

Wascally.Wabbit@dchowelaw.com

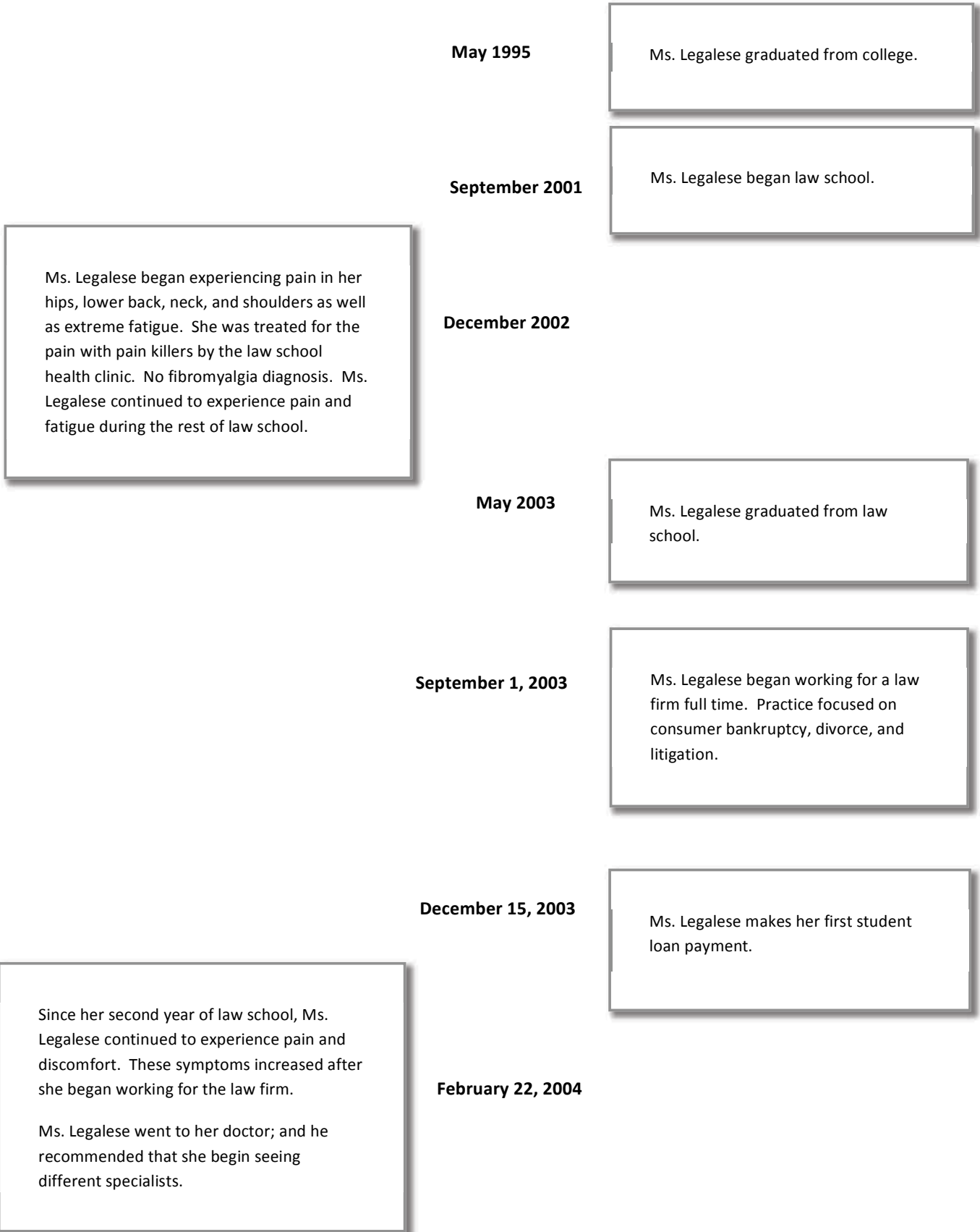
Persons and Parties served by mail:

(None)

Dated: June 1, 2013

/s/ Elmer J. Fudd

Timeline of Ms. Legalese's Employment and Illnesses



Timeline of Ms. Legalese's Employment and Illnesses

After almost nineteen months of tests, Ms. Legalese was diagnosed with fibromyalgia and irritable bowel syndrome.

Doctors recommended that Ms. Legalese reduce her hours to help with the extreme fatigue and pain. He prescribed several medications to help with the pain. They also recommended she meet with a nutritionist.

September 12, 2005

At her doctors' recommendation, Ms. Legalese began working reduced hours: four days in the office and one day from home. She stopped working on any matters requiring litigation

October 1, 2005

Despite the reduced hours and different medications, Ms. Legalese continued experiencing extreme pain and discomfort. Her headaches grew worse. She had more frequent bouts of irritable bowel syndrome. She began missing even more work over the next two years.

The law firm further reduced Ms. Legalese's hours to 2 days a week and changed her position from associate to clerical support because of the increased number of days she missed due to the fibromyalgia and irritable bowel syndrome.

November 3, 2007

Due to the reduction in her hours at the law firm and a reduction in her income, Ms. Legalese entered into her first Forbearance Agreement of 12 months with Zombie Loans. Inc.

January 5, 2008

Timeline of Ms. Legalese's Employment and Illnesses

Despite the further reduction in hours, Ms. Legalese continued to miss days of work at the law firm because of the fibromyalgia and irritable bowel syndrome.

August 5, 2008

Ms. Legalese was terminated by the law firm.

October 5, 2008

Ms. Legalese began working approximately 30 hours per week at the café as a hostess

March 11, 2009

Ms. Legalese lost her job at the café because she missed too many days of work due to the fibromyalgia and the irritable bowel syndrome.

March 27, 2009

Ms. Legalese began working at a bookstore as a part time supervisor and sales associate. She had a sympathetic manager that understood and tried to accommodate her physical limitations. In a good week she could work almost 30 hours. Most weeks she averaged 20 to 25 hours. She worked shorter shifts of 5 hours and was not on her feet the entire shift because as a supervisor she was responsible for certain paperwork.

Timeline of Ms. Legalese's Employment and Illnesses

April 10, 2010

Ms. Legalese tried to accommodate the demands of the new manager. Unfortunately, her symptoms increased and worsened. She had to call in sick more often than before.

A new manager was hired at the bookstore and said she would no longer accommodate Ms. Legalese's needs concerning her illnesses because she thought Ms. Legalese was faking them. She was no longer allowed to work shortened shifts nor take extra sick days. Each shift increased from 5 hours to 8 hours.

June 20, 2010

Ms. Legalese quit her job at the bookstore because she could not handle the longer shifts.

August 1, 2010

With all of the difficulties Ms. Legalese was experiencing trying to maintain a job, manage her illnesses, and pay her bills, including her student loans, she became very depressed. Ms. Legalese started seeing a professional therapist for her depression and started taking medication for it.

Ms. Legalese entered a second 12 month Forbearance Agreement with Zombie Loans, Inc.

September 13, 2010 – June 14, 2012

Ms. Legalese worked various jobs, as a check out person at a grocery store, as a sales associate at a card store, in a tea house, and doing clerical work in a dentist office.

Timeline of Ms. Legalese's Employment and Illnesses

Ms. Legalese began looking for jobs that would allow her to work from home, including reviewing insurance policies and doing research for local firms. Unfortunately, she has not been able to secure a position where she could work from home.

June 14, 2012 to present

Ms. Legalese began working as clerical support at the local library. In a good week she works about 20 hours and earns \$15 per hour.

Ms. Legalese continues to suffer from fibromyalgia, irritable bowel syndrome, and depression. She has been on different forms of medication since these were diagnosed in September 2005. They still affect her ability to work.

January 12, 2013

Ms. Legalese filed chapter 7 bankruptcy petition.

Recommended Supplements

Handbook of Massachusetts Evidence, Eighth Edition, Mark S. Brodin and Michael Avery, Aspen Publishers, last updated 11/16/2012.

Maine Evidence, Sixth Edition, Richard H. Field and Peter L. Murray, Tower Publishing, last updated 2011.

Evidentiary Foundations, Eighth Edition, Edward J. Imwinkelried and Edward L. Barrett, Jr., Matthew Bender, 2012.

Trial Techniques and Trials, Ninth Edition, Thomas A. Mauet, Wolters Kluwer Law & Business, 2013.

Bankruptcy Evidence Manual, 2012-2013 Edition, The Honorable Barry Russell, Thomson West, 2012.

Student Loan Law, National Consumer Law Center, 2010 Fourth Edition and 2012 Supplement, 2012.

Federal Rules of Evidence, 2013.