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Driven to Bankruptcy

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DRIVEN TO BANKRUPTCY

Pamela Foohey, Robert M. Lawless** & Deborah Thorne****

Over the last ten years, 15.1 million people owning 16.4 million cars filed for bankruptcy. These cars provided access to work, education, medical care, childcare, food, and other life necessities. They were also major household investments, the most expensive asset most bankruptcy filers owned other than a house. Using original data from the Consumer Bankruptcy Project, we document what happens to car owners and their car loans when they enter bankruptcy. In brief, we find that people who file bankruptcy own automobiles at the same rate as the general population and that they overwhelmingly indicate they want to use bankruptcy as a tool to keep their automobiles. We further identify a subset of debtors, constituting about a third of bankruptcy filers, who come to bankruptcy owning automobiles and little else. These cases are the most likely to be filed by people “driven to bankruptcy.” We detail what our results show about how people use consumer bankruptcy and where the system appears to falter. We conclude with recommendations on how to remedy these systemic issues as well as what the future of the automobile marketplace, particularly subprime auto loans, means for people’s continued use of bankruptcy.

TABLE OF CONTENTS

I.	INTRODUCTION.....	288
II.	CAR OWNERSHIP, FINANCIAL DISTRESS, AND BANKRUPTCY ..	294
III.	THE BANKRUPTCY LAW OF CARS	298
	A. <i>Bankruptcy Estate & Exemptions</i>	299
	B. <i>Paying a Secured Claim</i>	300

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	C. <i>Combatting Repossessions and License Suspensions</i>	303
IV.	METHODOLOGY	304
V.	RESULTS: FILING BANKRUPTCY WITH CARS	306
	A. <i>Car Ownership and Loans (Summary Statistics)</i>	306
	B. <i>Keeping Cars and Discharging Debts (Chapter Choice and Case Outcomes)</i>	311
	C. <i>It Is Not Asset Value (Exemptions)</i>	315
	D. <i>Differences Across Households in Bankruptcy (Cluster Analysis)</i>	316
	1. <i>Demographics and Homeownership</i>	316
	2. <i>Case Outcomes</i>	320
	E. <i>Racial Dimensions of Cars in Bankruptcy</i>	322
VI.	KEEPING CARS THROUGH BANKRUPTCY.....	324
	A. <i>Holding onto Cars, Before and After Bankruptcy</i>	324
	B. <i>Pinpointing “Car Bankruptcies”</i>	327
VII.	BANKRUPTCY: A SUBPRIME END TO AMERICA’S “LOVE AFFAIR” WITH CARS?.....	330

I. INTRODUCTION

Over the last ten years, 15.1 million people filed for bankruptcy, implying that the bankruptcy courts have dealt with 16.4 million cars during that same time period.¹ Although there is substantial literature on financial distress and home ownership,² including numerous articles about people filing bankruptcy to keep their homes,³ the literature on automobile ownership and financial distress

1. The number of persons filing bankruptcy is based on the authors' calculation from the comprehensive database of all filings at: *Integrated Bankruptcy Data Database*, FED. JUD. CTR., <https://www.fjc.gov/research/idb> (last visited May 2, 2020). The calculation adjusts for the number of joint bankruptcy cases to count the number of persons filing bankruptcy. The number of cars in bankruptcy is an extrapolation from the data presented in this Article.

2. Some of this literature focuses on the benefits and drawbacks of households' attempts to accumulate wealth in houses. See, e.g., Jared Ruiz Bybee, *In Defense of Low-Income Homeownership*, 5 ALA. C.R. & C.L. L. REV. 107 (2013); A. Mechele Dickerson, *Public Interest, Public Choice, and the Cult of Homeownership*, 2 U.C. IRVINE L. REV. 843 (2012); Lorna Fox, *Re-Possessing “Home”: A Re-Analysis of Gender Homeownership and Debtor Default for Feminist Legal Theory*, 14 WM. & MARY J. WOMEN & L. 423 (2008); Brent T. White, *Underwater and Not Walking Away: Shame, Fear and the Social Management of the Housing Crisis*, 45 WAKE FOREST L. REV. 971 (2010). In the wake of the Great Recession, a large strand of this literature deals with the mortgage market. See, e.g., KATHLEEN C. ENGEL & PATRICIA A. MCCOY, *THE SUBPRIME VIRUS: RECKLESS CREDIT, REGULATORY FAILURE, AND NEXT STEPS* (2011); ADAM J. LEVITIN & SUSAN M. WACHTER, *THE GREAT AMERICAN HOUSING BUBBLE: WHAT WENT WRONG AND HOW WE CAN PROTECT OURSELVES IN THE FUTURE* (forthcoming 2020); CHRISTOPHER ODINET, *FORECLOSED: MORTGAGE SERVICING AND THE HIDDEN ARCHITECTURE OF HOMEOWNERSHIP IN AMERICA* (2019); Melissa B. Jacoby, *The Value(s) of Foreclosure Law Reform*, 37 PEPP. L. REV. 511 (2010).

3. See, e.g., Jeremy Berkowitz & Richard Hynes, *Bankruptcy Exemptions and the Market for Mortgage Loans*, 42 J.L. & ECON. 809 (1999); Sarah W. Carroll

is thin, particularly regarding people filing bankruptcy to keep their automobiles.⁴ Using our data from the Consumer Bankruptcy Project (“CBP”), we describe the relationship between automobile ownership, financial distress, and bankruptcy.⁵

An automobile is more than just another asset or mere transportation. It is access to work, education, medical care, childcare, family, and other life necessities.⁶ Most people who do not own a car cannot afford one; they did not make a lifestyle choice to go “car free.”⁷ Although car ownership rates are lower for Millennials, evidence suggests the reasons they are “car free” are still more likely to be economic than a preference.⁸ Households without cars have lower incomes and are more likely to be in poverty.⁹ Car ownership

& Wenli Li, *The Homeownership Experience of Households in Bankruptcy*, 13 CITYSCAPE 113 (2011); A. Mechele Dickerson, *Bankruptcy and Mortgage Lending: The Homeowner Dilemma*, 38 J. MARSHALL L. REV. 19 (2004); John Eggum et al., *Saving Homes in Bankruptcy: Housing Affordability and Loan Modification*, 3 UTAH L. REV. 1123 (2008); Melissa B. Jacoby, *Bankruptcy Reform and Homeownership Risk*, 2007 U. ILL. L. REV. 323 (2007); Adam J. Levitin, *Resolving the Foreclosure Crisis: Modification of Mortgages in Bankruptcy*, 2009 WIS. L. REV. 565 (2009); Lynn M. LoPucki, *House Swaps: A Strategic Bankruptcy Solution to the Foreclosure Crisis*, 112 MICH. L. REV. 689 (2014); Katherine Porter, *Misbehavior and Mistake in Bankruptcy Mortgage Claims*, 87 TEX. L. REV. 121 (2008); Katherine Porter, *The Pretend Solution: An Empirical Study of Bankruptcy Outcomes*, 90 TEX. L. REV. 103 (2011); Eric A. Posner & Luigi Zingales, *A Loan Modification Approach to the Housing Crisis*, 11 AM. L. & ECON. REV. 575 (2009); Alan M. White & Carolina Reid, *Saving Homes? Bankruptcies and Loan Modifications in the Foreclosure Crisis*, 65 FLA. L. REV. 1713 (2013); Michelle J. White & Ning Zhu, *Saving Your Home in Chapter 13 Bankruptcy*, 39 J. LEGAL STUD. 33 (2010); Wenli Li & Michelle J. White, *Mortgage Default, Foreclosure, and Bankruptcy* (Nat’l Bureau of Econ. Research, Working Paper No. 15472, 2009); Sumit Agarwal & Changcheng Song, *The Impact of the Housing Crisis on Personal Bankruptcy* (Nov. 26, 2017) (unpublished study), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2588145.

4. See *infra* Part II.

5. See *infra* Part IV for details about CBP data.

6. See *A Car Is a Necessity*, PEW RES. CTR. (Sept. 13, 2010), <https://www.pewresearch.org/fact-tank/2010/09/13/a-car-is-a-necessity/> (noting that among twelve everyday consumer products, surveyed Americans described a car as more necessary than any other item); Laura Bliss, *If the Economy Is So Great, Why Are Car Loan Defaults at a Record High?*, CITYLAB (Feb. 15, 2019), <https://www.citylab.com/transportation/2019/02/subprime-car-loans-buy-automobile-lending-debt-trap/582652/> (noting that research shows that having a car “means your life is likely to be more stable”).

7. See Anne E. Brown, *Car-Less or Car-Free? Socioeconomic and Mobility Differences Among Zero-Car Households*, 60 TRANSPORT POL’Y 152, 154 tbl.1 (2017); Suman K. Mitra & Jean-Daniel M. Saphores, *Carless in California: Green Choice or Misery?*, 65 J. TRANSP. GEOGRAPHY 1, 1 (2017).

8. See Nicholas J. Klein & Michael J. Smart, *Millennials and Car Ownership: Less Money, Fewer Cars*, 53 TRANSPORT POL’Y 20, 20 (2017).

9. See David A. King et al., *The Poverty of the Carless: Toward Universal Auto Access*, J. PLAN. EDUC. & RES. (Feb. 1, 2019), <https://doi.org/10.1177/0739456X18823252>.

increases the probability of employment and number of hours worked.¹⁰

An automobile is also a major household investment—the most expensive asset many people will own other than a house. And like a house, an automobile often comes with a hefty loan.¹¹ Household financial distress can threaten automobile ownership and the day-to-day life stability and upward mobility that car ownership brings. An August 2019 article published in the *Wall Street Journal*, detailing how American families are going deeper into debt to maintain their middle-class lifestyles, identifies auto loans as one of the main inputs on households’ “accumulated ledger of economic risk.”¹²

A consideration of automobile ownership, financial distress, and consumer bankruptcy is particularly timely because auto loan origination rates have increased significantly over the past several years.¹³ Rising auto loan delinquency and default rates have accompanied these originations, signaling that American households may be facing increasingly serious financial problems. When faced with financial issues, some people will file bankruptcy. And if auto loans are a key component of people’s money troubles, those loans should appear in and perhaps even drive their bankruptcy cases.

For instance, in 2018, auto loan originations reached an all-time high annual total of \$584 billion, increasing 9 percent from the year prior.¹⁴ This amounts to about \$4200 of auto debt per capita, though auto debt varies from household to household.¹⁵ As of the first

10. See Steven Raphael & Lorien Rice, *Car Ownership, Employment & Earnings*, 52 J. URB. ECON. 109, 127 (2002).

11. See *Automobile Purchase Decisions and Auto Lending*, FED. RES. BOARD, <https://www.federalreserve.gov/econresdata/2016-economic-well-being-of-us-households-in-2015-Automobile-Purchase-Decisions-and-Auto-Lending.htm> (last updated June 14, 2016) (reporting that in 2015, two-thirds of people who purchased automobiles, new or used, financed their purchase with a loan); Phil LeBeau, *Auto Loans Hit Record, Pushing Average Monthly Car Payments to All-Time Highs*, CNBC (June 6, 2019, 2:09 PM), <https://www.cnbc.com/2019/06/06/auto-loans-hit-record-high-sending-borrowers-to-the-used-market.html> (citing Experian’s report that in the first quarter of 2019, the average amounts borrowed to buy a new or used vehicle were \$32,187 and \$20,137, respectively).

12. AnnaMaria Andriotis et al., *Families Go Deep in Debt to Stay in the Middle Class*, WALL STREET J. (Aug. 1, 2019, 11:35 AM), <https://www.wsj.com/articles/families-go-deep-in-debt-to-stay-in-the-middle-class-11564673734>.

13. *Number of Loans Originated*, CONSUMER FIN. PROTECTION BUREAU (Dec. 2019), <https://www.consumerfinance.gov/data-research/consumer-credit-trends/auto-loans/origination-activity/>.

14. QUARTERLY REPORT ON HOUSEHOLD DEBT AND CREDIT 2018: Q4, FED. RES. BANK OF N.Y. 2 (Feb. 2019), https://www.newyorkfed.org/medialibrary/interactives/householdcredit/data/pdf/hhdc_2018q4.pdf.

15. See Gwynn Guilford, *American Car Buyers Are Borrowing like Never Before—and Missing Plenty of Payments, Too*, QUARTZ (Feb. 21, 2017), <https://qz.com/913093/car-loans-in-the-us-have-hit-record-levels-and-delinquencies-are-rising-fast-too/> (reporting data from New York Fed and Equifax); Jenn Jones, *Auto Loan Statistics 2020*, LENDINGTREE (Jan. 10, 2020),

quarter of 2019, the average monthly payments for a new vehicle and used vehicle were \$554 and \$391 respectively (both of which established new highs).¹⁶ Based on data released by the credit reporting firm Experian, the average loan for a new car has increased 11 percent over the past decade, adjusting for inflation.¹⁷ Overall, since 2008, the total outstanding auto debt has increased by over 40 percent.¹⁸

Auto loan deficiencies also hit a high in 2018, with 7 million Americans over ninety days behind on car loan payments.¹⁹ Between 1999 and 2000, only 1.7 million Americans were more than ninety days behind on their auto loan payments.²⁰

The blossoming subprime auto loan market has contributed to the increase in auto loans and deficiencies.²¹ In 2018, 31 percent of new auto loan originations went to borrowers with subprime (below 660) credit scores.²² In comparison, in 2008, 10 percent of new mortgage originations went to subprime borrowers.²³ Subprime borrowers account for many of the delinquencies, and subprime auto loan delinquencies have risen to a rate worse than that during the Great Recession.²⁴

These defaults dramatically affect people's lives. Subprime auto lender Credit Acceptance has stated that it "expects to repossess 35

<https://www.lendingtree.com/auto/debt-statistics/> (reporting data based on borrower age, credit score, and car type).

16. See LeBeau, *supra* note 11 (reporting Experian data).

17. See Andriotis et al., *supra* note 12; see also AnnaMaria Andriotis & Ben Eisen, *A \$45,000 Loan for a \$27,000 Ride: More Borrowers Are Going Underwater on Car Loans*, WALL STREET J. (Nov. 9, 2019), <https://www.wsj.com/articles/a-45-000-loan-for-a-27-000-ride-more-borrowers-are-going-underwater-on-car-loans-11573295400> (reporting that a third "of people who traded in cars to buy new ones in the first nine months of 2019 had negative equity").

18. See Andriotis et al., *supra* note 12 (reporting data from the Federal Reserve).

19. Heather Long, *A Record 7 Million Americans Are 3 Months Behind on Their Car Payments, a Red Flag for the Economy*, WASH. POST (Feb. 12, 2019, 1:01 PM), <https://www.washingtonpost.com/business/2019/02/12/record-million-americans-are-months-behind-their-car-payments-red-flag-economy/> (interpreting the Federal Reserve of New York Q4 report to show that 7 million Americans are ninety days delinquent on their auto loans); see FED. RES. BANK OF N.Y., *supra* note 14.

20. See Gabrielle Coppola, *Auto-Loan Delinquencies Are the Highest Since 2012*, BLOOMBERG (Feb. 12, 2019, 3:31 PM), <https://www.bloomberg.com/news/articles/2019-02-12/auto-loan-performance-worsens-on-rise-in-subprime-delinquencies>.

21. *Id.*

22. FED. RES. BANK OF N.Y., *supra* note 14.

23. *Id.* at 6.

24. See Wolf Richter, *Auto Loan Delinquency Rates Are Worse Now Than During the Financial Crisis*, BUS. INSIDER (Apr. 9, 2018 5:16 PM), <http://www.businessinsider.com/auto-loan-delinquency-rates-worse-now-than-during-the-financial-crisis-2018-4>.

percent of the cars” that it lends against.²⁵ Once subprime lenders repossess cars, the lenders increasingly sue borrowers for the loan’s balance because the cars are typically worth less than the loan amount outstanding.²⁶ These suits can result in the garnishment of people’s wages for years after they no longer own the repossessed cars.²⁷

“Superprime” and prime borrowers are also increasingly defaulting on their auto loans.²⁸ These defaults may stem, in part, from lengthening repayment terms for auto loans. The “average new-car loan term is 68.8 months,” as compared to 48 months in 2012.²⁹ Longer loan terms increase the chances that households will default, which in turn increases the likelihood of repossessions.³⁰ In 2017, 1.7 million motor vehicles were expected to be repossessed.³¹

The changes in the auto loan market over the past decade have led to concerns about the racial and ethnic demographics of loan origination and repossession,³² as well as the general stability of the

25. See Ryan Felton, *This Subprime Auto Lender Repos 35 Percent of the Cars It Finances*, JALOPNIK (Feb. 9, 2018, 3:30 PM), <https://jalopnik.com/this-subprime-auto-lender-repos-35-percent-of-the-cars-1822875696>.

26. See Jessica Silver-Greenberg & Michael Corkery, *The Car Was Repossessed, but the Debt Remains*, N.Y. TIMES (June 18, 2017), <https://www.nytimes.com/2017/06/18/business/dealbook/car-loan-subprime.html>.

27. See *id.*

28. See Kelly Kent, *Auto Loan Delinquencies Extending Beyond Subprime Consumers*, EXPERIAN (Feb. 2, 2017), <http://www.experian.com/blogs/insights/2017/02/auto-loan-delinquencies-extending-beyond-subprime-consumers/>.

29. Jeff Gitlen, *Auto Loans Outstanding Hits Record in the United States*, LENDEU (Oct. 11, 2017), <https://lendedu.com/blog/outstanding-auto-loans-market-hits-record>.

30. Cf. *id.* (noting that loans with longer terms increase the likelihood of delinquency).

31. See Nick Zullo, *Forecast Has 2017 Repo Total Approaching 1.8M*, AUTO REMARKETING (Feb. 21, 2017, 4:24 PM), <https://www.autoremarketing.com/financial-services/forecast-has-2017-repo-total-approaching-1-point-8-million>.

32. See, e.g., Alexander W. Butler et al., *Discrimination in the Auto Loan Market* (Dec. 12, 2019) (unpublished manuscript), <https://ssrn.com/abstract=3301009>; Delvin Davis, *Non-Negotiable: Negotiation Doesn’t Help African Americans and Latinos on Dealer-Financed Car Loans* (Jan. 23, 2014) (unpublished manuscript), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2386005; *Racial Disparities in Auto Loan Markups: State-by-State Data*, NAT’L CONSUMER L. CTR. (June 2015), https://www.nclc.org/images/pdf/car_sales/ib-auto-dealers-racial_disparities.pdf; Lisa Rice & Erich Schwartz Jr., *Discrimination When Buying a Car: How the Color of Your Skin Can Affect Your Car-Shopping Experience*, NAT’L FAIR HOUSING ALLIANCE (Jan. 2018), <https://nationalfairhousing.org/wp-content/uploads/2018/01/Discrimination-When-Buying-a-Car-FINAL-1-11-2018.pdf>; John W. Van Alst, *Time to Stop Racing Cars: The Role of Race and Ethnicity in Buying and Using a Car*, NAT’L CONSUMER L. CTR. (Apr. 2019), https://www.nclc.org/images/pdf/car_sales/report-time-to-stop-racing-cars-april2019.pdf.

marketplace.³³ The recent expansion of the auto loan market spawned ominous forecasts that auto lending might be the next housing bubble.³⁴ In addition, though changes in the auto loan marketplace have only recently drawn media attention, issues with auto title loans have plagued American households for some time.³⁵

Owning an automobile is a necessary part of most Americans' lives, and for as long as it has been, many people have taken on debt to finance that ownership. Like all debt, some of this debt will go unpaid and creditors will initiate collection efforts. As we have established in a prior article based on CBP data, creditors' collection efforts push some people to file bankruptcy.³⁶ Not only will households enter bankruptcy with automobiles but auto loans and maintaining possession of cars may also be significant contributors to their filings.³⁷ Yet as reviewed in Part II, there is a noticeable and

33. See, e.g., Daniel Alpert & Robert Hockett, *The Debt Goes On: A Post-Crisis "Progress" Report* (Cornell Law Sch., Research Paper No. 16-36, 2016), <https://ssrn.com/abstract=2837929>; Delvin Davis & Joshua M. Frank, *Under the Hood: Auto Loan Interest Rate Hikes Inflate Consumer Costs and Loan Losses*, (Apr. 19, 2011) (unpublished manuscript), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1860188; Zhengfeng Guo et al., *Risks of Long-Term Auto Loans* (June 12, 2018) (unpublished manuscript), <https://ssrn.com/abstract=3290841>.

34. See, e.g., *Is a Subprime Auto Loan Crisis Brewing?*, KNOWLEDGE@WHARTON (Feb. 18, 2019), <https://knowledge.wharton.upenn.edu/article/auto-loan-subprime-crisis/>; Steven Pearlstein, *The Shadow Banks Are Back With Another Big Bad Credit Bubble*, WASH. POST (May 31, 2019, 1:57 PM), https://www.washingtonpost.com/business/economy/the-shadow-banks-are-back-with-another-big-bad-credit-bubble/2019/05/31/a05184de-817a-11e9-95a9-e2c830afe24f_story.html (linking auto loans with the growing "shadow" banking system); Angie Schmitt, *Is Subprime Auto Lending the Next Housing Bubble?*, STREETS BLOG (Feb. 13, 2019), <https://usa.streetsblog.org/2019/02/13/americas-car-centric-transportation-policies-are-driving-us-to-ruin/>.

35. See, e.g., JEAN ANN FOX & ELIZABETH GUY, CONSUMER FED'N OF AM., *DRIVEN INTO DEBT: CFA CAR TITLE LOAN STORE AND ONLINE SURVEY 2–3* (2005), https://www.texasfairlending.org/wp-content/uploads/2013/01/2005-Consumer-Federation-of-America-Car-Title-Loan-Report_111705.pdf (overviewing the survey's findings); James P. Nehf, *Secured Consumer Credit and the Fringe Banking Industry*, in 1C SECURED TRANSACTIONS UNDER THE UNIFORM COMMERCIAL CODE § 20A.01 (James P. Nehf ed., 2019); Kathryn Fritzdixon et al., *Dude, Where's My Car Title?: The Law, Behavior, and Economics of Title Lending Market*, 2014 U. ILL. L. REV. 1013, 1038–49 (2014); Jim Hawkins, *Credit on Wheels: The Law and Business of Auto-Title Lending*, 69 WASH. & LEE L. REV. 535, 538 (2012) (noting concerns); Nathalie Martin & Ozymandias Adams, *Grand Theft Auto Loans: Repossession and Demographic Realities in Title Lending*, 77 MO. L. REV. 41, 47–49 (2012) (overviewing title loans); Katrina Pascual, *1 in 5 Auto Title Loans End in Car Repossession: CFPB Study*, TECH TIMES (May 18, 2016, 7:45 AM), <https://www.techtimes.com/articles/159308/20160518/1-in-5-auto-title-loans-end-in-car-repossession-cfpb-study.htm>.

36. Pamela Foohey et al., *Life in the Sweatbox*, 94 NOTRE DAME L. REV. 219, 246 (2018).

37. See *infra* Table 1.

significant hole in the literature about consumer bankruptcy dealing with cars and auto loans as a component of filings.

This Article then turns to our data. Part III overviews bankruptcy and related laws pertaining to automobiles. Part IV briefly discusses methodology, and Part V presents the results of our data analysis. In short, our results show that people in bankruptcy own cars of modest value and owe immodest sums against those cars.³⁸ Bankruptcy appears to be an important tool for some people to keep their cars, although it is impossible to put a precise number on the percentage of people who use bankruptcy primarily to save their cars. We also use a cluster analysis to pinpoint distinct groups of bankruptcy filers who own cars and to identify differences in how people with cars use bankruptcy.³⁹ This analysis identifies two groups of debtors—collectively about a third of all filers—who come to bankruptcy owning automobiles and little else. These cases are the most likely to be filed by people “driven to bankruptcy.”

Part VI discusses what our results show about how people use consumer bankruptcy, where the system appears to falter, and how to remedy the identified problems. Finally, Part VII concludes with what our results suggest about the future of the auto market’s impact on consumer bankruptcy filings.

II. CAR OWNERSHIP, FINANCIAL DISTRESS, AND BANKRUPTCY

There is scant literature directly addressing what happens to people who file bankruptcy with a motor vehicle. The most directly applicable work to our analysis is a twenty-year-old study by Professors Marianne Culhane and Michaela White. Culhane and White created a random sample of about 1000 chapter 7 cases filed in 1995 in seven federal judicial districts to focus on reaffirmation of auto and other consumer loans through bankruptcy.⁴⁰ In their sample, 83 percent of debtors entered bankruptcy with cars, about half of the cars in the cases were subject to a secured loan, and debtors intended to reaffirm the loans on 72 percent of the cars they listed on the Statement of Intention form.⁴¹

38. See *infra* Subpart V.A. for examples of the types and ages of cars owned by the median debtor.

39. This cluster analysis is designed to highlight differences among debtors that otherwise may not become apparent. See *infra* Subpart V.D.

40. Marianne B. Culhane & Michaela M. White, *Debt After Discharge: An Empirical Study of Reaffirmation*, 73 AM. BANKR. L.J. 709, 709 (1999). “Reaffirmation” means to enter into an agreement by which the debtor continues to pay the secured loan to the current creditor post-bankruptcy, essentially waiving the discharge as to that debt. For a detailed discussion of reaffirmation, see *infra* Subpart III.B.

41. Culhane & White, *supra* note 40, at 738–39. In this study, 537 cars were listed by debtors on the Statement of Intention. The authors excluded cars that were not listed on the Statement of Intention from their analysis. *Id.*; see also *infra* Subpart III.B (discussing the Statement of Intention).

Culhane and White also found that only one-third of debtors who stated they intended to reaffirm actually filed a reaffirmation agreement.⁴² Instead, most debtors with auto loans seemingly opted either to “ride-through” these loans, an option that the enactment of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (“BAPCPA”)⁴³ ostensibly eliminated,⁴⁴ or to sign legally unenforceable “rogue” reaffirmation agreements,⁴⁵ another practice that BAPCPA intended to eliminate.⁴⁶ Because the study focused on reaffirmation agreements, which include consumer debts besides automobile loans, the authors did not report data about the number of cars bankruptcy debtors owned, the value of those cars, or the amount of auto loans outstanding.

Otherwise, most articles concerning cars and bankruptcy focus on doctrinal questions about dealing with cars within bankruptcy’s legal constraints.⁴⁷ Prior to BAPCPA’s enactment, Professor David Gray Carlson set forth an argument about the standard bankruptcy judges should use to value cars in chapter 13 (one of the two bankruptcy chapters most people file).⁴⁸ Likewise, after the Supreme Court published *Associated Commercial Corp. v. Rash*,⁴⁹ which addressed asset valuation in chapter 13, Professor Jean Braucher addressed the decision’s implications with specific attention to cars.⁵⁰ Similarly, pre-BAPCPA, a handful of articles discussed the

42. Culhane & White, *supra* note 40, at 721.

43. Pub. L. No. 109-8, 119 Stat. 23 (2005) (codified as amended in scattered titles of the U.S. Code). The law’s effective date was October 17, 2005. *Id.* § 1406(a), 119 Stat. at 215.

44. See *infra* notes 92–96 and accompanying text.

45. Culhane & White, *supra* note 40, at 741.

46. See *id.* at 717–18 (discussing “rogue” reaffirmation agreements); David B. Wheeler & Douglas E. Wedge, *A Fully-Informed Decision: Reaffirmation, Disclosure and the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005*, 79 AM. BANKR. L.J. 789, 789 (2005). Culhane & White, *supra* note 40, also found that debtors who entered into agreements with their lenders reaffirmed an average of \$7,607 and a median of \$7,265 in principal (about \$12,900 and \$12,300 in today’s dollars, respectively). Inflation is per the Bureau of Labor Statistics’ *CPI Inflation Calculator*, <https://data.bls.gov/cgi-bin/cpicalc.pl>. See Culhane & White, *supra* note 40, at 755 tbl 13. Because so few debtors in the sample reaffirmed their car loans, these figures reveal little about how much debtors’ cars were worth or how much equity the debtors held in the cars when they filed bankruptcy. In addition, compared to our data, see Subpart V.A, these figures for the auto loans seems very high. We suspect that many of the reaffirmed loans included amounts loaned for other consumer goods. Indeed, the authors of the study state that, overall, most reaffirmation agreements in their sample dealt with non-car “big ticket” consumer items. Culhane & White, *supra* note 40, at 713.

47. See, e.g., Culhane & White, *supra* note 40, at 719.

48. See David Gray Carlson, *Car Wars: Valuation Standards in Chapter 13 Bankruptcy Cases*, 13 BANKR. DEV. J. 1, 1 (1996).

49. 520 U.S. 953 (1997).

50. See Jean Braucher, *Getting It for You Wholesale: Making Sense of Bankruptcy Valuation of Collateral After Rash*, 102 DICK. L. REV. 763, 766 (1998).

Bankruptcy Code's provisions for the retention of cars in chapter 7 (the other chapter most people file).⁵¹

Following BAPCPA's enactment, Professor William Whitford detailed how automobile lenders benefited from its new provisions affecting cars, including valuation, redemption, and reaffirmation agreements.⁵² Also post-BAPCPA, Professors David Gray Carlson and Jean Braucher both discussed Bankruptcy Code provisions affecting cars (and homes) in chapter 13.⁵³ In addition, two papers focused on whether BAPCPA's provisions favoring auto lenders affected auto loans outside bankruptcy.⁵⁴

Most recently, based on a sample of chapter 13 cases filed in Cook County, Illinois, Professors Edward Morrison and Antoine Uettwiller found that between one-third and one-half of the debtors used chapter 13 to combat license suspensions or to save their cars from seizure because of accumulated parking tickets and other fines.⁵⁵ Their article contrasts with most other literature about the legal and financial benefits of chapter 13, which casts filing chapter 13 as a way

51. See, e.g., Marianne B. Culhane & Michaela M. White, *But Can She Keep the Car? Some Thoughts on Collateral Retention in Consumer Chapter 7 Cases*, 7 FORDHAM J. CORP. & FIN. L. 471 (2002); Scott B. Ehrlich, *The Fourth Option of Section 521(2)(A)—Reaffirmation Agreements and the Chapter 7 Consumer Debtor*, 53 MERCER L. REV. 613, 673 (2002); Ingrid Michelsen Hillinger & Michael G. Hillinger, *Section 365 in the Consumer Context: Something Old, Something New, Something Borrowed, Something Blue*, 104 COM. L.J. 377, 377 (1999); see also *infra* Subpart III.A (discussing chapter 7 and chapter 13).

52. See William C. Whitford, *A History of the Automobile Lender Provisions of BAPCPA*, 2007 U. ILL. L. REV. 143 *passim* (2007). See generally Lisa A. Napoli, *Reaffirmation After the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005: Many Questions, Some Answers*, 81 AM. BANKR. L.J. 259 (2007) (detailing BAPCPA's changes to reaffirmation agreements and focusing multiple examples on cars); Eugene R. Wedoff, *Major Consumer Bankruptcy Effects of BAPCPA*, 2007 U. ILL. L. REV. 31, 55–58 (2007) (noting reaffirmation, redemption, and ride-through as major changes brought by BAPCPA).

53. See Jean Braucher, *Rash and Ride-through Redux: The Terms for Holding on to Cars, Homes and Other Collateral Under the 2005 Act*, 13 AM. BANKR. INST. L. REV. 457, 459 (2005) (discussing the effect of filing chapter 7 on an individual's ability to retain personal property); David Gray Carlson, *Cars and Homes in Chapter 13 After the 2005 Amendments to the Bankruptcy Code*, 14 AM. BANKR. INST. L. REV. 301, 302 (2006) (discussing BAPCPA's benefits to auto and home lenders).

54. See Rajashri Chakrabarti & Nathaniel Pattison, *Auto Credit and the 2005 Bankruptcy Reform: The Impact of Eliminating Cramdowns*, 32 REV. OF FIN. STUD. 4734 (2019), <https://doi.org/10.1093/rfs/hhz039> (finding strong evidence that BAPCPA's elimination of cramdowns decreased car loan interest rates and some evidence of increased subprime loan sizes); Chunlin Leonhard, *Negative Externalities and Subprime Auto Financing: Time to Let the Hanging Paragraph Go*, 45 U. TOL. L. REV. 267, 267–69 (2014) (discussing the hanging paragraphs' potential impact on car loan markets).

55. See Edward R. Morrison & Antoine Uettwiller, *Consumer Bankruptcy Pathologies*, 173 J. INSTITUTIONAL & THEORETICAL ECON. 174, 175–76 (2017).

for debtors to save their homes.⁵⁶ In their study, African American debtors were more likely to file chapter 13 than other debtors, comporting with recent research from ProPublica regarding racial disparities in bankruptcy filings.⁵⁷ That study focused on filings in the Western District of Tennessee and the Northern District of Illinois to find that debtors filed chapter 13, in part, to reclaim suspended licenses or to free impounded cars.⁵⁸

Finally, a few other works situate spending on cars as one of a handful of consumption choices that contribute to consumer bankruptcy filings or to households' need for credit.⁵⁹ For example, a recent study assessed bankruptcy filings following natural disasters and found that filings among subprime car loan borrowers increased twice as much in states with strong creditors' rights compared to

56. See Pamela Foohey, Robert M. Lawless, Katherine Porter & Deborah Thorne, "No Money Down" *Bankruptcy*, 90 S. CAL. L. REV. 1055, 1062 (2017) ("Because of the ability to retain property, chapter 13 is popular with people who want to save their homes from foreclosure.").

57. Paul Kiel & Hannah Fresques, *Data Analysis: Bankruptcy and Race in America*, PROPUBLICA (Sept. 27, 2017), <https://projects.propublica.org/graphics/bankruptcy-data-analysis>. These studies also align with our research about racial disparities in chapter choice. See generally Jean Braucher, Dov Cohen & Robert M. Lawless, *Race, Attorney Influence and Bankruptcy Chapter Choice*, 9 J. EMPIRICAL LEGAL STUD. 393 (2012) (finding evidence of steering based on race by attorneys when advising clients of bankruptcy options); Foohey et al., *supra* note 56 (detailing the role of where someone lives and someone's race on people's likelihood of filing chapter 7 or 13).

58. Kiel & Fresques, *supra* note 57; see also William E. Crozier & Brandon L. Garrett, *Driven to Failure: An Empirical Analysis of Driver's License Suspension in North Carolina* (Nov. 22, 2019) (unpublished manuscript), <https://ssrn.com/abstract=3440832> (noting that forty-one states currently require suspension of driver's licenses for non-driving related reasons, such as not appearing in court). The mayor of Chicago has announced she supports an end to the city's aggressive program of impounding automobiles over unpaid parking tickets and also supports state-level legislation to stop driver's license suspensions for unpaid parking tickets. In her announcement, the mayor indicated the moves were intended, among other things, to decrease bankruptcy filings over unpaid parking tickets. Elliott Ramos & Melissa Sanchez, *Mayor Lightfoot Announces Her Plan to Stop Suspending Licenses for Parking Tickets*, NPR (July 24, 2019), <https://www.npr.org/local/309/2019/07/24/744595562/mayor-lightfoot-announces-her-plan-to-stop-suspending-licenses-for-parking-tickets>.

59. See, e.g., Scott Fay et al., *The Household Bankruptcy Decision*, 92 AM. ECON. REV. 706, 708–09 (2002) (including state exemptions for cars in assessing when households will file bankruptcy); Song Han & Geng Li, *Household Borrowing After Personal Bankruptcy*, 43 J. MONEY, CREDIT & BANKING 491, 491 (2011) (discussing households' access to consumer credit, including car loans, after bankruptcy); Igor Livshits et al., *Accounting for the Rise in Consumer Bankruptcies*, 2 AM. ECON. J.: MACROECONOMICS 165, 190 (2010) (finding that changes in consumer credit markets, including non-revolving car loans, partly accounts for rising consumer bankruptcy filing rates); Ning Zhu, *Household Consumption and Personal Bankruptcy*, 40 J. LEGAL STUD. 1, 1 (2011) (identifying car loans as a contributor to households' need to file bankruptcy).

states with stronger borrower protections.⁶⁰ The study further showed that a car repossession increased the likelihood of an individual filing bankruptcy.⁶¹

The assumption that cars are an important part of the consumer bankruptcy system unites all of this prior literature. But, as far as we can assess, no literature reports data specific to debtors' cars in bankruptcy.⁶² In this Article, we ask whether debtors look to bankruptcy for help with their car loans and what happens when they do. Before presenting the data, we first briefly review how bankruptcy law applies to car loans.

III. THE BANKRUPTCY LAW OF CARS

A complete explanation of how bankruptcy law interacts with car ownership and car loans would take hundreds of pages.⁶³ One of us is the co-author of a textbook that covers the topic (along with other types of secured lending).⁶⁴ Nevertheless, a basic knowledge of how the Bankruptcy Code treats cars is important to understanding this Article's findings. Readers already familiar with United States bankruptcy law may want to skip to the next Part.

60. See Elizabeth A. Berger et al., *Credit Where Credit Is Due: Drivers of Subprime Credit* (June 25, 2018) (unpublished manuscript), <https://ssrn.com/abstract=2989380>.

61. See *id.*

62. Prior empirical studies of the people who file bankruptcy, including articles based on CBP data, do not report specific data regarding cars or car loans. See, e.g., Sara S. Greene et al., *Cracking the Code: An Empirical Analysis of Consumer Bankruptcy Outcomes*, 101 MINN. L. REV. 1031, 1036–37 (2017) (relying on 2007 CBP data to predict how a chapter 13 filing will end); Dalié Jiménez, *The Distribution of Assets in Consumer Chapter 7 Bankruptcy Cases*, 83 AM. BANKR. L.J. 795, 808 (2009) (detailing assets sold by chapter 7 trustees and batching sales of cars with sales of stocks, insurance policies, and other personal property); Robert M. Lawless, Angela K. Littwin, Katherine M. Porter, John A. E. Pottow, Deborah K. Thorne, & Elizabeth Warren, *Did Bankruptcy Reform Fail? An Empirical Study of Consumer Debtors*, 82 AM. BANKR. L.J. 349, 349–50 (2008) (relying on 2007 CBP data to report key financial characteristics, such as mortgage debt, of households that filed bankruptcy); Jean M. Lown & Barbara R. Rowe, *A Profile of Utah Consumer Bankruptcy Petitioners*, 5 J.L. & FAM. STUD. 113, 113 (2003) (reporting on a sample of 2,567 chapter 7 and chapter 13 cases filed in Utah in 1997); Scott F. Norberg, *Consumer Bankruptcy's New Clothes: An Empirical Study of Discharge and Debt Collection in Chapter 13*, 7 AM. BANKR. INST. L. REV. 415, 427 (1999) (reporting on a sample of seventy-one chapter 13 cases filed in the Southern District of Mississippi between 1992 and 1998).

63. For a thorough explanation of the problematic interdependence between the car sales and car lending industry, see Adam J. Levitin, *The Fast and the Usurious: Putting the Brakes on Auto Lending Abuses*, 108 GEO. L.J. (forthcoming 2020).

64. LYNN M. LOPUCKI, ELIZABETH WARREN & ROBERT M. LAWLESS, *SECURED TRANSACTIONS: A SYSTEMS APPROACH* (8th ed. 2015).

A. *Bankruptcy Estate & Exemptions*

A car is an asset of a bankruptcy debtor and becomes part of the debtor's bankruptcy estate.⁶⁵ People who file bankruptcy have two options: file chapter 7 or file chapter 13.⁶⁶ In a chapter 7 bankruptcy, the trustee can sell the debtor's nonexempt assets in the bankruptcy estate and distribute the proceeds to unsecured creditors.⁶⁷ The chapter 7 rules regarding asset sales and payment to creditors also are important in a chapter 13 bankruptcy because the chapter 13 repayment plan must pay creditors at least as much as they would have received if the debtor had filed chapter 7.⁶⁸

Debtors can exempt assets from their bankruptcy estates.⁶⁹ Trustees cannot sell exempt assets. Rather, debtors keep these assets for their post-bankruptcy lives.⁷⁰ In nineteen states, debtors can choose between the federal exemptions in the Bankruptcy Code or in state law. The other thirty-one states have exercised their right to opt out of the federal exemptions and require bankruptcy debtors in their state to apply their state's own exemptions.⁷¹

The federal exemption currently stands at \$4000 for one car.⁷² State exemptions in motor vehicles vary. For example, Idaho allows \$7000.⁷³ Illinois allows \$2400, and Indiana has no motor vehicle exemption.⁷⁴ In addition to the motor vehicle exemption, the federal exemptions and many state exemptions allow a "wild card" exemption that the debtor can use to exempt any personal property the debtor chooses.⁷⁵ Indiana, for example, has an \$8000 wild-card exemption

65. See 11 U.S.C. § 541 (2018).

66. Although people also may file under chapter 11, very few do so because it is expensive and cumbersome. See Foohey et al., *supra* note 36, at 226 n.32. The discussion thus focuses on chapters 7 and 13.

67. See Pamela Foohey, *A New Deal for Debtors: Providing Procedural Justice in Consumer Bankruptcy*, 60 B.C. L. REV. 2297, 2338 (2019) (discussing the trustee's role). In chapters 7 and 13, the bankruptcy trustee is a private attorney charged with overseeing the bankruptcy case. *Id.*

68. 11 U.S.C. § 1325(a)(4). Bankruptcy lawyers often refer to this requirement as the "best interests of creditors" test.

69. Foohey, *supra* note 67, at 2306.

70. *Id.*

71. See AM. BANKR. INST., FINAL REPORT OF THE ABI COMMISSION ON CONSUMER BANKRUPTCY 42 (2019), <https://consumercommission.abi.org/commission-report>.

72. See 11 U.S.C. § 522(d)(2). This figure, along with other dollar amounts in the Code, adjusts every three years. *Id.* § 104(a). The last adjustment took effect on April 1, 2019. See Revision of Certain Dollar Amounts in the Bankruptcy Code Prescribed Under Section 104(a) of the Code, 84 Fed. Reg. 3,488 (Feb. 12, 2019), <https://www.federalregister.gov/documents/2019/02/12/2019-01903/revision-of-certain-dollar-amounts-in-the-bankruptcy-code-prescribed-under-section-104a-of-the-code>.

73. IDAHO CODE § 11-605(3) (2019).

74. 735 ILL. COMP. STAT. 5/12-1001(c) (2019).

75. See Gary E. Sullivan, *A Fresh Start to Bankruptcy Exemptions*, 2018 BYU L. REV. 335, 338 n.6, 390.

the debtor could use to protect a motor vehicle.⁷⁶ The federal wild-card exemption can be as high as \$13,900 depending on whether the debtor claims a homestead exemption.⁷⁷ Married debtors can often combine exemptions, including federal exemptions.⁷⁸

The exemption protects the debtor's equity in the car. For example, suppose an Indiana debtor owns a car worth \$19,000 subject to a \$5000 lien. The trustee would sell the car for \$19,000 (ignoring the costs of the sale), pay off the \$5000 lien, give \$10,250 to the debtor for Indiana's wild-card exemption (assuming the debtor used it to protect the car), and distribute the remaining \$3750 to creditors.

If the car was instead subject to a \$10,000 lien, or if the case involved married debtors, the trustee would not sell the car because the exemptions would exceed the value of the debtor's equity in the car. Rather, the debtor would keep the car. As we discuss next, if the debtor had an outstanding loan secured by the car, the debtor would need to take other steps to address this loan.

B. *Paying a Secured Claim*

Many cars are subject to liens. These liens are often the purchase money loan the debtor used to buy the car, but they can also be later loans, such as a title or pawn loan secured by the car.⁷⁹ Cars can also become subject to involuntary liens, such as an artisan's lien for repairs to the car or for parking or traffic fines.⁸⁰

Bankruptcy law discharges the debtor's personal liability on a loan, but it does not extinguish the lien.⁸¹ Thus, even after bankruptcy, if a debtor wishes to keep a car, the debtor must continue paying the car loan, or the creditor can repossess the automobile.⁸² The debtor can also avoid some involuntary liens in bankruptcy.⁸³

76. See IND. CODE § 34-55-10-2(c)(2) (2019).

77. See 11 U.S.C. § 522(d)(5). The dollar amounts were adjusted effective April 1, 2019 to \$1325 and \$12,575 for an aggregate of \$13,900. See *supra* note 72 and accompanying text.

78. See 11 U.S.C. § 522(m); *In re Miller*, 167 B.R. 782, 782–83 (Bankr. S.D.N.Y. 1994) (married debtors may combine motor vehicle exemption to protect equity in a car); see also *In re Sherman*, 237 B.R. 551, 553–55 (Bankr. N.D.N.Y. 1999) (married debtors could combine exemptions to protect other personal property).

79. This lien is referred to as a “purchase-money security interest.” A “purchase-money security interest” is one that secures a loan for the purchase price of the car. The typical loan obtained from an auto dealer or at a bank to purchase a car would give rise to a “purchase-money security interest.”

80. See LOPUCKI ET AL., *supra* note 64.

81. See 11 U.S.C. §§ 727, 1328 (2018).

82. In some instances, while a bankruptcy case is pending, the trustee will abandon the vehicle, removing it from the bankruptcy estate, allowing the creditor to repossess it as allowed under applicable law. See *id.* § 554.

83. *Id.* § 545 (avoiding many statutory liens). Judicial liens that impair an exemption can be avoided under *id.* § 522(f).

A creditor with a lien holds a secured claim.⁸⁴ A chapter 7 consumer debtor with a secured claim against a car has three choices. First, the debtor can surrender the car to the creditor and face no post-bankruptcy liability on the car because of the bankruptcy discharge. Second, the debtor can redeem the car by paying the entire value of the car to the creditor (instead of the amount of the loan).⁸⁵ Third, the debtor can reaffirm the debt.⁸⁶ Reaffirmation allows a debtor to assume post-bankruptcy liability on a debt that otherwise would be discharged, essentially waiving the discharge as to the debt. This means that the loan continues to exist outside the bankruptcy proceeding.⁸⁷ The Bankruptcy Code imposes procedural safeguards before a debtor can reaffirm a debt that requires either the lawyer's or the court's acquiescence that reaffirmation is in the debtor's best interest.⁸⁸

The Bankruptcy Code requires a debtor who files chapter 7 to submit a Statement of Intention within thirty or forty-five days of the meeting of creditors.⁸⁹ The Statement of Intention must specify whether the debtor intends to surrender, redeem, or reaffirm the debt on the car.⁹⁰ If the debtor fails to meet the deadline, the car ceases to have the protections of bankruptcy law, and the creditor can proceed with its state-law remedies against the car (i.e., repossession and sale).⁹¹

The law on the ground about the Statement of Intention diverges substantially from the law on the books. Many debtors do not file a Statement of Intention, or they choose a supposedly prohibited fourth choice, to retain the automobile.⁹² This procedure is often referred to as a ride-through, because the car loan simply continues after bankruptcy.⁹³ Creditors are often willing to accept a ride-through so long as the debtor remains current on the car loan because, after all, if the debtor misses car payments, the creditor can still repossess the car.⁹⁴ The law on the books clearly gives a creditor rights in the

84. Richard B. Hagedorn, *The Survival and Enforcement of the Secured Claim Under the Bankruptcy Reform Act of 1978*, 54 AM. BANKR. L.J. 1, 3 (1980).

85. See 11 U.S.C. § 722 (allowing the redemption of “tangible personal property intended primarily for personal, family, or household use” by paying the “secured claim”). Under *id.* § 506(a)(1), the “secured claim” equals the value of the collateral.

86. See *id.* § 524.

87. See *id.*

88. See *id.* § 524(c).

89. As explained at AM. BANKR. INST., *supra* note 71, at 52–57, Congress enacted conflicting 30- and 45-day requirements in § 521 as part of BAPCPA and has not fixed the conflict in the fourteen years that have passed since.

90. 11 U.S.C. § 521(a)(2) (2018).

91. See *id.* § 362(h).

92. See ELIZABETH WARREN ET AL., *THE LAW OF DEBTORS AND CREDITORS: TEXT, CASES, AND PROBLEMS* 191–92 (7th ed. 2014) (discussing ride-through).

93. *Id.*

94. *Id.*

absence of a Statement of Intention, but insisting on these rights in bankruptcy court is often not cost-justified given the dollar figures involved.⁹⁵ The typical creditor will have recourse to the car or its value regardless of whether the creditor insists on its rights, and an aggressive legal strategy generally will not materially increase the recovery from a debtor who has filed bankruptcy.⁹⁶

A chapter 13 bankruptcy requires the debtor's repayment to creditors over a three- or five-year repayment plan.⁹⁷ Chapter 13 debtors can use the car during the pendency of the bankruptcy case.⁹⁸ Generally speaking, debtors above their state's median income must use a five-year plan.⁹⁹

For secured claims, unless the creditor consents to a different treatment, the debtor must either surrender the collateral or make payments equal to the present value of the secured claim—that is, the debtor must make payments with interest.¹⁰⁰ If the debtor has missed payments and is in arrears, chapter 13 can be an especially useful tool. The debtor can spread repayment of the arrearage over the three- or five-year life of the plan instead of paying it all at once, as they would need to do outside of bankruptcy.¹⁰¹

The “secured claim” that the debtor must pay is usually the value of the collateral.¹⁰² As part of BAPCPA, Congress enacted special protections for any purchase-money security interest in an automobile purchased within 910 days (i.e., two and a half years) before the bankruptcy filing.¹⁰³ The provision is known as the “hanging paragraph” because, in another example of the ill-considered nature of BAPCPA, Congress put the provision in an unnumbered paragraph of section 1325.¹⁰⁴ If the hanging paragraph applies, the chapter 13 plan must pay the full amount of the debt, not

95. See, e.g., *Dumont v. Ford Motor Credit Co. (In re Dumont)*, 581 F.3d 1104, 1118 (9th Cir. 2009) (holding that BAPCPA eliminated ride-through); *In re Miller*, 443 B.R. 54, 58–59 (Bankr. D. Del. 2011) (same); *In re Linderman*, 435 B.R. 715, 718 (Bankr. M.D. Fla. 2009) (“Nationally, debtors no longer can keep personal property without reaffirming the debt or redeeming the property.”).

96. See Ehrlich, *supra* note 51, at 617 (discussing ride-through prior to BAPCPA); Amber J. Moren, Note, *Debtor's Dilemma: The Economic Case for Ride-Through in the Bankruptcy Code*, 122 YALE L.J. 1594, 1596 (2013) (discussing ride-through after BAPCPA).

97. For a discussion of chapter 13, see Foohey et al., *supra* note 56, at 1062–63.

98. See 11 U.S.C. § 1303 (2018) (giving a chapter 13 debtor the powers of a bankruptcy trustee under section 363, which includes the right to use property of the bankruptcy estate).

99. See *id.* § 1322(d).

100. See *id.* § 1325(a)(5).

101. See *id.* § 1322(b)(5).

102. See *id.* § 506(a).

103. See *id.* § 1325(a)(*) ; *supra* note 79 (defining “purchase-money security interest”).

104. See 11 U.S.C. § 1325(a)(*).

just the value of the collateral.¹⁰⁵ The hanging paragraph is not applicable to car loans that are more than two and a half years old, but loans that are two and a half years old may have amortized to a point where the amount owed is roughly equivalent or even lower than the value of the car anyway.¹⁰⁶

C. *Combatting Repossessions and License Suspensions*

In addition to addressing secured claims against cars, filing bankruptcy is useful to combat repossessions. Bankruptcy comes with the automatic stay, which prohibits any act to collect on prepetition claims, such as auto loans.¹⁰⁷ Courts have generally, but not universally, held that the automatic stay requires the return of repossessed (but not yet sold) cars to debtors in chapter 13.¹⁰⁸ Chapter 7 likewise can assist debtors in getting their repossessed cars back, provided they reaffirm or redeem the accompanying debt.¹⁰⁹

Finally, unpaid parking tickets and other government-assessed fees and fines also can lead to cars being booted or impounded, a practice for which Chicago has received national press.¹¹⁰ Beyond

105. See Juliet M. Moringiello, *(Mis)use of State Law in Bankruptcy: The Hanging Paragraph Story*, 2012 WIS. L. REV. 963, 970 (2012).

106. See 11 U.S.C. § 1325(a)(*).

107. 11 U.S.C. § 362(a)(6).

108. See Eugene R. Wedoff, *Return of Vehicles Seized Before a Chapter 13 Filing: Does the Debtor Have to File a Turnover Motion?*, 2019 AM. BANKR. INST. J. 2, 2 (discussing “the right of a chapter 13 debtor to obtain the return of a vehicle seized before the bankruptcy was filed” and the circuit split regarding when a secured creditor must turn over a repossessed vehicle to the debtor). Compare *In re Fulton*, 926 F.3d 916, 920 (7th Cir. 2019) (holding that once a debtor files bankruptcy, a city (here, Chicago) cannot “continue to hold a debtor’s vehicle until the debtor pays her outstanding parking tickets”), and *Weber v. SEFCU (In re Weber)*, 719 F.3d 72, 83 (2d Cir. 2013) (holding that a secured creditor violated the automatic stay when it did not return a repossessed vehicle to a chapter 13 debtor), and *Thompson v. Gen. Motors Acceptance Corp.*, 566 F.3d 699, 700 (7th Cir. 2009) (holding that a secured creditor must immediately return a vehicle it lawfully repossessed pre-petition upon the debtor filing chapter 13), with *In re Denby-Peterson*, 941 F.3d 115, 132 (3d Cir. 2019) (holding that a secured creditor does not need to turn over a vehicle repossessed pre-petition immediately), and *WD Equip. v. Cowen (In re Cowen)*, 849 F.3d 943, 950 (10th Cir. 2017) (holding that a secured creditor only must return a vehicle to a chapter 13 debtor if the court grants the debtor’s motion for turnover).

109. See *supra* Subpart III.B.

110. See Will Racke, *Report: Chicago Has Seized and Sold Nearly 50,000 Cars over Ticket Debt Since 2011*, NEWSWEEK (Jan. 7, 2019, 9:14 PM), <https://www.newsweek.com/chicago-seize-cars-tickets-1283106>; Melissa Sanchez & Sandhya Kambhampati, *How Chicago Ticket Debt Sends Black Motorists into Bankruptcy*, PROPUBLICA ILL. (Feb. 27, 2018), <https://features.propublica.org/driven-into-debt/chicago-ticket-debt-bankruptcy/>; see also David Siegel, *Bankruptcy Is the Answer to Recovering an Impounded Car: But Be Patient*, LAW OFF. DAVID M. SIEGEL (May 27, 2015), <https://davidmsiegel.com/bankruptcy-is-the-answer-to-recovering-an-impounded-auto-but-be-patient/> (linking impounding and filing chapter 13 bankruptcy with unpaid parking tickets). In some cities, leaving a car on a street for too long can result in towing. See Laura

releasing vehicles from the impound lot, chapter 13's broader discharge gets rid of some fees and fines such as parking tickets, which in turn helps debtors with license suspensions.¹¹¹ In contrast, chapter 7 does not include such a broad discharge, a difference which recent research has linked to some people filing chapter 13 to deal with parking tickets and license suspensions.¹¹²

IV. METHODOLOGY

The data in this Article are from the CBP, a long-running study of the people who file bankruptcy in the United States. The CBP began in 1981 and also studied waves of bankruptcy filers in 1991, 1999, 2001, and 2007.¹¹³ In 2013, the CBP started continuous data collection.¹¹⁴ The authors of this Article now serve as the co-principal investigators ("co-PIs") for the CBP.¹¹⁵

This Article uses data collected by the CBP from 2013–2018, hereafter referred to as the "current CBP." Previous iterations of the CBP did not collect detailed information about debtor's motor vehicles.¹¹⁶

In the current CBP, a national random sample of 200 bankruptcy cases (chapter 7 and chapter 13) is drawn every three months.¹¹⁷ Court records are publicly and electronically available. The court records for each filer in the sample are downloaded and coded into a database by law students supervised by one of the co-PIs. One or more of the co-PIs double-checks the court-record coding using a computer program to identify potentially problematic data entries.¹¹⁸

J. Nelson, *Towing a Car Can Be Financially Ruinous. Should California Cities Do It Anyway?*, L.A. TIMES (June 12, 2019, 3:00 AM), <https://www.latimes.com/local/lanow/la-me-ln-los-angeles-unpaid-parking-tickets-towing-impound-20190612-story.html> (noting that some California cities will tow vehicles left on the street for more than 72 hours and that Los Angeles "charges \$133 for the tow, \$115 to release the vehicle, and a \$45.65 fee for each day the car is in storage"); see also *supra* note 58.

111. Compare 11 U.S.C. § 727(b), with *id.* § 1328(a)(3). See generally Pamela Foohey, *Fines, Fees, and Filing Bankruptcy*, 97 N.C. L. REV. 419 (2020) (discussing the scope of the chapter 7 and chapter 13 discharge as regards civil fines and fees).

112. See *supra* notes 55–58 and accompanying text.

113. Melissa B. Jacoby et al., *Rethinking the Debates over Health Care Financing: Evidence from the Bankruptcy Courts*, 76 N.Y.U. L. REV. 375, 376–77 (2001); Lawless et al., *supra* note 62, at 353–54.

114. Foohey et al., *supra* note 56, at 1072.

115. For more about the CBP, see CONSUMER BANKR. PROJECT, <http://www.consumerbankruptcyproject.org/> (last visited May 2, 2020).

116. See Lawless et al., *supra* note 62, at 387–98 (detailing the history of the CBP); see also Jacoby et al., *supra* note 113, at 386–91 (discussing the 1999 "Phase III" of the CBP).

117. Other discussions of the methodology for the current CBP appear at Foohey et al., *supra* note 36, at 232–34; Foohey et al., *supra* note 56, at 1071–74.

118. Foohey et al., *supra* note 56, at 1072.

The current CBP thus consists of the court records for 4800 households that filed bankruptcy.

Each household in the sample also receives a seven-page questionnaire asking for demographic information as well as information about the household's circumstances before and after the bankruptcy filing.¹¹⁹ Respondents who complete the questionnaire receive a fifty-dollar gift card.¹²⁰ In total, 1,315 questionnaires were returned for a response rate of 27.4 percent. The only data in this Article that use the questionnaire responses are respondents' age, marital status, and racial identifications. This Article uses the full set of 4800 observations for which court records are available except when reporting age, marital status, or race information.

As part of a bankruptcy filing, a debtor must submit schedules disclosing debts and assets, as well as other information related to the bankruptcy case. These schedules include listings of the debtor's personal property and the property's value.¹²¹ Automobiles, light trucks (e.g., pickup trucks), motorcycles, and similar conveyances used for personal transportation were coded as a "car." Trailers, ATVs, four-wheelers, mobile homes, and commercial vehicles (e.g., a semitrailer owned by a truck driver who had filed an individual bankruptcy) were not considered cars.¹²²

The CBP records the value for the three most valuable cars as listed in Schedule B. Only 3.2 percent of cases had more than three cars, and less than 0.8 percent had more than four cars. For each car, the value of all security interests and liens against the car was recorded from Schedule D, which is the amount owing on the loan. The bankruptcy schedules do not contain other information about the loan terms, such as the length of the loan or the interest rate.¹²³ If no security interests or liens were listed, the debtor was considered to own the car "free and clear" (i.e., that the amount of the security interests and liens was zero). Finally, in chapter 7 cases, the debtor's intention as to the car was recorded from Form 8 (Statement of Intention). (The debtor does not file a Statement of Intention in a chapter 13 case.)

The availability of "Blue Book" values for cars makes their valuation less problematic than the valuation of the debtor's other personal property. "Blue Book" valuations require accurate

119. *Id.* at 1071–72.

120. *Id.* at 1073.

121. *Schedule A/B Property (individuals) – Form 106A/B*, U.S. COURTS, <https://www.uscourts.gov/forms/individual-debtors/schedule-ab-property-individuals> (last visited May 2, 2020).

122. *Id.*

123. *Schedule D: Creditors Who Hold Claims Secured by Property (individuals) – Form 106D*, U.S. COURTS, <https://www.uscourts.gov/forms/individual-debtors/schedule-d-creditors-who-hold-claims-secured-property-individuals> (last visited May 2, 2020).

information about the car's features and condition.¹²⁴ The bankruptcy schedules are, of course, prepared for the purpose of the bankruptcy case. Incomplete information or litigation incentives can affect a car's valuation in the bankruptcy schedules.¹²⁵ A "Blue Book" generally lists two values: the value a car dealer would give to take the car as a trade-in and the retail price a car dealer would charge for the car.¹²⁶ We suspect, although do not know for certain, that many debtors use the car's lower trade-in "Blue Book" value rather than the higher retail value. We elaborate on how valuation may be affecting the Article's findings below.

Throughout this Article, we generally report medians rather than means because the presence of outliers skews the means. We do not report tests of statistical significance for most univariate comparisons or crosstabulations, although many of the differences are statistically significant. Because of the large number of observations, it is easy for a univariate or crosstabulation comparison to pass the conventional 0.05 threshold for statistical significance even for relatively small effects. Instead of statistical significance, we urge readers to focus on the size of the differences in the data.

V. RESULTS: FILING BANKRUPTCY WITH CARS

A. *Car Ownership and Loans (Summary Statistics)*

Because chapter 7 and chapter 13 bankruptcy offer very different types of relief for cars,¹²⁷ we first present summary statistics separately for households that filed under each chapter. As a point of comparison for nonbankrupt households, we look to the 2016 Survey of Consumer Finances ("SCF"), the most recent version of the Federal Reserve's triennial survey, to provide a financial snapshot of U.S. households.¹²⁸ Because of different variable definitions and methodologies, the SCF provides only a general point of comparison.¹²⁹

124. *What's My Car Worth – Blue Book Used Car & Trade-In Values*, KELLEY BLUE BOOK, <https://www.kbb.com/whats-my-car-worth/> (last visited May 2, 2020).

125. *See id.* (showing a car's year, make, model, and mileage is necessary to accurately calculate the car's value); *see also infra* Subpart V.A (describing debtors' incentives to "lowball" the value of their cars).

126. *What Is Blue Book Value?*, KELLEY BLUE BOOK (Dec. 17, 2013, 12:53 PM), <https://www.kbb.com/what-is/blue-book-value/>.

127. *See supra* Part III.

128. *See Survey of Consumer Finances*, FED. RES. BOARD, <https://www.federalreserve.gov/econres/scfindex.htm> (last visited May 2, 2020); *see also Survey of Consumer Finances – About*, FED. RES. BOARD, <https://www.federalreserve.gov/econres/aboutscf.htm> (last updated Mar. 16, 2017).

129. The tabulations from the SCF were done using the Survey Documentation and Analysis tool available from the University of California,

Not surprisingly, bankruptcy filers are in much worse financial shape than the general population as captured by the SCF. The median total debt to annual income ratio is 2.33 for bankruptcy filers as compared to 0.49 for SCF respondents. As reported in Table 1, levels of car ownership, however, are similar between people who file bankruptcy and SCF respondents. Across all filers, 84.7 percent own cars, as compared to 84.8 percent of SCF respondents. The median bankruptcy filer has one car with the median joint bankruptcy filing of a married couple having two cars. Both are the same as the corresponding median SCF households.

Also as reported in Table 1, more chapter 13 filers (88.8 percent) have cars as compared to chapter 7 filers (82.5 percent). The percentage of chapter 7 filers with cars, notably, is the same as in Culhane and White's study of chapter 7 filers from 1995, which is the only data point of comparison from prior literature.¹³⁰ Also similar to the result in Culhane & White's study that about half of debtors' cars were subject to a loan, in our study, of debtors' three most valuable cars, 52.1 percent of the cars had a lien against them.¹³¹ These findings suggest patterns of car ownership in bankruptcy are long-standing.¹³²

Berkeley. *SDA: Survey Documentation and Analysis*, U.C. BERKLEY, <http://sda.berkeley.edu> (last visited May 2, 2020).

130. See Culhane & White, *supra* note 40, at 738.

131. See *id.*

132. We assessed the possibility that car ownership varied based on the need for an automobile in a location through two different measures. First, we used zip-code level data from the United States Census Bureau's American Community Survey, which tracks how people commute to work (car alone, carpool, and public transit). See *American Community Survey*, U.S. CENSUS BUREAU, <https://www.census.gov/programs-surveys/acs> (last visited May 2, 2020). Second, we considered a location's rurality using data from the United States Department of Agriculture's Rural-Urban Continuum, which "distinguishes metropolitan counties by the population size of their metro area, and nonmetropolitan counties by degree of urbanization and adjacency to a metro area", to create a 9-item categorical variable for rurality. See *Rural-Urban Continuum Codes*, USDA ECON. RES. SERV., <https://www.ers.usda.gov/data-products/rural-urban-continuum-codes/> (last updated Oct. 25, 2019). Neither measure showed a geographical disparity in debtors' vehicle ownership and where they reside.

TABLE 1. HOUSEHOLDS WITH CARS – DESCRIPTIVE STATISTICS FOR
BANKRUPTCY FILERS BY CHAPTER AND
AS COMPARED TO THE SURVEY OF CONSUMER FINANCES

	<u>Chapter 7</u> <u>Filers</u>	<u>Chapter 13</u> <u>Filers</u>	<u>SCF</u>
<u>Percentages & Counts</u>			
% car owners	82.5%	88.8%	84.8%
% car owners with house	39.0%	58.5%	69.5%
% cars with liens	45.8%	62.2%	n/a
Median # of cars owned, all households	1.0	1.0	1.0
Median # of cars owned, joint filers/married	2.0	2.0	2.0
<u>Medians for Car Owners</u>			
Value of most valuable car	\$5,394	\$8,923	n/a
Amount owed on most valuable car	\$2,746	\$9,776	n/a
Equity in most valuable car	\$1,029	\$0	n/a
Total value of all cars owned	\$6,473	\$10,496	\$17,100
Total owed on car loans	\$3,797	\$11,062	\$0
Total equity in all cars owned	\$1,215	\$0	\$11,900
Total car value/total assets	23.2%	13.8%	8.7%
Total car value/total assets (no house)	51.5%	67.2%	66.2%

Notes: Table 1 reports medians and percentages from the current CBP, as well as a comparison to the SCF (using the Survey & Documentation Analysis tool from the University of California, Berkeley). Percentages and counts are given for all cases with medians given for persons who own cars.

The CBP and SCF follow different data conventions that are important to note. The CBP includes as a “car” the following: “automobiles, light trucks (e.g., pickup trucks), motorcycles and similar conveyances used for personal transportation,” while the SCF counts motorcycles with motor homes and other recreational vehicles. The CBP data are reported using 2018 dollars, while the SCF data are reported using 2016 dollars. The CBP data observe the value and equity in individual cars, while the SCF data are computed using aggregate figures across all cars. Finally, the CBP analogue for a married couple is a joint bankruptcy case.

Car values diverge between the two bankruptcy chapters. One explanation might be that chapter 7 debtors want to lowball the estimates of value, lest their schedules suggest assets are available for distributions to creditors. A recent study found that when exemption levels for home equity rise, chapter 7 bankruptcy filings also increase, suggesting that asset valuation is important to

debtors.¹³³ In chapter 13, debtors have less of an incentive to lowball because they often will have to pay the full amount owing to the lender anyway, and an inaccurately low valuation only invites objections from the chapter 13 trustee or the car lender.¹³⁴ It is unlikely, however, that these legal incentives can fully explain the differences in car valuations between the chapters. Information on the market value of automobiles is readily available through the Blue Book pricing guides.¹³⁵ As compared to most other personal property, debtors do not have as much latitude in listing an automobile's value.

The most valuable automobile for the median chapter 7 filer is worth approximately \$5400, which is roughly in the same price range as the trade-in values for a typical five-year-old Ford Focus or a six-year-old Toyota Corolla. The median chapter 13 filer's most valuable car is worth \$8928, which is closer in value to a two-year-old Ford Focus or three-year-old Toyota Corolla. Chapter 13 filers tend to have more income, but in an unreported regression, bankruptcy chapter remained a statistically significant contributor to car value even after controlling for income. Table 1 indicates that, despite having less valuable cars, chapter 7 filers have more of their wealth concentrated in cars than chapter 13 filers (23.2 percent versus 13.8 percent). This effect is most likely due to the higher concentration of homeowners in chapter 13, and indeed it reverses when looking at non-homeowners only.

Across all debtors, chapters 7 and 13, the most valuable car is more likely than the second most valuable car to be encumbered with an auto loan (60.5 percent and 39.6 percent respectively). The third most valuable car is even less likely to have a lien on it (27.2 percent). As reported in Table 1, chapter 13 debtors also are more likely to enter bankruptcy with liens on their cars as compared to chapter 7 debtors. This result holds for the most valuable, second most valuable, and third most valuable vehicles.¹³⁶ Thus, when controlling for homeownership, chapter 13 filers not only are more likely to have a higher percentage of their wealth concentrated in cars but they are also more likely to have loans on those cars.

Comparing car values from the bankruptcy filers to the SCF data must be done with caution. The SCF Codebook indicates that car value is computed using retail values.¹³⁷ Bankruptcy filers, especially

133. See Nathaniel Pattison & Richard M. Hynes, *Asset Exemptions and Consumer Bankruptcies: Evidence from Individual Filings* 3, 17, 31 (Va. Law & Econ., Research Paper No. 2019-14, 2019), <https://ssrn.com/abstract=3413911>.

134. *Id.* at 7-8.

135. See *What's My Car Worth*, *supra* note 124.

136. 53.7 percent, 32.4 percent, and 21.2 percent of chapter 7 filers owe a secured lender on their most valuable, second most valuable, and third most valuable car (respectively), as compared to 72.3 percent, 50.4 percent, and 33.9 percent of chapter 13 filers (respectively).

137. The SCF codebook is searchable at <https://www.federalreserve.gov/apps/scfeb> (last visited May 2, 2020).

chapter 7 filers, are more likely to use the lower trade-in value.¹³⁸ Online sites that give consumers information about car values suggest that the retail value will be 25–40 percent more than the trade-in value.¹³⁹ Even with this rough adjustment, bankruptcy filers have less valuable cars than the general population as captured by the SCF.

Despite having less valuable cars, bankruptcy filers have more of their wealth concentrated in them than the SCF respondents. Persons come to bankruptcy court with their wealth depleted, and the data bear out the intuition that people will hold onto their means of transportation if they can.¹⁴⁰ Although people in bankruptcy own cars at the same percentage as SCF respondents, those bankruptcy filers with cars are less likely to own homes as compared to SCF respondents. This finding also lends credence to the intuition that people will hold onto their cars even after defaulting on their mortgages and losing their homes.¹⁴¹

Interestingly, when looking at non-homeowners, the SCF respondents report a similar concentration of wealth in cars as chapter 13 bankruptcy filers and a higher concentration of wealth in cars than chapter 7 filers. That non-homeowners in the general population appear to have similar patterns of wealth accumulation as bankruptcy filers merits further study but is outside the scope of this Article's focus on bankruptcy filers.

Where bankruptcy filers most clearly differ from SCF respondents is in the level of car indebtedness. The median SCF respondent reported no automobile loans and \$11,900 in equity in cars, where the median chapter 7 filer owed approximately \$3800 with only \$1215 of equity, and the median chapter 13 filer owed a little over \$11,060 with no equity in their cars.

Perhaps it is not surprising that debtors arrive in bankruptcy court with cars and relatively high levels of debt (in relation to value) securing those cars. But these findings establish that debtors look to the bankruptcy system to help deal with car debt, while suggesting that people hold onto their cars through financially turbulent times.

138. This practice can be seen in continuing legal education publications aimed at practicing consumer bankruptcy attorneys. See MARK G. DEGIACOMO, A PRACTICAL GUIDE TO CONSUMER BANKRUPTCY § 2.4.5(b) (4th ed. 2018) (advising attorneys to use “‘book value’ at wholesale” to value automobiles absent “unusual circumstances”); Kent A. Gaertner, *Bankruptcy Initial Interview: Tips and Traps*, 26 J. DUPAGE COUNTY BAR ASS'N 26, 31 (2014) (noting that for car valuations, “the less value the better”).

139. Elizabeth Punke, *What Is the Average Mark Up on a Used Car?*, ITSTILLRUNS, <https://itstillruns.com/average-mark-up-used-car-7326490.html> (last visited May 2, 2020).

140. Foohey et al., *supra* note 36, at 239, 242.

141. See Bliss, *supra* note 6 (quoting hedge fund manager Steve Eisman, who noted that even during the Great Recession, auto loan delinquencies were relatively low because people “tended to default on their house first, credit card second and car third”).

These results also show that people enter bankruptcy with older, less valuable vehicles, not the new or luxury automobiles that some may assume debtors are using bankruptcy to retain or which show up in one-off cases.¹⁴²

B. Keeping Cars and Discharging Debts (Chapter Choice and Case Outcomes)

Although what constitutes a “successful” outcome in a bankruptcy case is contested, car owners appear to have better case outcomes than bankruptcy filers who do not own cars. As Table 2 shows, car owners are less likely to have their cases dismissed, both in chapter 7 and in chapter 13.

Our data cannot explain why debtors with cars are more likely to receive a discharge. Perhaps owning cars motivates debtors to work hard to keep their cars, which would result in more cases that include cars receiving a discharge. Perhaps debtors with more resources, as evidenced by car ownership, are more likely to obtain discharge. However, our data show that both *pro se* and represented debtors who own cars are more likely to receive a discharge than debtors that enter bankruptcy without cars. People who file *pro se* are generally thought to be resource-poor as compared to other debtors.¹⁴³ In addition, in a regression controlling for income as a proxy for having resources, debtors who come to bankruptcy owning cars are 25 percent less likely to have their cases dismissed as debtors without cars. Debtors with cars have more successful bankruptcy court outcomes than those without cars.

142. See, e.g., *In re Hageney*, 422 B.R. 254, 261–63 (Bankr. E.D. Wash. 2009) (giving the debtors ten days to convert their case to chapter 13 before the court would dismiss their chapter 7 case for bad faith because they had purchased a Victory motorcycle for approximately \$20,000 just ten weeks prior to filing); Bill Balena, *My Avon Lake Neighbor Declared Bankruptcy and Kept Two Cadillacs*, BALENA L. FIRM, LLC (May 5, 2013), <http://ohbksource.com/my-avon-lake-neighbor-declared-bankruptcy-and-kept-two-cadillacs/>.

143. See Angela Littwin, *The Affordability Paradox: How Consumer Bankruptcy’s Greatest Weakness May Account for Its Surprising Success*, 52 WM. & MARY L. REV. 1933, 1938 (2011) (finding that *pro se* debtors “had statistically significantly lower incomes and asset levels than their represented counterparts”).

TABLE 2. CASE OUTCOMES BY CAR OWNERSHIP

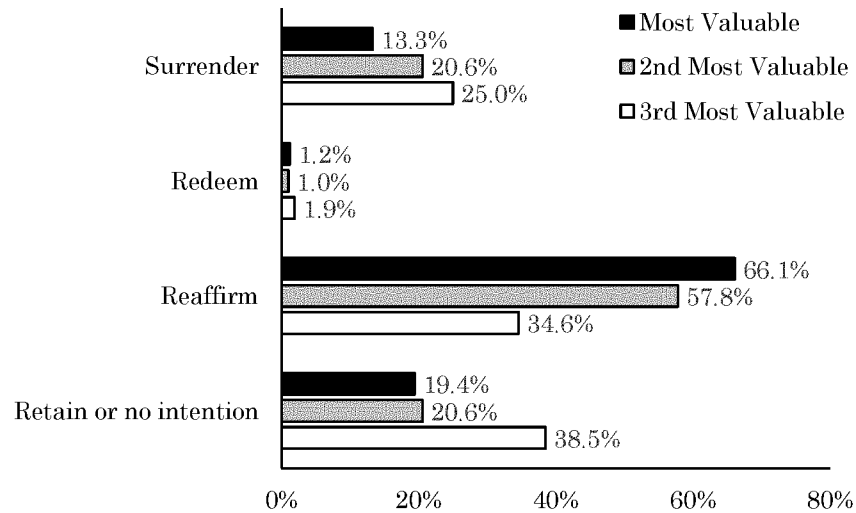
	<u>Owns Car</u>	<u>No Car</u>
<u>Chapter 7 Filings</u>		
Dismissed	1.9%	6.2%
Discharged	80.8%	76.1%
Pending	17.2%	17.7%
<u>Chapter 13 Filings</u>		
Dismissed	29.9%	40.9%
Discharged	10.4%	8.0%
Pending	59.7%	51.1%

Notes: Table 2 reports bankruptcy case outcomes by the chapter at the time of filing between car owners and non-car owners (N for chapter 7 = 2,939, N for chapter 13 = 1,567). Case outcomes are updated at three different times after the sample is pulled. Thus, the outcome is measured as of the most recent inspection of the docket, which is within six to eight weeks of filing for one-third of the data, more than one year for one-third of the data, and more than two years for one-third of the data.

Another measure of case outcomes is to consider what the debtor does with the car. As explained above, in a chapter 7 case, a debtor must file a Statement of Intention about any assets serving as collateral. What debtors indicate in that statement provides a more complete picture of what they desire to happen to an automobile in those cases. Figure 1 breaks down the intended disposition for chapter 7 debtors' three most valuable cars.

Two-thirds of chapter 7 debtors state that they intend to reaffirm the debt on their most valuable vehicle, and 57.8 percent have the same intention for their second most valuable vehicle. In addition to the reaffirmations, another approximately 20 percent of debtors either do not list an intention or state that they intend to retain the first- or second-most valuable car. Particularly for a household's two most valuable vehicles, these are attempts at "ride-through," where the debtor continues to make the car payments after bankruptcy. Although post-BAPCPA the Bankruptcy Code does not permit ride-throughs, car lenders are often happy to continue receiving payments on a car loan and do not contest it. The findings suggest that ride-through is more prevalent than many lawyers might realize, even after multiple court decisions holding that BAPCPA eliminated ride-through as an option.

FIGURE 1. INTENDED DISPOSITION OF CARS IN CHAPTER 7, FROM STATEMENTS OF INTENTION



Notes: Figure 1 reports the action expressed in the debtor's Statement of Intention in a chapter 7 case, sorted by the relative value of automobile. (The debtor does not file a Statement of Intention in a chapter 13 case.) N for most valuable car is 1,263. N for second most valuable car is 302. N for third most valuable car is 52.

Putting these figures together, chapter 7 debtors indicate that they want to continue their auto loan after bankruptcy 85.5 percent of the time for the most valuable car and 78.4 percent of the time for the second most valuable car. Although this discussion has focused on the two most valuable cars thus far, because so few debtors have more than two cars, chapter 7 debtors also seek to continue the auto loan 73.1 percent of the time for a third car. The higher percentage of cases in which debtors state no intention as to their third most valuable vehicle, however, may show that debtors are comfortable with losing the vehicle if ride-through proves infeasible. Conversely, the higher percentages of debtors indicating that they want to reaffirm the loans on the first and second most valuable vehicles suggest that debtors are particularly concerned about keeping one or two cars. This hypothesis, of course, aligns with research about cars being crucial to people's livelihoods. Depending on household size and access to public transportation, debtors may need two cars to survive.

As a point of comparison, recall that in their study of chapter 7 cases filed in 1997, Culhane and White reported that 72 percent of debtors with cars stated that they intended to reaffirm their auto loans, although only about one-third of debtors with car loans

ultimately filed reaffirmation agreements.¹⁴⁴ Per their methodology, Culhane and White excluded cars that debtors did not list on the Statement of Intention.¹⁴⁵ In our reported results, we include all cars with loans, even if the debtor did not list an intention regarding the loan, by collapsing these debtors with debtors who check the “retain the property and [explain]” box on the Statement of Intention. Although there are blank lines for the debtor to include an explanation, few debtors write anything. Not listing an intention and checking a box without providing explanation are equally non-compliant with the Bankruptcy Code and both seem to be attempts at ride-throughs.

Removing from our sample cars for which the debtor listed no intention regarding the loan, chapter 7 debtors indicate that they plan to reaffirm the loans on 66.7 percent of their cars. This percentage is lower than the percentage of reaffirmations reported by Culhane and White. However, Culhane and White’s study was limited to seven districts, and research shows significant interdistrict variation in bankruptcy outcomes.¹⁴⁶ When we limit our sample to the seven districts used by Culhane & White, the intended reaffirmation rate decreases to 62.4 percent. It appears that reaffirmation rates have declined since 1995, although we do not observe whether the reaffirmation occurs.

The most likely reason for the decline in intended reaffirmations is from BAPCPA’s 2005 changes to the bankruptcy law. BAPCPA added a requirement that the debtor act on the stated intention within 45 days.¹⁴⁷ If the debtor does not act within the deadline, bankruptcy’s automatic stay is lifted and secured creditors can proceed against their collateral.¹⁴⁸ Thus, after 2005 there is more of a consequence to not following through on a stated intention to reaffirm. Also, BAPCPA required debtor’s attorneys to opine that a debtor would be able to make payments under a reaffirmation agreement if the debtor’s expenses exceed the debtor’s income.¹⁴⁹ Cumulatively, these changes were predicted to have a chilling effect on reaffirmation agreements, and it appears they have.

Ultimately, however, bankruptcy law leaves debtors few options to modify an auto loan, and debtors seem to leave bankruptcy with

144. See Culhane & White, *supra* note 40, at 739–40.

145. *Id.* at 763, 765, 768.

146. See *id.* at 711–12, 721. Culhane & White also note the variability in reaffirmation agreements and outcomes across the seven districts in their study.

147. See 11 U.S.C. § 521(a)(1), (6) (2018).

148. *Id.* §§ 362(h)(1), 521(a). BAPCPA also added a form reaffirmation agreement to be used by debtors. See *id.* § 524(k).

149. *Id.* §§ 524(c), (k)(5); see also Devin L. Palmer, *Reaffirmation Agreements Under BAPCPA and Potential Liability of Bankruptcy Attorneys*, DAILY REC. (Jan. 31, 2006), <https://boylancode.com/reaffirmation-agreements-under-bapcpa-and-potential-liability-of-bankruptcy-attorneys/> (speculating about attorneys’ willingness to sign the certification soon after BAPCPA’s passage).

the same loans with which they entered. That is, debtors want to keep their cars, particularly the one or two they need to live productively, and they are willing to continue paying their secured creditors to do so. To the extent bankruptcy makes car loans more manageable, it is because of the freeing of income from debt service from the other discharged debts.

Another surprising finding is the paucity of redemptions. As noted, the Bankruptcy Code allows a debtor to redeem collateral securing a consumer debt by paying the value of the collateral.¹⁵⁰ A cottage industry of lenders specializes in providing financing to bankruptcy debtors who want to redeem collateral.¹⁵¹ Where the collateral is worth less than the face amount of the debt, redemption can be financially advantageous, although redemption loans can be costly with high interest rates. Despite the availability of these loans, however, redemptions are playing a very small role in helping debtors cope with car loans.

C. *It Is Not Asset Value (Exemptions)*

We hypothesize that people use bankruptcy to save their cars primarily because of the importance of the cars as access to jobs, schooling, and health care and not because of the economic value of the cars. We do not directly observe, of course, the debtor's motivations, and in any event, these motivations are likely complex and overlapping. Our data, however, indicate that the economic value of the cars is not the primary motivation.

As explained above, the debtor can exempt equity in an automobile in an amount that varies from state to state. Across all cases, 22.4 percent of debtors claim an exemption in an automobile. If the debtor's primary motivation was to protect the economic value of the car, we would expect to see differences in debtors' bankruptcy cases based on the nonexempt value the debtor would lose. Our research protocols for the CBP did not contemplate coding exemptions, but for purposes of this Article, we returned to the original court files and coded the exemptions for half of the cases from each year of the data.

The median car owner who claimed an exemption had \$2932 of equity in the claimed car that was exempt from the bankruptcy estate. Chapter 13 filers are more likely to have nonexempt car equity they would lose in a chapter 7 filing (26.1 percent versus 20.4 percent); chapter 13 filers also have higher average amounts of nonexempt car equity (\$1268 versus \$720). (The medians in both chapters are zero.) But, this effect goes away in a regression once we control for income where income only is significant, suggesting the

150. 11 U.S.C. § 722 (2018).

151. See, e.g., 722 REDEMPTION FUNDING, INC., <https://www.722redemption.com/> (last visited May 2, 2020); FRESH START LOANS, <http://www.freshstartloans.com/> (last visited May 2, 2020).

effect is only because chapter 13 filers have higher incomes and therefore are more likely to have nonexempt car equity.

Moving beyond chapter choice, we saw no connection between exemptions and other actions in the bankruptcy case. One might expect that debtors would be more likely to keep a car that had economic value to them. The debtor's stated intent to surrender, reaffirm, redeem, or ride-through a loan had no relationship with the debtor's claim of an exemption in a car or the amount of nonexempt equity in the car. Similarly, the amount of claimed exemptions or the existence of nonexempt equity had no relationship with whether the debtor's case was dismissed or discharged. Generally speaking, statistical analyses only capture results that happen on average. It certainly has to be true that some cases in our data reflect attempts by debtors to preserve the economic value of an automobile, but our data indicate economic value is not a motivator across most cases.

D. Differences Across Households in Bankruptcy (Cluster Analysis)

Thus far, the analysis has looked at the data in the aggregate, but different debtors come to bankruptcy court with different circumstances. For example, a debtor with a car and a house often will have both different resources (because the debtor could afford both) and different post-bankruptcy goals than a debtor with only a car. At the same time, rough categorizations based on home or car ownership may obscure important differences. A married couple with a modest home that is only worth a bit more than the two cars likely is different than someone with a more valuable house and perhaps even several cars.

As a proxy to measure the centrality of the debtor's car to the bankruptcy case, we used the ratio of the value of the debtor's cars to the debtor's total assets. Higher values imply that the debtor has more of their wealth concentrated in automobiles. This measure had a median of 0.19 and a mean of 0.33 and ranged from near zero to one.¹⁵² Stated differently, the median household that filed bankruptcy in our sample entered bankruptcy with cars accounting for about 20 percent of their total assets, and the average household came to bankruptcy court with cars as one-third of their total assets. As a shorthand, we refer to this ratio as *CarWealth*.

1. Demographics and Homeownership

One value of a clustering analysis is that it does not use arbitrary groupings chosen by the researcher or indeed use any decisions from the researcher at all about what observations belong in each group.

152. In 0.7 percent of the cases, debtors claimed a car was worth nothing, sometimes omitting any value and sometimes entering zero. In these instances, the debtor usually was claiming one of two things: the car was in need of repairs such that it was valueless or someone else actually owned the car such that it was worth nothing to the debtor. The cluster analysis excludes these cases.

Such techniques are called “unsupervised” methods. Distinct groups emerge from the data based on the data’s characteristics, as borne out by the descriptive statistics for the four clusters detailed in Table 3. The cluster analysis shows that, when it comes to automobiles, there are four distinct groups of households that file bankruptcy.¹⁵³ In addition to being useful to explore differences in case outcomes when focusing on cars, these groupings of filers by themselves provide useful insights into how persons use the bankruptcy process.

Consisting of 49.2 percent of total cases with cars, the first cluster is roughly the size of the other three clusters combined. Households in this cluster have the lowest concentrations of *CarWealth*, with a median of only 0.05. These debtors’ *CarWealth* is so low because they predominantly are homeowners (83.1 percent), with a median home value of a bit under \$136,000. Homeownership implies a mortgage, which leads to the highest median amount of indebtedness among the four clusters (\$186,682) and the highest debt-to-income ratio (3.48). These households are the best resourced, with a median annual income of \$40,164, almost \$8000 higher than the median income of the debtors in the next cluster. Consistent with their homeownership, these debtors are more likely to file chapter 13.

153. Specifically, we did a k-means clustering that asked the computer to assemble four groups such that the variance within each group was minimized around the group’s mean. To confirm that the four-group clustering solution was most optimal, we did a post-cluster analysis consistent with Anna Makles, *Stata Tip 110: How to Get the Optimal k-Means Cluster Solution*, 12 STATA J. 347, 347 (2012).

TABLE 3. DESCRIPTIVE STATISTICS FOR CLUSTERS OF
CAR VALUE/TOTAL ASSETS (*CARWEALTH*)

	<u>Cluster</u>			
	<u>1</u>	<u>2</u>	<u>3</u>	<u>4</u>
<u>Medians</u>				
Car value/total assets	0.05	0.31	0.59	0.84
Number of cars	1	1	1	1
Total value of cars	\$6,725	\$5,643	\$7,383	\$13,176
Total equity in cars	\$1,564	\$902	\$528	-\$1,836
Total assets	\$150,255	\$18,091	\$12,549	\$15,801
Home value (homeowners only)	\$135,938	\$63,884	\$15,709	\$9,500
Total debt	\$186,682	\$65,838	\$54,344	\$53,459
Annual income	\$40,164	\$32,316	\$31,122	\$30,156
Debt-to-income ratio	3.48	1.62	1.42	1.47
<u>Percentages</u>				
Chapter 13s	41.1%	29.1%	29.4%	37.6%
Homeowners	83.0%	24.0%	6.8%	0.6%
African American	23.0%	21.5%	32.4%	34.0%
N	1,853	633	603	680

Notes: For bankruptcy debtors who owned a car, a k-means clustering was done for the ratio of the value of the debtor's cars to the debtor's total assets. Analysis suggested that four clusters was appropriate. Table 3 presents descriptive statistics for each of the four clusters. Number of observations is the total in each cluster. Some variables have missing observations. Race is from a subset of 1,094 surveys with valid racial information.

Households in the first cluster are distinct demographically. Debtors' average age is fifty-two, as compared to forty-seven or under in the other three clusters. The debtors are more likely to be married or live with a partner than those in clusters three and four. Both differences may be explained by homeownership. The households also are less likely to be African American. Overall, the first cluster is closest to the stereotypical middle-class bankruptcy, particularly one filed with the goal of saving the house. The debtor's cars most likely are along for the ride.

Clusters two and three have increasing concentrations of *CarWealth* (medians of 0.31 and 0.59). They have similar median income levels (\$32,316 and \$31,112) and somewhat similar debt-to-income ratios (1.62 and 1.42). They are about equally as likely to be in chapter 13 (28.6 percent and 29.4 percent). Clusters two and three differ in two important ways. First, there are many more homeowners in cluster two, though not nearly as many as in the first cluster. Indeed, cluster three includes only thirty-nine homes. The median home value for homeowners is more than four times greater in cluster two (\$63,884) than in cluster three (\$15,709). An

investigation of some of the houses in cluster three shows that they are mobile homes or are located in very economically depressed cities and towns, such as Flint, Michigan and Spencer, Tennessee, where more than a third of the population is below the poverty line.¹⁵⁴ Debtors in cluster two also were more likely to be married or live with a partner, which again may be a function of their higher homeownership rate.

Second, there are fewer African American households in cluster two (21.5 percent) than in cluster three (32.4 percent). Consistent with their low homeownership rate, debtors in both clusters are more likely to file chapter 7 than those households in the first cluster. These cases seem to be the stereotypical middle-class bankruptcy which does not include a house.

The highest concentration of African American households is in cluster four (34.0 percent). Debtors in this cluster also own little else besides their cars. The cars for the median filer in the cluster represent 84 percent of the filer's total wealth. This household owns \$15,801 in assets, of which about \$13,176 are their cars. For example, a family may have two vehicles—such as a three-year-old Honda Civic sedan with a trade-in value of about \$9825, and an eight-year-old Kia Sedona minivan with a trade-in value of \$3350—plus household items listed as worth a total of \$2625.

Although cluster four has the highest car values of all the clusters, the median filer has negative total equity in cars. The median debtor in cluster four has \$15,824 in car loans compared to only \$1769 in car loans for the median debtor in cluster one. With such a high concentration of their wealth in cars, cluster four represents the debtors most likely to be in bankruptcy to deal with car debt.

Given that debtors in cluster four do not own homes and have the lowest median incomes of all the clusters, almost all these debtors seemingly should file chapter 7 from a purely financial perspective. Nonetheless, they file chapter 13 at a higher rate (37.6 percent) than the debtors in clusters two and three, in which at least some debtors own homes. Indeed, cluster four's chapter 13 filing rate is closer to the approximately 41 percent of debtors in the first cluster, 83 percent of whom own homes.

Finally, across the clusters, the median total value of cars increases. This is partly mechanical because the total value of the cars is the numerator for the variable *CarWealth* used to cluster the groups. At the same time, it is not a complete explanation because

154. This figure is based on the 2010 United States Census. See *Poverty Status in Past 12 Months (Flint, Michigan)*, U.S. CENSUS BUREAU, <https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?src=CF>; *Poverty Stats in Past 12 Months (Spencer, Tennessee)*, U.S. CENSUS BUREAU, <https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?src=CF>.

total value of assets, the denominator in the variable, does not display the same effect. For instance, cluster three has the lowest median value for total assets. The implication is that car value is driving the clustering more than total assets.

2. Case Outcomes

Case outcomes across the four clusters vary, as shown in Table 4. Cluster four varies the most from the other clusters. Debtors in cluster four are more than twice as likely to have their chapter 7 cases dismissed than cluster one, although given the low rate of chapter 7 dismissals generally this difference affects a small number of cases. Chapter 13 cases in clusters three and four are 33 percent more likely to be dismissed than clusters one and two. And the discharge rate in cluster four is lower than the other three clusters; although, with the number of pending chapter 13 cases, these results should be interpreted with caution.

TABLE 4. CASE OUTCOMES BY CLUSTERS OF CAR VALUE/TOTAL ASSETS

	<u>Clusters</u>					
	<u>1</u>	<u>2</u>	<u>3</u>	<u>4</u>	<u>All</u>	<u>N</u>
<u>Chapter 7 Filings</u>						
Dismissed	1.3%	1.8%	1.2%	3.5%	1.8%	42
Discharged	83.0%	82.9%	80.3%	74.5%	81.0%	1,936
Pending	15.8%	15.4%	18.5%	21.9%	17.3%	413
<u>Chapter 13 Filings</u>						
Dismissed	27.1%	26.6%	36.2%	35.9%	29.8%	411
Discharged	11.2%	10.3%	11.3%	7.0%	10.3%	142
Pending	61.2%	63.0%	52.5%	57.0%	60.0%	825

Notes: For bankruptcy debtors who own cars, Table 4 reports case outcomes by the original chapter at the time of filing. The outcome is measured as of the most recent inspection of the docket, which is within six to eight weeks of filing for one-third of the data, more than one year for one-third of the data, and more than two years for one-third of the data. Outcomes are reported across four k-means clusters of the ratio of the value of the debtor's cars to total assets, capturing the concentration of the debtor's wealth in cars.

Debtors in cluster four come to bankruptcy with significantly fewer resources than debtors in the other clusters, particularly clusters one and two. They also owe more on their primary assets, their cars, than those assets are worth. These debtors' cases higher dismissal rate may reflect their lack of resources.¹⁵⁵ The cases themselves may be thought of as "precarious" bankruptcies. The

155. The percent of cases filed *pro se* does not vary across clusters.

households live unsteady financial lives pre-bankruptcy and their cases are similarly insecure.

In contrast, recall that households in clusters one and two seem to reflect the typical middle-class bankruptcy filings. Debtors' cases in these two clusters end in dismissal less often than the average case overall, particularly cases in cluster one. These debtors, in turn, are better resourced. In short, although our data cannot provide concrete reasons about the drivers of the clusters' discharge rates, it seems that people with more resources are more likely to receive discharges. Of course, if a primary motivation of people in cluster four for filing bankruptcy is to keep their cars by discharging their other debts, that cluster's lower discharge rate means that these households are less likely to achieve what they want from bankruptcy.

Chapter 7 filers' intended disposition of their most valuable vehicle across clusters further suggests that households in cluster four may be especially concerned about keeping their cars. As shown in Table 5, debtors in cluster four have higher rates of reaffirmation than debtors in the other three clusters.

TABLE 5. INTENDED DISPOSITION OF MOST VALUABLE CAR IN CHAPTER 7, FROM STATEMENTS OF INTENTION

	<u>Clusters</u>					
	<u>1</u>	<u>2</u>	<u>3</u>	<u>4</u>	<u>All</u>	<u>N</u>
Surrender	8.5%	12.3%	13.0%	15.4%	11.7%	167
Redeem	0.9%	2.0%	1.5%	1.2%	1.3%	18
Reaffirm	57.7%	53.8%	59.1%	64.2%	58.8%	841
Retain or no intention	32.9%	31.9%	26.4%	19.2%	28.3%	404

Notes: For chapter 7 bankruptcy debtors who own cars subject to a lien, Table 5 reports the intended disposition of the most valuable car listed on the bankruptcy schedules. The intended disposition is listed on Form 8, the Statement of Intention, which is only filed in chapter 7 cases. The last row captures both cases where Form 8 is missing or no intention for the automobile is listed on Form 8. Outcomes are reported across four k-means clusters of the ratio of the value of the debtor's cars to total assets, capturing the concentration of the debtor's wealth in cars.

Reaffirmation levels must be considered with apparent ride-through attempts captured in the final row because both leave an auto loan in place (although the reaffirmation technically is a new debt). When reaffirmation rates are added to ride-throughs, cluster four is lower (83.4 percent) than cluster one (90.6 percent). The effect can be seen in the rate of surrender, where cluster four is surrendering at higher rates (15.4 percent) than cluster one (8.5 percent). Nonetheless, affirmatively indicating that the debtor wants

to keep vehicles through reaffirmation implies that these debtors are worried about losing their cars more so than debtors in other clusters.

In understanding the importance of these numbers, the overall rates should be kept in mind. Although the rate of cluster four debtors who surrender is about twice the rate of cluster one debtors who surrender, five of six debtors in cluster four take steps to continue their auto debt. Households in this cluster are the most likely to be in bankruptcy because of auto debt, and most indicate that they want to continue paying on that debt post-bankruptcy. Because many of these households have *negative* equity in their cars, they essentially are paying to file bankruptcy so that they can continue to pay more for their cars than those cars are worth.¹⁵⁶

E. Racial Dimensions of Cars in Bankruptcy

Households in cluster four not only are most likely to be in bankruptcy because of auto debt but they also are most likely to be African American. That the people in this cluster also have the distinction of entering bankruptcy with the highest value of cars and with auto loans dwarfing the value of those cars aligns with research showing that African Americans pay more for cars and car loans.¹⁵⁷

As reported in Table 6, when comparing all cases in our sample, African American households enter bankruptcy with slightly more valuable cars at the median. And at the median, their most valuable car is underwater—they owe more on the car than the car is worth. Although African American households are less likely to own cars than other households, this reverses when homeownership is

156. As reported in other work by this Article's authors, some people file chapter 13 bankruptcy without paying their attorneys anything prior to filing, termed "no money down" bankruptcy. Debtors who file chapter 13 with "no money down" have financial characteristics more akin to chapter 7 filers than other chapter 13 filers, suggesting that ability to pay attorneys is influencing their chapter choice. In addition, African American households are more likely to file chapter 13 with "no money down" than other households. See Foohey et al., *supra* note 56. Debtors in clusters two and four are more likely to file chapter 13 with "no money down" than debtors in the other two clusters. African American households in cluster two are more likely to file chapter 13 with "no money down" than other households in that cluster. Recall that debtors in cluster two are better resourced; they are the typical middle-class chapter 7 bankruptcy filers. That African American households in this cluster nonetheless are more likely to file "no money down" chapter 13 cases reflects our findings and discussion in *"No Money Down" Bankruptcy*. In contrast, there is no race effect across households in cluster four. All households in cluster four are equally likely to file "no money down" chapter 13 cases, and they file with "no money down" more often than debtors in the other clusters. This result further suggests that cases in cluster four are "precarious" bankruptcies. These debtors have few resources, including savings to pay their bankruptcy attorneys prior to filing.

157. See *supra* note 32 and accompanying text; Van Alst, *supra* note 32, at 6, 9 (finding not only that African Americans face higher auto loan interest rates but also that they face higher prices for cars themselves and that trying to negotiate for better prices does not result in lower car prices).

removed from the analysis, and African American households are more likely to own a car if they do not own a home.

TABLE 6. COMPARISON OF HOUSEHOLDS IN BANKRUPTCY WITH CARS,
BY RACE

	African-American <u>Households</u>	All Other <u>Households</u>	
% car owners	82.1%	89.1%	*
% car owners without house	55.1%	53.8%	*
Value of most valuable car (median)	\$7,098	\$5,920	
Equity in most valuable car (median)	-\$236	\$1,069	*

Notes: Table 6 reports differences in rates of car ownership and car value for African American households as compared to all other households in the CBP. Racial identification comes from a survey. There are 1,268 observations with completed surveys and car information in the bankruptcy schedules. Statistical significance at the $p < .05$ level is indicated in the last column by an asterisk and computed using a chi-square test for the percentages and a Wilcoxon rank-sum test for the medians.

This result parallels African Americans' lower homeownership rate in the overall population.¹⁵⁸ In short, African American households bring to bankruptcy the financial discrimination and disparities they experience outside bankruptcy. That these households own more valuable cars in bankruptcy, while not having any equity in those cars, is a symptom of these disparities.

Finally, though African American households constitute a larger portion of the debtors in the cluster that seems most likely to file bankruptcy to deal with cars and auto loans, it is important to remember that almost two-thirds of the debtors in that cluster are of other demographics. African American households that file bankruptcy overall are more likely than other households to own more valuable cars and owe significant sums on those cars. But all of the debtors in cluster four come to bankruptcy with this financial profile, and their experiences in bankruptcy (case outcomes, intentions to reaffirm) do not differ based on race.¹⁵⁹

158. See U.S. CENSUS BUREAU, QUARTERLY RESIDENTIAL VACANCIES AND HOMEOWNERSHIP, FIRST QUARTER 2019 tbl.7 (2019), <https://www.census.gov/housing/hvs/files/qtr119/Q119press.pdf>; see also Michelle Singletary, *Black Homeownership Is As Low As It Was When Housing Discrimination Was Legal*, WASH. POST (Apr. 5, 2018, 7:13 AM), <https://www.washingtonpost.com/news/get-there/wp/2018/04/05/black-homeownership-is-as-low-as-it-was-when-housing-discrimination-was-legal/> (citing Urban Institute data showing that the African American homeownership rate is 41.2%, as compared to white Americans' homeownership rate of 64%).

159. For instance, debtors in cluster four are equally likely to pay their bankruptcy attorneys "no money down" when filing chapter 13.

VI. KEEPING CARS THROUGH BANKRUPTCY

Cars and auto loans are a key component of Americans' lives, a source of their financial problems, and a motivation to file bankruptcy. Yet, before this Article, very little was known about people's use of bankruptcy to deal with cars and auto loans. Indeed, the most relevant scholarship to this Article is a twenty-year-old study about chapter 7 filings that focused on reaffirmation agreements generally, only discussing cars incidentally because so many of the reaffirmations involved cars.¹⁶⁰

A. *Holding onto Cars, Before and After Bankruptcy*

Perhaps our most unremarkable finding is that bankruptcy filers own cars at the same rate as other American households, but there is importance in the unremarkable. In comparison to other Americans, bankruptcy filers are less likely to own both a house and a car when they file.¹⁶¹ People seem to hold onto their cars while draining other assets before filing bankruptcy, which is consistent with our prior research about pre-bankruptcy asset depletion.¹⁶² Importantly, it also suggests that focusing on houses as *the* asset people file bankruptcy to deal with misses a key component of people's filings.

Although there is a robust market for used cars, and people perhaps could look to that market for a different vehicle if their cars are under threat of seizure and sale, for many households, buying another car may be a second-best solution as compared to filing bankruptcy.¹⁶³ If their repossessed car was worth less than the amount outstanding, debtors will still owe money to their auto lender.¹⁶⁴ Because people have struggled to pay their debts as their financial situations worsened, their credit scores almost certainly have been undermined.¹⁶⁵ The only auto loan they likely will be

160. See Culhane & White, *supra* note 40, at 738.

161. See *supra* Table 1.

162. See generally Foohey et al., *supra* note 36 (finding that one out of ten long strugglers sold their homes to avoid filing bankruptcy, and nearly half of long strugglers pawned other property).

163. See EDMUNDS, USED VEHICLE REPORT: Q1 2019, at 1 (2019), <https://static.ed.edmunds-media.com/unversioned/img/industry-center/insights/used-market-reports/q1-2019-used-car-report.pdf> (predicting that the used car market will expand in 2019); Adrienne Roberts, *Used-Car Sales Boom as New Cars Get Too Pricey for Many*, WALL STREET J. (Sept. 23, 2018, 7:46 PM), <https://www.wsj.com/articles/used-car-sales-boom-as-new-cars-get-too-pricey-for-many-1537700401>.

164. See Silver-Greenberg & Corkery, *supra* note 26.

165. Filing bankruptcy often increases people's credit scores. See Julapa Jagtiani & Wenli Li, *Credit Access After Consumer Bankruptcy Filing: New Evidence*, 89 AM. BANKR. L.J. 327, 329 (2015) (finding that chapter 7 and chapter 13 debtors' credit scores increase after filing bankruptcy); Katherine Porter, *Life After Debt: Understanding the Credit Restraint of Bankruptcy Debtors*, 18 AM. BANKR. INST. L. REV. 1, 32 (2010) ("For those with credit scores below 300 when they filed bankruptcy, the average bankruptcy penalty ratio is *positive* and equal

approved for is an expensive, subprime loan that comes with a high chance of default.¹⁶⁶ The price of that loan, plus other fees, means that people's "new" used car likely will be worth less than their previous car, while costing them more over the car's useful life. Given that the people who file bankruptcy own cars with median values significantly below that of non-bankrupt people, the idea of trading down to an even older car is likely unappealing.

Filing bankruptcy, particularly chapter 7, may be more cost effective, even when accounting for attorneys' fees, which can exceed \$1200.¹⁶⁷ Bankruptcy also hopefully will result in a discharge of unsecured debts, which should help people stay current on their auto loans post-bankruptcy.¹⁶⁸ Filing bankruptcy to hold onto a car also may be driven by the well-known endowment effect, where people value a thing they already have more than the prospect of gaining something they do not have.¹⁶⁹

Our results show not only that people enter bankruptcy owning cars but also that most chapter 7 debtors want to use the process to keep at least one of those cars. Including attempts at ride-through, more than 85 percent of households state that they want to keep their most valuable car, and more than three-quarters indicate that they want to keep their second most valuable car.¹⁷⁰ A higher percentage of debtors specify that they will surrender their second and third most valuable vehicles.¹⁷¹ Debtors also are less likely to indicate that they want to enter into a reaffirmation agreement as to their third most valuable vehicle.¹⁷² Chapter 7 debtors thus are giving up what may be their "extra" non-essential cars.¹⁷³ These findings suggest that, as to automobiles, the value of bankruptcy lies in surrendering non-

to 173%, meaning that individuals obtain more credit after bankruptcy with respect to the credit limit they would have if they did not file.").

166. See *supra* note 24 and accompanying text.

167. See Foohey et al., *supra* note 56, at 1058 (finding that chapter 7 attorneys' fees averaged \$1,229 in 2015).

168. See *id.* at 1057.

169. See Daniel Kahneman et al., *The Endowment Effect, Loss Aversion, and Status Quo Bias*, 5 J. ECON. PERSP. 193, 194 (1991) (discussing the endowment effect). Note that our data cannot prove that people file bankruptcy solely to keep their cars. See *infra* Subpart VI.B.

170. See *supra* Table 5.

171. See *supra* Figure 1.

172. See *supra* Figure 1.

173. Exemptions limits may explain this result, in part. But given that few cases we sampled included non-exempt equity in vehicles, it is likely that exemptions alone cannot explain why 25 percent of chapter 7 debtors indicate they will surrender their third most valuable vehicle. See *supra* Subpart V.C. There also is a disparity in the relative percentage of debtors indicating they want to reaffirm versus otherwise retain their most valuable and second most valuable vehicles, and the percentage of debtors indicating they want to reaffirm versus otherwise retain their third most valuable vehicle, which further suggests that debtors are less concerned about keeping a third vehicle. See *supra* Figure 1 and accompanying text.

essential cars and discharging unsecured debts, potentially including those stemming from the surrendered cars.

A more discrete yet still significant finding is that two-thirds of chapter 7 debtors affirmatively indicate they want to reaffirm the secured debt on their most valuable vehicle.¹⁷⁴ Although the percentage of chapter 7 debtors entering bankruptcy with cars is essentially the same as in the 1995 study focusing on reaffirmation agreements, the percentage indicating that they will reaffirm the accompanying auto loan has dropped almost ten percentage points since 1995.¹⁷⁵ The most obvious intervening event in the past twenty years is BAPCPA's passage, which made seeking to reaffirm more burdensome for debtors and attorneys.¹⁷⁶ Our results suggest that rather than checking the "retain and reaffirm" box on the Statement of Intention, more debtors are gambling that they will be able to ride-through or otherwise negotiate "off the books" with their auto lenders.

Recall that the motivation behind BAPCPA's amendments to the Bankruptcy Code provisions governing reaffirmation agreements was to eliminate ride-through and curb "rogue" agreements.¹⁷⁷ In reality, BAPCPA's changes may have had the opposite effect, persuading more debtors to bypass the reaffirmation agreement process. Whether and how debtors actually keep their cars presents questions ripe for further study, particularly given that a surprisingly low percentage of debtors ostensibly keep their cars by taking out a redemption loan.¹⁷⁸ Understanding the exact mechanisms by which people retain vehicles in chapter 7 will allow for an assessment of how to remedy the apparent gap between the law on the books and the law on the ground. Importantly, our results presented in this Article highlight this gap and show that how chapter 7 debtors keep their cars is worthy of study.

Also worthy of underscoring is that, in both chapter 7 and chapter 13, most people are not keeping new or luxury vehicles. Chapter 7 households' most valuable car, based on Blue Book trade-in value, is exemplified by the lowest-priced 2010 Ford F-150 pickup, in good condition, with a regular cab that seats three people, and with 100,000 miles on the odometer.¹⁷⁹ In comparison, chapter 13 households' most valuable cars, again based on Blue Book trade-in value, is exemplified by the same lowest-priced 2010 Ford F-150 pickup, again in good condition, but with a super cab that seats five people, and with 75,000 miles on the odometer.¹⁸⁰ Consistent with other research about the people who file bankruptcy, these are

174. See *supra* Figure 1.

175. See *supra* note 173 and accompanying text.

176. See *infra* notes 179–81 and accompanying text.

177. See *supra* notes 45–46 and accompanying text.

178. See *supra* note 173 and accompanying text.

179. See *What's My Car Worth*, *supra* note 124.

180. See *id.* For more examples of the vehicles owned by chapter 7 and chapter 13 filers, see *supra* Subpart V.A.

vehicles owned by households struggling to get by, not reckless spenders who file the first moment they feel distressed.¹⁸¹

B. Pinpointing “Car Bankruptcies”

The overall results show that households enter bankruptcy with relatively low-value vehicles and predominately want to hold onto most of their vehicles through bankruptcy.¹⁸² Although these results teach that consumer bankruptcy scholars should not singularly focus on houses as the valuable (and difficult to replace) asset that people seek to retain, they do not isolate what might be termed “car bankruptcies”—those cases filed with the primary purpose of keeping cars. The cluster analysis we used to separate bankrupt households that own cars finds four distinct groups, two clusters of which essentially do not own houses.¹⁸³ These two clusters include those debtors most likely “driven to bankruptcy” because they own cars and little else.

Debtors in these two clusters constitute about one-third of the cases in our sample and are more or less evenly divided between the two clusters.¹⁸⁴ To the extent that our data can pinpoint car bankruptcies, these cases likely are them. Indeed, debtors in these two clusters are more likely to indicate that they want to reaffirm their car loan than debtors in the other two clusters, which may suggest that they are more keenly interested in keeping cars.¹⁸⁵ Because of data limitations, we cannot state with certainty that these are car bankruptcies. Nonetheless, the differences between the debtors in these two clusters versus other debtors tell the story of the financial precarity of debtors who turn to bankruptcy for help owning little more than cars.

Given the absence of houses, as a financial matter, it would be reasonable to assume that most debtors in both clusters would file chapter 7. Such is true of the debtors in one of the clusters (the third cluster). These households file chapter 7 at rates slightly above the national average. In contrast, households in cluster four are much more likely to file chapter 13.¹⁸⁶

Debtors in the fourth cluster differ from those in the third in one noticeable way: their most valuable car is worth significantly more, but they owe so much on it that the debtors hold *negative* equity in the car.¹⁸⁷ Also, chapter 7 debtors in cluster four are even more likely

181. See Foohey et al., *supra* note 36, at 235–36 (discussing how long people wait to file bankruptcy while seriously struggling with their debts).

182. See discussion *supra* Subpart V.B. and Table 3.

183. See *supra* Subpart V.D.1.

184. Between clusters three and four, 47 percent of the cases are in cluster three. See *supra* Table 3.

185. See *supra* Table 5 and Subpart V.D.2.

186. See *supra* Table 3.

187. See *supra* Table 3.

to state that they intend to reaffirm their auto loans, lending additional support to our theory that these are “car bankruptcies.”¹⁸⁸

The high incidence of chapter 13 filing among debtors in cluster four warrants further exploration. For these households, filing chapter 13 and paying to use bankruptcy to retain underwater cars, which costs on average of about \$3200 in attorneys’ fees, makes little financial sense absent other factors.¹⁸⁹ But if the only readily available way to get a vehicle out of the impound lot is to file chapter 13, bankruptcy can be a rational solution. Filing bankruptcy also probably makes sense to those debtors who are worried about getting a new auto loan, particularly when they already are underwater on their current auto loan and their credit scores are likely quite low. Plus, bankruptcy attorneys presumably offer these debtors what is termed “no money down” chapter 13 bankruptcy, by which debtors pay filing and attorneys’ fees through the repayment plan and their attorneys will not ask for any fees prior to filing.¹⁹⁰ Debtors in cluster four, regardless of race, are more likely to file “no money down” chapter 13 cases.¹⁹¹ In short, these debtors are more likely to be offered the opportunity to file bankruptcy *now*, get their car back or auto loan back on track *now*, and pay *later*. The rub, however, is that only one-third of their chapter 13 cases will end with a debt discharge.¹⁹²

The higher incidence of African American households in clusters three and four is also notable. To the extent that these cases are “car bankruptcies,” African American households are more likely to be driven to bankruptcy.¹⁹³ In prior research, we established that African American households are more likely to file chapter 13 than other similarly situated households and that “no money down” bankruptcy is a crucial aspect of the racial disparity in chapter choice.¹⁹⁴ “Car bankruptcies” likewise seem to be a crucial aspect of the racial disparity in chapter choice.

Consumer bankruptcy itself cannot solve the racial disparities in car prices, auto loan rates, ticketing, and repossessions that plague African Americans. It also cannot address the fact that African American households generally will arrive to the bankruptcy system

188. See *supra* Table 5.

189. See Foohey et al., *supra* note 56, at 1058 (finding that chapter 13 attorneys’ fees averaged \$3,217 in 2015).

190. See *generally id.*; *supra* note 156 (summarizing “no money down” bankruptcy). As discussed, *supra* note 151, debtors in cluster four are more likely to file chapter 13 than debtors in other clusters.

191. See *supra* note 156 (detailing “no money down” bankruptcy’s intersection with the results of the cluster analysis).

192. See Foohey et al., *supra* note 56, at 1062.

193. See *supra* Tables 3, 6.

194. See Foohey et al., *supra* note 56, at 1082 (providing data that African Americans are more likely to file chapter 13 and linking this trend with deferred attorneys’ fees in chapter 13).

with more expensive cars and larger auto loans.¹⁹⁵ But it can address the racial disparity in which households file chapter 7 versus chapter 13. In our prior work, we have discussed in detail how consumer bankruptcy law and practice can change to address the racial disparity in chapter choice.¹⁹⁶ The solutions we outlined—making chapter 7 attorneys' fees payable in installments and reforming the legal culture that historically has nudged African American households to file chapter 13—are equally applicable to our results about racial disparities in how cars are dealt with in bankruptcy in this Article.¹⁹⁷

In addition, our results lend support to prior location-specific studies finding that African Americans file chapter 13 to combat license suspensions and car repossessions due to parking tickets and fines.¹⁹⁸ Why chapter 13 works particularly well in these scenarios has to do with the scope of its debt discharge and the relative certainty of repossessed cars being returned to owners.¹⁹⁹ But filing chapter 13 is much more expensive than filing chapter 7 and is less likely to end with a debt discharge. If chapter 7 offered a discharge that included the same civil fines and fees currently included in chapter 13's discharge, the households who turn to chapter 13 for help with fees and fines that threaten their cars could file chapter 7. Beyond paying less in attorneys' fees, they also would receive the discharge vastly more often.²⁰⁰

Whether and the extent to which the consumer bankruptcy system is the best or even an appropriate venue to address racial disparities in the issuance of parking tickets and other fines, as well as the booting, impounding, and repossession of cars, is an important question. Indeed, debtors in cluster four are the least likely to obtain a discharge, which may reflect the severe lack of resources that bring them to bankruptcy in the first place.²⁰¹ Nonetheless, our results suggest that these nonbankruptcy disparities are manifest in the bankruptcy system, which itself faces racial disparities in outcomes.²⁰² Reforms to fines, fees, and car repossessions, at the very least, are issues that should be considered in the context of consumer bankruptcy.

195. See *supra* Table 6.

196. See Foohey et al., *supra* note 56, at 1103–05.

197. *Id.*

198. See *supra* text accompanying notes 55–58.

199. See *supra* Subpart III.C.

200. See Foohey et al., *supra* note 56, at 1062 (noting that debtors receive a discharge in over 95 percent of chapter 7 cases).

201. See *supra* Table 4.

202. See Foohey et al., *supra* note 56, at 1065–66 (discussing the financial impact of bankruptcy chapter choice and the correlation between chapter choice and race).

VII. BANKRUPTCY: A SUBPRIME END TO AMERICA'S "LOVE AFFAIR"
WITH CARS?

Americans' long-time so-called "love affair" with their cars is more accurately a reflection of a need for transportation to maintain jobs, get food, and provide for family members.²⁰³ Now is an especially propitious time to document what happens to cars in bankruptcy. The auto loan marketplace is booming, particularly for subprime loans.²⁰⁴ Analysts are predicting increasing repossessions. And reports that the American middle class continues to struggle are making headline news.²⁰⁵

The results presented in this Article show that the people who file bankruptcy have similar levels of automobile ownership as the nonbankrupt population, but they own less expensive cars, on which they owe relatively more to secured lenders. The results support intuitions that people will keep paying their auto loans as long as possible and suggest that auto debt is playing some role in contributing to financial distress. The results further show that most people who file bankruptcy intend to keep their cars. Cars and auto loans play an important role in the consumer bankruptcy system.

If the auto loan marketplace continues its present course, more people will file bankruptcy to deal with their cars and car loans. More subprime auto loans will lead to more defaults and repossessions. Subprime borrowers will have fewer nonbankruptcy options to deal with their expensive loans. Instead, more people may turn to bankruptcy, in part, to help save their current cars, renegotiate their auto loans, and discharge other debts. The data in this Article should guide further studies. Understanding whether and how debtors ultimately keep their cars will increase the system's effectiveness in helping people who turn to bankruptcy to deal with their cars and auto loans.

Finally, a crucial aspect of the story of cars in bankruptcy is the financial fragility of the people who file owning little more than their cars. These households often pay more to use bankruptcy to continue paying on underwater auto loans.²⁰⁶ They also bring the racial disparities they face outside bankruptcy with them into the system, which itself has proven less useful for African Americans, especially to obtain a debt discharge.²⁰⁷ If the auto market continues to expand, and if cities continue to impound vehicles for unpaid tickets and other fines, not only should more households look to bankruptcy to deal

203. See Emily Badger, *The Myth of the American Love Affair with Cars*, WASH. POST (Jan. 27, 2015, 2:26 PM), <https://www.washingtonpost.com/news/wonk/wp/2015/01/27/debunking-the-myth-of-the-american-love-affair-with-cars/>.

204. See *supra* text accompanying notes 22–24.

205. See *supra* text accompanying note 13.

206. See *supra* Subpart VI.B.

207. See *supra* Subpart VI.B.

with their cars and auto loans, but these households will continue to find a system that works differently for some households. Until the racial disparities in the consumer bankruptcy system are addressed, bankruptcy will continue to compound racial disparities in household finance and wealth.

