

Black People More Likely to File for More Expensive Bankruptcy Option, Experts Say; Higher costs and less relief loom large as Black debtors are often steered toward more expensive bankruptcy option, studies show

Al-Muslim, Aisha . WSJ Pro. Bankruptcy ; New York (Nov 13, 2020).

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ABSTRACT (ENGLISH)

Several studies focused on racial disparities in the consumer bankruptcy system also found that Black people make up a higher percentage of debtors across the bankruptcy system compared with the total population, said law professor Robert Lawless at the American Bankruptcy Institute's Consumer Bankruptcy Forum on Wednesday. The racial disparity between chapter 13 filers remains even after controlling for factors, such as a prior bankruptcy history, assets, income and debt, said Mr. Lawless, a professor at the University of Illinois College of Law. To reduce vulnerability to implicit and unintended racial biases, lawyers should have a preplanned list of questions to ask or factors to consider, use checklists and flow charts, and write out reasons for decisions on which bankruptcy route to take, said Ms. Miller, a clinical assistant professor of psychology at the University of Illinois at Urbana-Champaign.

FULL TEXT

Black people out of all bankruptcy filers are twice as likely on average to file for a more costly type of personal bankruptcy than debtors of other races.

Several studies focused on racial disparities in the consumer bankruptcy system also found that Black people make up a higher percentage of debtors across the bankruptcy system compared with the total population, said law professor Robert Lawless at the American Bankruptcy Institute's Consumer Bankruptcy Forum on Wednesday. The number of Black people who file for chapter 13 also is significantly higher than among white people and those of other races.

The disparities highlight the role unconscious bias and systemic racism may play in the bankruptcy system, said experts on an ABI virtual panel during a conference focused solely on consumer bankruptcy.

Chapter 13—which can be the “no money down” option for bankruptcy protection—is more expensive and requires filers to make monthly payments for at least three to five years before their debt is discharged, while chapter 7 doesn't require filing a repayment plan and allows for the liquidation of assets to pay creditors. Most people don't have assets to liquidate, Mr. Lawless said.

The chapter 13 process for an individual can cost on average around \$3,000 to \$4,000 in total, while filing for chapter 7 typically totals about \$1,200, Mr. Lawless said.

Black people who have filed for chapter 13 bankruptcy also are less likely to obtain a discharge of their debt, according to a report from the ABI Commission on Consumer Bankruptcy. The results raise concerns about creating a situation where Black people end up paying more for bankruptcy, yet are less likely to get relief from the process.

The racial disparity between chapter 13 filers remains even after controlling for factors, such as a prior bankruptcy history, assets, income and debt, said Mr. Lawless, a professor at the University of Illinois College of Law. He

served on ABI's Bankruptcy Institute's commission on consumer bankruptcy.

Another possible reason Black people are more likely to file for chapter 13 bankruptcy protection than chapter 7 is because they are steered to do so by lawyers, session panelists said.

An experiment with a hypothetical couple named Reggie and Latisha—statistically more likely to be Black American names—or Todd and Allison—statistically more likely to be names of white Americans—found lawyers were more likely to recommend chapter 13 to an Black couple than to a white couple or a couple whose race wasn't indicated, Mr. Lawless said.

"It's probably not the case that there are lots of bankruptcy attorneys out there in a predatory, intentional way trying to steer their Black clients toward less good outcomes. We certainly don't believe that," Andrea Miller, a senior court research associate at the National Center for State Courts. However, she said that "implicit bias" may also be a factor in the racial discrepancy.

In addition, lawyers are in the business of earning money, so they may steer people to the more expensive bankruptcy option, said Glenda Gray, a Chicago-based bankruptcy lawyer

"Sometimes, it's not totally about racism or the biases," Ms. Gray said during the panel.

To reduce vulnerability to implicit and unintended racial biases, lawyers should have a preplanned list of questions to ask or factors to consider, use checklists and flow charts, and write out reasons for decisions on which bankruptcy route to take, said Ms. Miller, a clinical assistant professor of psychology at the University of Illinois at Urbana-Champaign.

By taking those steps, she added, lawyers are "going to be in a better position to override your automatic responses to clients of color, and replace those automatic responses with thoughtful, more egalitarian responses."

Write to Aisha Al-Muslim at aisha.al-muslim@wsj.com

Credit: By Aisha Al-Muslim

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