

there were minor differences in discharge percentages between two debtors. Admittedly, having a sufficiently large sample size would resolve this problem. Unfortunately, there are simply not enough student loan discharges to iron out that issue. Prior to my research, the most comprehensive study examined just 46 cases.³² Even at 207 cases, my sample size is too small for a regression to detect fine-grade differences in discharge outcomes.

However, by using the three groups identified above, my regressions do identify three variables that are predictive of discharge: (1) whether the debtor has a medical hardship, (2) whether the debtor is employed, and (3) the debtor's income the year before filing bankruptcy. These variables match the first two prongs of the *Brunner* test quite closely³³ and show that there is some degree of consistency in the judicial decisions. Debtors in bad economic positions *are* more likely to get relief. This finding of judicial consistency bolsters my argument that the major flaw in the system is not inconsistent application of the undue hardship standard, but rather the fact that 99.9 percent of student loan debtors in bankruptcy never attempt to get a discharge.

Given that the cost of pursuing a student loan discharge is relatively low compared to the cost of filing bankruptcy, this statistic is even more surprising. Add on the fact that there is no statistically significant difference in outcomes between debtors without attorneys and debtors with attorneys,³⁴ and one cannot help but wonder why more people in bankruptcy do not seek to discharge their student loans. Ultimately, it seems that bankruptcy filers' lack of accurate knowledge of the system is the main problem.

Part I of this paper details the methodology behind my data collection, and Part II presents the study's findings. First, I compare the attributes of discharge seekers and non-discharge seekers. Then I estimate regression models to determine which variables are correlated with receipt of a discharge. Part III discusses the implications of my findings.

I. METHODOLOGY

To locate adversary proceedings for this study, I used Public Access to Court Electronic Records (PACER),³⁵ an online, government-run database that stores case information for U.S. bankruptcy courts. Although each court maintains its own database, the PACER Case Locator permits searches that

³²Pardo & Lacey, *supra* note 12, at 214.

³³The first two prongs require a current inability to repay and a future inability to repay. See *supra* text accompanying note 11.

³⁴In my sample, forty-three percent of debtors without attorneys received a discharge versus thirty-eight percent of debtors with attorneys.

³⁵PACER PUBLIC ACCESS TO COURT ELECTRONIC RECORDS, <https://pcl.uscourts.gov> (last visited Sept. 11, 2012).