

## Eleventh Circuit Reaffirms Prior Ruling that Debt Collectors who File Time-Barred Proofs of Claim are Subject to Liability Under Fair Debt Collections Practices Act

Article By:

Mona L. Burton

Kirk S. Cheney

Clarissa M. Collier

Engels J. Tejeda

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In 2014 the **Eleventh Circuit** held that a [debt collector](#) violates the [Fair Debt Collections Practices Act](#) when it filed a proof of claim in a chapter 13 case on a debt that it knows to be time-barred. *Crawford v. LVNV Funding, LLC*, 758 F.3d 1254 (11<sup>th</sup> Cir. 2014). The United States District Court for the Southern District of Alabama subsequently held the *Crawford* decision as placing the FDCPA and the Bankruptcy Code in irreconcilable conflict. On appeal, the Eleventh Circuit found no such conflict, stating “Although the code certainly allows all creditors to file proofs of [claim in bankruptcy](#) cases, the Code does not at the same time protect those creditors from all liability,” and that a particular group of creditors—debt collectors—may be liable for damages for violating the FDCPA if they file claims in chapter 13 cases they know to be time-barred. ***Johnson v. Midland Funding, LLC***, 2016 WL 2996372 (11<sup>th</sup> Cir. 2016).

The court reaffirmed its prior conclusion by looking to the language of the FDCPA, which prohibits a “false, deceptive or misleading representation,” 15 U.S.C. § 1692e, or “unfair or unconscionable means, 15 U.S.C. § 1692f, to collect a debt. Finding these terms to be ambiguous, the court adopted a “least-sophisticated consumer’ standard” to determine whether a debt collector’s conduct is deceptive under the FDCPA. The court concluded in *Crawford* that filing a time-barred proof of claim is akin to filing a time-barred lawsuit, something which is prohibited by the FDCPA. As a result, in *Crawford*, the court held knowingly filing a time-barred proof of claim constituted misleading conduct under the FDCPA.

However, the court agreed it left unanswered in *Crawford* an additional question: whether the Bankruptcy Code preempts the FDCPA when creditors misbehave in bankruptcy. This specific question was not raised in *Crawford* but was raised in *Johnson* by the creditor, who argued the Bankruptcy Code, having been enacted subsequent to the FDCPA, preempted it as to claims for violation. The Eleventh Circuit disagreed and decided the two statutes could be read in harmony.

The court commenced its analysis by noting the Supreme Court interpreted the Bankruptcy Code's definition of a "claim" in § 101(5)(A) as creating an entitlement for creditors to file a proof of claim where a right to payment exists. *Travelers Cas. & Sur. Co. of Am. v. Pac. Gas & Elec. Co.*, 549 U.S. 443 (2007). The court further noted that a "right to payment" under the Bankruptcy Code "is nothing more or less than an enforceable obligation." *Penn. Dept. of Pub. Welfare v. Davenport*, 495 U.S. 552 (1990). The court continued its analysis by stating the Bankruptcy Code contemplates that creditors may file unenforceable claims. *In re McLean*, 794 F.3d 1313 (11<sup>TH</sup> Cir. 2015). Further, the court noted that "having a claim is not the same as being entitled to a remedy," and further noted that applicable state law provides the running of the statute of limitations does not extinguish a cause of action but rather makes the remedy unavailable. Consequently, the average creditor filing a time-barred claim will likely face a disallowance of its claim and will not receive a distribution from the bankruptcy estate.

However, the court noted that debt collectors are not the average creditor, as the FDCPA imposes requirements on debt collectors which don't apply to other creditors. The FDCPA prohibits the use of unfair or unconscionable means to collect or attempt to collect a debt, as well as the use of any false, deceptive or misleading representation or means in connection with the collection of any debt. A debt collector who violates these proscriptions faces civil liability to the debtor. Debt collectors are a narrow subset of creditors who might file proofs of claim in chapter 13 cases. Contrary to the conclusion of the district court, the circuit court found no irreconcilable conflict between the Bankruptcy Code, which permits creditors to file time-barred proofs of claim, and the FDCPA which prohibits debt collectors from engaging in such conduct. The Eleventh Circuit reached this conclusion by noting first that repeals by implication are not favored and will not be presumed unless the intention of the legislature to repeal is clear and manifest. *Nat'l Ass'n of Home Builders v. Defenders of Wildlife*, 551 U.S. 644 (2007). The court noted the U.S. Supreme Court's conclusion "[W]hen two statutes are capable of coexistence, it is the duty of the courts, absent a clearly expressed congressional intention to the contrary, to regard each as effective." *J.E.M. Ag Supply, Inc. v. Pioneer Hi-Bred Int'l, Inc.*, 534 U.S. 124 (2001). The court stated that, for an irreconcilable conflict to exist, there must usually be some sort of "positive repugnancy" between the statutes, not merely "different requirements and protections." Statutory repeal cannot be inferred unless the later statute expressly contradicts the earlier statute or an inference of repeal is "absolutely necessary" in order for the latter statute to have "any meaning at all."

The Eleventh Circuit concluded the Bankruptcy Code and the FDCPA can be construed in a way that allows both to exist. A conclusion that the Bankruptcy Code repealed the FDCPA was not "absolutely necessary" in order for § 501 of the Bankruptcy Code to have "any meaning at all." The Bankruptcy Code allows all creditors to file claims, with the overlay from the FDCPA that a certain subgroup of creditors—debt collectors—may face liability by filing a time-barred proof of claim if they do so knowing it is time-barred. The court concluded the goals and purposes of both statutes can still be served with this construction. The purpose of the FDCPA is to punish debt collectors who engage in misleading or unconscionable conduct, not to punish debt collectors who file proofs of claim in chapter 13 cases. As a result, the court determined that the statutes were not in irreconcilable conflict and that the Bankruptcy Code did not effect a repeal of the FDCPA.

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