

Banking and Finance Law Daily Wrap Up, TOP STORY—11th Cir.: Bankruptcy Code doesn't block collection practices suit over stale debt, (May 25, 2016)

By [Richard A. Roth, J.D.](#)

Debt collectors that knowingly filed claims in consumer bankruptcy cases seeking the payment of time-barred debts would have violated the Fair Debt Collection Practices Act, the U.S. Court of Appeals for the Eleventh Circuit has decided. There is no irreconcilable conflict between the Bankruptcy Code provision allowing creditors to file claims and the FDCPA ban on misleading or unfair debt collection practices ([Johnson v. Midland Funding, LLC](#), May 24, 2016, Martin, B.).

The significant facts of the two consolidated cases are essentially the same. In each case, a consumer filed a bankruptcy petition and a debt collector filed a proof of claim on a consumer debt. Also, in each case, the six-year Alabama statute of limitations on the debt had passed, meaning the debt collector could not legally collect the debt.

Prior decision. The case was not to be decided in a vacuum, the court noted. Instead, the district court judges reached their decisions in the light of *Crawford v. LVNV Funding, LLC*, a 2014 Eleventh Circuit case that considered the interaction between the Bankruptcy Code and the FDCPA. *Crawford* said that a debt collector's proof of claim on a time-barred debt misrepresented that the debt was enforceable, which violated the FDCPA; however, it explicitly did not consider whether the Bankruptcy Code precluded a FDCPA claim (see *Banking and Finance Law Daily*, [July 22, 2014](#)).

That question now had to be answered.

No irreconcilable conflict. The Bankruptcy Code does not stand in the way of a FDCPA claim, the appellate court decided. In general, the Code allows creditors to file claims on debts that appear to be stale, the court conceded. "However, when a particular type of creditor—a designated 'debt collector' under the FDCPA—files a knowingly time-barred proof of claim in a debtor's Chapter 13 bankruptcy, that debt collector will be vulnerable to a claim under the FDCP," the court said.

The court rejected the consumers' claim that the Code does not create a right to file a claim on a time-barred debt. To the contrary—the Code envisions that unenforceable claims may be filed and relies on the bankruptcy trustee to object to and prevent the payment of such claims.

However, the Code's provision allowing a debt collector to file a proof of claim on a stale debt does not relieve the debt collector of the consequences of doing so, the court continued. There

was no irreconcilable conflict between the two laws because they have different scopes, different goals, different coverage, and can be interpreted in a way that allows them to coexist.

The Bankruptcy Code applies to all creditors, while the FDCPA applies only to debt collectors, the court pointed out. Also, the Code addresses proofs of claim in bankruptcy, while the FDCPA addresses debt collection activity both inside and outside of bankruptcy. “The Bankruptcy Code’s rules about who can file claims do not shield debt collectors from obligations that Congress imposed on them,” according to the court.

The Code does not require creditors to file claims, the court added. It permits creditors to file claims. A debt collector who chooses to file a time-barred claim opens itself up to the consequences. The situation is similar to a litigant who chooses to file a frivolous lawsuit and must thereafter face the possibility of sanctions for doing so.

The consolidated cases are [No. 15-11240](#) and [No. 15-14116](#).

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Companies: LVNV Funding, LLC; Midland Funding, LLC; Resurgent Capital Services, L.P