Banking and Finance Law Daily Wrap Up,TOP STORY—8th Cir.: Bankruptcy claim for time-barred debt not debt collection act violation,(Jul. 12, 2016)

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

A debt collector did not violate the Fair Debt Collection Practices Act by filing a bankruptcy proof of claim for a debt it knew to be beyond the statute of limitations, the U.S. Court of Appeals for the Eighth Circuit has determined. Weighing in on an increasingly common claim, the court decided that Midland Credit Management had not violated any of the FDCPA's restrictions on debt collection tactics (*[Nelson v. Midland Credit Management, Inc.](#)*, July 11, 2016, Benton, W.).

At issue was a defaulted $751.87 consumer debt. As described by the court, Midland, acting as the creditor's collection agent, filed a proof of claim in the consumer's bankruptcy proceeding. The claim was rejected because the debt was too old.

The consumer then sued Midland, claiming that the debt collector had violated the FDCPA in three different ways:

1. it engaged in harassment, in violation of 15 U.S.C. §1692d;
2. it made false, deceptive, or misleading representations, in violation of 15 U.S.C. §1692e; and
3. it used unfair or unconscionable collection methods, in violation of 15 U.S.C. §1692f.

FDCPA protection not needed. Filing a proof of claim on a debt known to be stale does not violate the FDCPA, the court decided. In the process, the court considered and declined to follow the opinion of the U.S. Court of Appeals for the Eleventh Circuit in *[Crawford v. LVNV Funding](#)* (see *Banking and Finance Law Daily*, [July 22, 2014](#)). In *Crawford*, the Eleventh Circuit decided that filing a stale proof of claim could be an unfair or unconscionable collection practice and could misrepresent that the debt remained legally enforceable. The Eighth Circuit, however, disagreed.

Crawford ignores that bankruptcy claims and collection suits are different, the Eighth Circuit said. A debtor in a bankruptcy court is protected by the bankruptcy trustee, who has a duty to object to unenforceable claims. Contesting a collection suit is "more burdensome" than contesting a bankruptcy court claim. Also, since a bankruptcy claim usually does not expand the amount of the consumer's money that is at stake, the consumer has less to lose from a stale proof of claim.

These factors satisfy the concerns the FDCPA was intended to address, the court said. There was no need to use the FDCPA to supplement the Bankruptcy Code's protections.

Contrary position. The Eleventh Circuit recently clarified *Crawford*, removing any doubt as to the decision's intended effect. In *Johnson v. Midland Funding, LLC*, the court made clear that filing a time-barred proof of claim is an FDCPA violation. Addressing a point left open by *Crawford*, the Eleventh Circuit said explicitly that the Bankruptcy Code did not displace the consumer protections of the FDCPA. The Bankruptcy Code does not require creditors to file claims, it permits creditors to file claims. In the Eleventh Circuit's view, a debt collector that chooses to file a time-barred claim opens itself up to the consequences (see *Banking and Finance Law Daily*, May 25, 2016).

In 2015, the Supreme Court declined LVNV Funding's request that it review the *Crawford* decision (*LVNV Funding LLC v. Crawford*, No. 14-858). In its petition, the debt collector claimed that the Second, Seventh, and Ninth Circuits previously had decided that filing a proof of claim is not debt collection activity that implicates the FDCPA and that the circuit courts of appeal were "hopelessly divided." However, a denial of certiorari has no precedential effect.

The case is No. 15-2984.

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