

# Supreme Court Rules That Filing a Proof of Claim on a Time-Barred Debt Does Not Violate the FDCPA

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On May 15, 2017, the United States Supreme Court ruled that the Eleventh Circuit erred when it found a debt buyer liable under the Fair Debt Collection Practices Act for filing proofs of claim in bankruptcy on debts that had become time-barred. A copy of the Court's opinion can be found [here](#).

## Background

In *Johnson v. Midland*, the Eleventh Circuit revisited the issue of whether debt collectors violate the FDCPA when filing proofs of claims in bankruptcy cases when those claims are based on unenforceable, time-barred consumer debts. The Eleventh Circuit affirmed its prior decision in *Crawford v. LVNV Funding, LLC*, 758 F.3d 1254 (11th Cir. 2014), concluding that when a "creditor is also a 'debt collector' as defined by the FDCPA, the creditor may be liable under the FDCPA for 'misleading' or 'unfair' practices when it files a proof of claim on a debt that it knows to be time-barred, and in doing so 'creates the misleading impression to the debtor that the debt collector can legally enforce the debt.'"

Many courts have rejected *Crawford*. The Eighth Circuit, in *Nelson v. Midland Credit Management, Inc.*, 828 F.3d 739 (8th Cir. 2016), was especially critical of the *Crawford* rationale, noting that the bankruptcy process protects debtors against harassment and deception. The Eighth Circuit noted, "[u]nlike defendants facing a collection suit, bankruptcy debtors are aided by 'trustees who owe fiduciary duties to all parties and have a statutory obligation to object to unenforceable claims.'" The Eighth Circuit reasoned that "[d]efending a lawsuit to recover a time-barred debt is more burdensome than objecting to a time-barred proof of claim." The Court found, "there is no need to protect debtors who are already under the protection of the bankruptcy court, and there is no need to supplement the remedies afforded by bankruptcy itself."

Beyond the substantive arguments about whether the filing of a proof of claim on a debt outside the statute of limitations violates the FDCPA, courts began wrestling with whether the Bankruptcy Code preempts the FDCPA, an issue specifically left unanswered in *Crawford*. As with the substantive analysis, Circuit Courts have been split on the preemption issue. The Ninth Circuit in *Walls v. Wells Fargo Bank N.A.*, 276 F.3d 502 (9th Cir. 2002), held that the FDCPA is not needed to protect debtors protected by the automatic stay and other provisions of the Bankruptcy Code.

Since the preemption argument was not addressed in *Crawford*, the District Court in *Johnson* was the first to confront the preclusion question that the Eleventh Circuit left open. In *Johnson*, the debtor filed for Chapter 13 bankruptcy relief. A debt collector filed a proof of claim that disclosed on its face that the claim was barred by the

statute of limitations. The debtor sued the debt collector, alleging that the filing of the proof of claim was deceptive and misleading under § 1692e and unfair and unconscionable under § 1692f. The District Court found that there was an irreconcilable conflict between the Bankruptcy Code and the FDCPA, because a creditor can properly file a proof of claim on a time-barred debt under the Bankruptcy Code but the same creditor cannot file the proof of claim without violating the FDCPA, as construed by *Crawford*. In other words, the District Court said, “the Code authorizes filing a proof of claim on a debt known to be stale, while the [FDCPA] (as construed by *Crawford*) prohibits that precise practice,” and “those contradictory provisions cannot possibly be given effect simultaneously.” And in the face of that conflict, the District Court ruled that the FDCPA “must give way” to the Bankruptcy Code.

The Eleventh Circuit reversed stating that it saw no irreconcilable conflict between the Bankruptcy Code and the FDCPA. The Court pointedly ruled: “[A]lthough the (Bankruptcy) 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. A particular subset of creditors – debt collectors – may be liable under the FDCPA for bankruptcy filings they know to be time-barred.” In finding no conflict between the federal statutes, the Eleventh Circuit noted “when a particular type of creditor” – a “debt collector” as defined under the FDCPA – files a proof of claim for a debt it knows is out-of-statute, the creditor must “still face the consequences” imposed by the FDCPA for a ‘misleading’ or ‘unfair’ claim.”

Midland petitioned the Supreme Court to grant certiorari and the reply by Johnson agreed with the need for review. As Midland pointed out in its reply brief, the case presented an unusual situation where both petitioner and respondent agreed that the questions presented implicate clear circuit conflicts on important issues of federal law.

## The Opinion

The majority’s opinion analyzed the FDCPA application in two parts. Justice Breyer, writing for the Court, first analyzed whether the filing of a proof of claim on its face that is time-barred is not “false, deceptive or misleading.” The Court noted first that under the Bankruptcy Code, a “claim” is defined as a “right to payment” and relevant state law usually determines whether a person has such a right. In this case, Alabama law, “like the law of many states, provides that a creditor has a right to payment of a debt even after the limitations period has expired.” The opinion specifically rejects the consumer’s attempt to redefine “claim” to require a claim be enforceable. The Court noted “the word ‘enforceable’ does not appear in the Code’s definition of ‘claim.’” Moreover, Section 502(b)(1) “says that, if a ‘claim’ is unenforceable, it will be disallowed. It does not say that an ‘unenforceable’ claim is not a claim.” The Court relied on the presence of the Chapter 13 trustee and his or her understating that “a proof of claim is a statement by the creditor that he or she has a right to payment subject to disallowance (including disallowance based upon, and following, the trustee’s objection for untimeliness)” to conclude that filing a claim on a time-barred debt is neither misleading or deceptive.

The Court then turned to whether assertion of a time-barred claim is “unfair” or “unconscionable” under the FDCPA. In concluding that such activity is neither the Court distinguished claims administration in bankruptcy proceedings from ordinary state court collection litigation. The Court found that unlike a collection case, in bankruptcy the consumer initiates the judicial proceeding, aided by the benefit of a bankruptcy trustee who “bears the burden of investigating claims and pointing out that a claim is stale.”

The Court was clearly troubled about the potential slippery slope of adopting Johnson’s argument that would change untimeliness as an affirmative defense that must be raised by the debtor or trustee. Creating an exception to the simple affirmative defense approach, the Court noted, “would required defining the boundaries of” such an exception, including whether such an exception was limited to facially time-barred claims or whether other affirmative defenses would be affected. “The law has long treated unenforceability of a claim (due to the expiration of the limitations period) as an affirmative defense. And we see nothing misleading or deceptive in the filing of a proof of claim that, in effect, follows the code’s similar system.”

Although the Court ruled that the Code does not preempt the FDCPA, finding the statutes “have different purposes and structural features,” the Court held that substantively, the conduct of filing time-barred claims does not violate the FDCPA. The Court rejected the United States’ amicus argument that the Advisory Committee on the Rules of Bankruptcy Procedure settled the issue when in adopted Bankruptcy Rule 9011, authorizing sanctions against a party submitting any paper that to the best of their knowing was not warranted by existing law. Instead, the Court noted that the Court rejected a proposal that would have required a creditor to make a pre-filing investigation based on a time-bar defense.”

In a dissent joined by Justices Ginsburg and Kagan, Justice Sotomayor disagreed with many of the justifications of the majority. In response to the majority’s view that the Chapter 13 trustees can serve as gatekeepers in the proof of claim administration, the dissent noted that time-barred claims have “deluged” the courts and “overworked trustees.” The dissent noted the application of the opinion was limited to Chapter 13 cases and left open the possibility of legislative action if Congress wanted to amend the FDCPA to prohibit filing of time-barred debt.

## Conclusion

The opinion settles an issue that has led to tremendous litigation (and divergence) throughout the country – a creditor can no longer face FDCPA liability for filing a proof of claim in a Chapter 13 case on account of a debt beyond the statute of limitations. *Johnson*, however, makes clear that filing of lawsuit to collect a time-barred debt outside of bankruptcy could have a different result.

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