

# Filing proof of claim in bankruptcy on a time-barred debt violates the FDCPA

In *Crawford v. LVNV Funding, LLC*, the Eleventh Circuit became the first federal circuit court of appeals to hold that filing a proof of claim on a time-barred debt in a bankruptcy case violates the Fair Debt Collection Practices Act (“FDCPA”).<sup>[1]</sup> See No. 13-12389, \_\_ F.3d \_\_, 2014 WL 3361226 (11th Cir. July 10, 2014). The case arose when LVNV filed a proof of claim in Crawford’s bankruptcy case on a debt for which the statute of limitations had expired. In response, Crawford filed an adversary proceeding against LVNV, alleging that LVNV routinely filed proofs of claim on time-barred debts and that LVNV’s actions violated the FDCPA.

The U.S. Bankruptcy Court for the Middle District of Alabama granted LVNV’s motion to dismiss the FDCPA claim, and the U.S. District Court affirmed. See *Crawford v. LVNV Funding, LLC*, No. 2:12-cv-701-WKW, 2013 WL 1947616, at \*1 (M.D. Ala. May 9, 2013). While noting that there was no binding authority on point, the district court noted that the “elephantine body of persuasive authority” weighed in favor of finding that filing a proof of claim in bankruptcy cannot give rise to an FDCPA claim. The district court explained that filing a proof of claim “does not amount to an effort to collect a debt,” but “even if it did, it is not the sort of abusive practice the FDCPA was enacted to prohibit.” *Id.*

The Eleventh Circuit rejected both of the district court’s reasons for dismissing the FDCPA claim. 2014 WL 3361226, at \*5. The court stated that filing a proof of claim is an attempt to collect a debt covered by the FDCPA, which covers direct and indirect collection actions, including collection initiated through legal proceedings. *Id.* The court noted that courts have “uniformly held” that the comparable act of suing on a time-barred debt violates the FDCPA. *Id.* at \*3. The court also pointed out that in Crawford’s case, because neither Crawford nor the trustee objected to LVNV’s time-barred claim, money was actually paid out from the Chapter 13 estate for the debt. *Id.*

In reaching its holding, the court emphasized the importance of statute of limitations provisions in the debt collection context. The court stated that “the limitations period provides a bright line for debt collectors and consumer debtors, signifying a time when the debtor’s right to be free of

stale claims comes to prevail over a creditor's right to legally enforce the debt." *Id.* at \*4. The court noted that, with the passage of time, a debtor's memory and records of the debt may diminish, "making it difficult for a consumer debtor to defend against the time-barred claim." *Id.*

The court concluded that "a debt collector's filing of a time-barred proof of claim creates the misleading impression to the debtor that the debt collector can legally enforce the debt." *Id.* at 4. The "least sophisticated consumer" may therefore fail to object to the claim, and, due to the Bankruptcy Code's automatic allowance provision, the claim will be paid out of the debtor's wages. For these reasons, the court found that filing a proof of claim on a time-barred debt was unfair, unconscionable, deceptive, and misleading, in violation of §§ 1692e and 1692f of the FDCPA.

The Eleventh Circuit declined to address whether the Bankruptcy Code preempts the application of the FDCPA to the bankruptcy context because that was an issue before the court on appeal.