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Filing a Proof of Claim after *Crawford*: the Potential for Creditors to Face FDCPA Violations in the Eleventh Circuit

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The language of Bankruptcy Code § 501(a) is as broad as it is simple. "A creditor or an indenture trustee may file a proof of claim."¹ The Bankruptcy Code's definition of "claim" only broadens § 501(a)'s scope: a "claim" means any "right to payment," regardless of whether or not that right is presently enforceable.² Based on that definition, *any* creditor is entitled to file *any* proof of claim based on a right to payment.

Up until 2014, the Fair Debt Collection Practices Act (the "FDCPA") did not restrict a creditor's entitlement to file a proof of claim. The FDCPA is a consumer protection statute that prohibits "false, deceptive, or unfair" debt-collection practices.³ For instance, a debt collector violates the FDCPA when it threatens to sue or files suit in state court on a time-barred debt.⁴ But prior to 2014, the FDCPA did not affect a creditor's ability to file a proof of claim in a bankruptcy case. Multiple courts within the Eleventh Circuit held that the time-barred nature of a debt does not impact a creditor's right to file a proof of claim; to provide an FDCPA cause of action for this conduct would undermine creditors' rights in the bankruptcy process.⁵ If the proof of claim was for a time-barred debt, the debtor simply needed to file an objection under the Bankruptcy Code's claims objection process.⁶ The FDCPA was simply unnecessary to protect a debtor from improper claims, because the Bankruptcy system provided that protection.⁷

¹ 11 U.S.C. § 501(a).

² 11 U.S.C. § 101(5). A "claim" is defined as a "right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured".

³ 15 U.S.C. §§ 1692e, 1692f; *Jerman v. Carlisle, McNellie, Rini, Kramer & Ulrich LPA*, 559 U.S. 573, 587 (2010).

⁴ *Phillips v. Asset Acceptance, LLC*, 736 F.3d 1076, 1079 (7th Cir. 2013); *Huertas v. Galaxy Asset Mgmt.*, 641 F.3d 28, 32–33 (3d Cir. 2011); *Castro v. Collecto, Inc.*, 634 F.3d 779, 783, 787 (5th Cir. 2011).

⁵ *In re Williams*, 392 B.R. 882 (Bankr. M.D. Fla. 2008); *In re Pariseau*, 395 B.R. 492, 494 (Bankr. M.D. Fla. 2008).

⁶ *Williams*, 392 B.R. at 885–86.

⁷ *Id.*

The Effect of *Crawford v. LVNV Funding, LLC*

The Eleventh Circuit opinion in *Crawford v. LVNV Funding, LLC*⁸ raised concerns for creditors who held claims for debts after the statute of limitations had expired. In *Crawford*, which was a Chapter 13 case, LVNV purchased the debtor's delinquent department store account almost 7 years before the debtor filed bankruptcy.⁹ By the time *Crawford* filed bankruptcy in 2008, the limitations period on the debt had expired 4 years earlier.¹⁰ LVNV filed a proof of claim to collect on the time-barred debt.¹¹ In response, *Crawford* filed an adversary proceeding against LVNV alleging that filing a proof of claim for a stale debt violated the FDCPA.¹²

Even though both the bankruptcy court and the district court dismissed the adversary proceeding, the Eleventh Circuit held that LVNV had violated the FDCPA by filing its stale proof of claim.¹³ The court reasoned that LVNV would have violated the FDCPA had it filed a suit to collect the time-barred debt in state court.¹⁴ From the lens of the "least-sophisticated consumer" standard used to evaluate FDCPA claims, the court found that an unsophisticated Chapter 13 debtor may be misled by a time-barred proof of claim and fail to object to the claim.¹⁵ Due to the Bankruptcy Code's automatic allowance provision, the otherwise unenforceable debt will be paid from the debtor's future wages when he fails to object.¹⁶ Thus, the Eleventh Circuit held that just as LVNV would have violated the FDCPA by filing its stale claim in state court, it violated the FDCPA by filing a stale proof of claim in bankruptcy court.¹⁷

Commentators have predicted far-reaching negative effects from the *Crawford* decision. Among the predictions, critics of *Crawford* expect that debt collectors will stop filing claims for time-barred debt, which will devalue pools of accounts containing time-barred debt, a commodity often traded by financial institutions.¹⁸ Creditors who use outside entities (attorneys or debt collection companies) to help them administer their bankrupt accounts will have to either abandon their time-barred claims or take the time to file the claims themselves, the argument goes.¹⁹ Not to mention added FDCPA risks that attorneys will face by representing creditors.²⁰

⁸ 758 F.3d 1254 (2014).

⁹ *Id.* at 1257.

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ *Id.* at 1262.

¹⁴ *Id.* at 1259.

¹⁵ *Id.* at 1261.

¹⁶ *Id.*

¹⁷ *Id.* at 1262.

¹⁸ *Alane A. Becket et al., Filer Beware! It's Not Just the Rules Committee Changing the Rules*, 2014 No. 9 NORTON BANKR. L. ADVISER NL 1, at 8.

¹⁹ *Id.*

²⁰ *Id.*

The Backlash after *Crawford*

The reality of *Crawford's* aftereffect is less dire. Many courts within the Eleventh Circuit have reeled back the applicability of *Crawford* through the doctrine of preclusion. Preclusion doctrine states that when two statutes can co-exist, the courts have a duty to render each statute effective.²¹ However, "[w]here provisions in the two acts are in irreconcilable conflict, the later act to the extent of the conflict constitutes an implied repeal of the other one."²² *Crawford* itself expressly declined to consider whether the Bankruptcy Code precludes the FDCPA when creditors misbehave in bankruptcy.²³

Recently, courts within the Eleventh Circuit have taken up the preclusion issue in the context of proofs of claim and have found an irreconcilable conflict between the Bankruptcy Code and the FDCPA. The District Court for the Southern District of Alabama in March 2015 concluded that the Bankruptcy Code broadly allows creditors to file proofs of claim on time-barred debt, while the FDCPA prohibits that conduct.²⁴ For that reason it found an irreconcilable conflict, and held that the Bankruptcy Code precludes the FDCPA.²⁵ In *Neal v. Atlas Acquisitions, LLC*, the District Court for the Middle District of Florida came to exactly the same holding: the Bankruptcy Code precludes an FDCPA claim based on a time-barred proof of claim.²⁶ Other courts are likely to follow.²⁷ Therefore, while *Crawford* may have instilled fear in many creditors filing a time-barred proof of claim, *Crawford's* holding has been significantly diminished by later courts utilizing the preclusion doctrine. While filing a stale proof of claim isn't exactly worry-free conduct after *Crawford*, creditors now have a strong argument that the FDCPA should not be implicated.

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²¹ *J.E.M. Ag Supply, Inc. v. Pioneer Hi-Bred International, Inc.*, 534 U.S. 124, 143–44 (2001).

²² *EC Term of Years Trust v. United States*, 550 U.S. 429, 435 (2007).

²³ *Crawford*, 758 F.3d at 1262 n. 7.

²⁴ *Johnson v. Midland Funding, LLC*, 528 B.R. 462, 473 (S.D. Ala. 2015).

²⁵ *Id.* The FDCPA yielded to the Bankruptcy Code, and not vice versa, because the Bankruptcy Code is the later act (the FDCPA has not been substantively amended since its 1977 enactment).

²⁶ *Neal v. Atlas Acquisitions, LLC*, No. 3:14-CV-1113-J-34, 2015 WL 5687785, at *7 (M.D. Fla. Sept. 25, 2015).

²⁷ *See, e.g., Flatau v. Sherman Financial Grp., LLC*, No. 5:14-CV-245(MTT), 2015 WL 8773299, at *6 (M.D. Ga. Dec. 14, 2015) ("[I]t may very well be that the Plaintiffs' FDCPA claim is precluded by the Bankruptcy Code.")