

# What We Know

## ARTICLES & INSIGHTS

### ABOUT THE AUTHOR

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compliance group. In her practice, she defends consumer financial service providers and members of the collection industry in state and federal court, as well as in regulatory matters involving a variety of consumer protection laws. Caren also advises a broad range of law firms, and collection agencies regarding an array of consumer finance issues. An active writer and speaker, Caren currently serves as chair of the Debt Collection Practices and Bankruptcy subcommittee for the American Bar Association's Consumer Financial Services Committee. She is also a member of the Defense Bar for the National Creditors Bar Association, the North Carolina State Chair for ACA International's Member Attorney Program and a member of the Bank Counsel Committee of the North Carolina Bankers Association. Most recently, she was elected to the Governing Committee for the Conference on Consumer Finance Law. In 2018, Caren was named one of the "20 Most Powerful Women in Collections" by *Collection Advisor*, a national trade publication. Caren oversees a blog titled: [Consumer Financial Services Litigation and Compliance](#) dedicated to consumer

## Fourth Circuit Weighs in on Time-Barred Proof of Claim Debate

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Joining the proof of claim fray, the Fourth Circuit has held that the filing of a time-barred proof of claim does not violate the FDCPA when the statute of limitations does not extinguish the debt. *Dubois v. Atlas Acquisitions*, No. 15-1495, 2016 U.S. App. LEXIS, \*22-23 (4<sup>th</sup> Cir. Aug. 25, 2016).

In joining the majority of circuits, the Fourth Circuit held that while filing a proof of claim is debt collection activity regulated by the FDCPA, the filing of a proof of claim that is time-barred does not violate the FDCPA when the statute of limitations does not extinguish the debt. In reaching its conclusion, the court was persuaded by several of the points articulated by other courts over the past two years:

- In Maryland, the state where the bankruptcy was pending, the statute of limitations does not extinguish the debt. It merely limits the avenues of recourse.
- The court took a broad view of the meaning of a claim, holding that a "claim" is defined as a right to payment and that a creditor with a stale debt retains some right to payment. As was the case in the Seventh Circuit, the Court drew support for its position from the Bankruptcy Code's claim allowance procedures. The Court noted that the Bankruptcy Code contemplates the filing of time barred proofs of claim as evidenced by the fact that the statute of limitations is one of the enumerated grounds for disallowing a claim.
- The court was also persuaded by the unique circumstances presented in the bankruptcy context and concluded that the reasons why it is unfair or misleading *to sue* on a time-barred debt are significantly diminished in a Chapter 13 bankruptcy
- First, the bankruptcy code contemplates the existence of a trustee who is charged with reviewing proofs of claim and objecting to time-barred claims thereby stopping the creditor from engaging in further collection efforts and discharging the claim
- Secondly, the amount paid into the bankruptcy by the debtor is not affected by the number of unsecured claims filed. Therefore, there is no harm to the consumer (who

financial services and has been published in a number of publications including the Journal of Taxation and Regulation of Financial Institutions, California State Bar Business Law News, Banking and Financial Services Policy Report and Carolina Banker.

the FDCPA is designed to protect) if additional claims are filed

- Thirdly, the Bankruptcy Rules require creditors to accurately state the last transaction and charge off date for the account, making stale claims easier to detect
- Finally, the debtor in a Chapter 13 bankruptcy is a voluntary participant and instigator of the bankruptcy and not an involuntary party to a lawsuit.

### Keys to the Decision

The opinion is important for a number of reasons. Parties seeking to rely upon it should note the following:

- First, the opinion does not hold that the Bankruptcy Code preempts the FDCPA. In fact, the Court never reached the issue.
- Secondly, the court's decision does not address the contents of the proof of claim or the conduct of the debt collector. Many of the courts to date have gone to great lengths to limit their holdings to instances where the defendants filed accurate, albeit time-barred, proofs of claim; however, as noted by the dissent, the majority opinion in this matter never reaches the conduct of the debt collector. Instead, the Fourth Circuit's opinion appears to focus solely on whether or not the statute of limitations extinguished the debt.

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