Exchange Commission under section 6 of the Securities Exchange Act of 1934.

(49) The term "security"—

(A) includes—

(i) note;

(ii) stock;

(iii) treasury stock;

(iv) bond;

(v) debenture;

(vi) collateral trust certificate;

(vii) pre-organization certificate or subscription;

(viii) transferable share;

(ix) voting-trust certificate;

(x) certificate of deposit;

(xi) certificate of deposit for security;

(xii) investment contract or certificate of interest or participation in a profit-sharing agreement or in an oil, gas, or mineral royalty or lease, if such contract or interest is required to be the subject of a registration statement filed with the Securities and Exchange Commission under the provisions of the Securities Act of 1933, or is exempt under section 3(b) of such Act from the requirement to file such a statement;

(xiii) interest of a limited partner in a limited partnership;

(xiv) other claim or interest commonly known as "security"; and

(xv) certificate of interest or participation in, temporary or interim certificate for, receipt for, or warrant or right to subscribe to or purchase or sell, a security; but

(B) does not include—

(i) currency, check, draft, bill of exchange, or bank letter of credit;

(ii) leverage transaction, as defined in section 761 of this title;

(iii) commodity futures contract or forward contract;

(iv) option, warrant, or right to subscribe to or purchase or sell a commodity futures contract;

(v) option to purchase or sell a commodity;

(vi) contract or certificate of a kind specified in subparagraph (A)(xii) of this paragraph that is not required to be the subject of a registration statement filed with the Securities and Exchange Commission and is not exempt under section 3(b) of the Securities Act of 1933 from the requirement to file such a statement; or

(vii) debt or evidence of indebtedness for goods sold and delivered or services rendered.

(50) The term "security agreement" means agreement that creates or provides for a security interest.

(51) The term "security interest" means lien created by an agreement.

(51A) The term "settlement payment" means, for purposes of the forward contract provisions of this title, a preliminary settlement payment, a partial settlement payment, an interim settlement payment, a settlement payment on account, a final settlement payment, a net settlement payment, or any other similar payment commonly used in the forward contract trade.

(51B) The term "single asset real estate" means real property constituting a single property or project, other than residential real property with fewer than 4 residential units, which generates substantially all of the gross income of a debtor who is not a family farmer and on which no substantial business is being conducted by a debtor other than the business of operating the real property and activities incidental thereto.

(51C) The term "small business case" means a case filed under chapter 11 of this title in which the debtor is a small business debtor.

(51D) The term "small business debtor"—

(A) subject to subparagraph (B), means a person engaged in commercial or business activities (including any affiliate of such person that is also a debtor under this title and excluding a person whose primary activity is the business of owning or operating real property or activities incidental thereto) that has aggregate noncontingent liquidated secured and unsecured debts as of the date of the filing of the petition or the date of the order for relief in an amount not more than $2,566,050 (excluding debts owed to 1 or more affiliates or insiders) for a case in which the United States trustee has not appointed under section 1102(a)(1) a committee of unsecured creditors or where the court has determined that the committee of unsecured creditors is not sufficiently active and representative to provide effective oversight of the debtor; and

(B) does not include any member of a group of affiliated debtors that has aggregate noncontingent liquidated secured and unsecured debts in an amount greater than $2,490,925(*) (excluding debt owed to 1 or more affiliates or insiders).

(52) The term "State" includes the District of Columbia and Puerto Rico, except for the purpose of defining who may be a debtor under chapter 9 of this title.

(53) The term "statutory lien" means lien arising solely by force of a statute on specified circumstances or conditions, or lien of distress for rent, whether or not statutory, but does not include security interest or judicial lien, whether or not such interest or lien is provided by or is dependent on a statute and whether or not such interest or lien is made fully effective by statute.

(53A) The term "stockbroker" means person—

(A) with respect to which there is a customer, as defined in section 741 of this title; and

(B) that is engaged in the business of effecting transactions in securities—

(i) for the account of others; or

(ii) with members of the general public, from or for such person's own account.

(53B) The term "swap agreement"—

(A) means—

(i) any agreement, including the terms and conditions incorporated by reference in such agreement, which is—

(I) an interest rate swap, option, future, or forward agreement, including a rate floor, rate cap, rate collar, cross-currency rate swap, and basis swap;

(II) a spot, same day-tomorrow, tomorrow-next, forward, or other foreign exchange, precious metals, or other commodity agreement;

(III) a currency swap, option, future, or forward agreement;

(IV) an equity index or equity swap, option, future, or forward agreement;
(V) a debt index or debt swap, option, future, or forward agreement;
(VI) a total return, credit spread or credit swap, option, future, or forward agreement;
(VII) a commodity index or a commodity swap, option, future, or forward agreement;
(VIII) a weather swap, option, future, or forward agreement;
(IX) an emissions swap, option, future, or forward agreement; or
(X) an inflation swap, option, future, or forward agreement;

(ii) any agreement or transaction that is similar to any other agreement or transaction referred to in this paragraph and that—
(I) is of a type that has been, is presently, or in the future becomes, the subject of recurrent dealings in the swap markets or other derivatives markets (including terms and conditions incorporated by reference therein); and
(II) is a forward, swap, future, option, or spot transaction on one or more rates, currencies,commodities, equity securities, or other equity instruments, debt securities or other debt instruments,quantitative measures associated with an occurrence, extent of an occurrence, or contingency associatedwith a financial, commercial, or economic consequence, or economic or financial indices or measuresof economic or financial risk or value;

(iii) any combination of agreements or transactions referred to in this subparagraph;
(iv) any option to enter into an agreement or transaction referred to in this subparagraph;
(v) a master agreement that provides for an agreement or transaction referred to in clause (i), (ii), (iii), or (iv), together with all supplements to any such master agreement, and without regard to whether the master agreement contains an agreement or transaction that is not a swap agreement under this paragraph, except that the master agreement shall be considered to be a swap agreement under this paragraph only with respect to each agreement or transaction under the master agreement that is referred to in clause (i), (ii), (iii), or (iv); or
(vi) any security agreement or arrangement or other credit enhancement related to any agreements or transactions referred to in clause (i) through (v), including any guarantee or reimbursement obligation by or to a swap participant or financial participant in connection with any agreement or transaction referred to in any such clause, but not to exceed the damages in connection with any such agreement or transaction, measured in accordance with section 562; and

(B) is applicable for purposes of this title only, and shall not be construed or applied so as tochallenge or affect the characterization, definition, or treatment of any swap agreement under anyother statute, regulation, or rule, including the Gramm-Leach-Bliley Act, the Legal Certainty for BankProducts Act of 2000, the securities laws (as such term is defined in section 3(a)(47) of the SecuritiesExchange Act of 1934) and the Commodity Exchange Act.

(53C) The term "swap participant" means an entity that, at any time before the filing of the petition, has an outstanding swap agreement with the debtor.

(56A)(***) The term "term overriding royalty" means an interest in liquid or gaseous hydrocarbons in place or to be produced from particular real property that entitles the owner thereof to a share of production, or the value thereof, for a term limited by time, quantity, or value realized.

(53D) The term "timeshare plan" means and shall include that interest purchased in any arrangement, plan, scheme, or similar device, but not including exchange programs, whether by membership, agreement, tenancy in common, sale, lease, deed, rental agreement, license, right to use agreement, or by any other means, whereby a purchaser, in exchange for consideration, receives a right to use accommodations, facilities, or recreational sites, whether improved or unimproved, for a specific period of time less than a full year during any given year, but not necessarily for consecutive years, and which extends for a period of more than three years. A "timeshare interest" is that interest purchased in a timeshare plan which grants the purchaser the right to use and occupy accommodations, facilities, or recreational sites, whether improved or unimproved, pursuant to a timeshare plan.

(54) The term "transfer" means—
(A) the creation of a lien;
(B) the retention of title as a security interest;
(C) the foreclosure of a debtor's equity of redemption; or
(D) each mode, direct or indirect, absolute or conditional, voluntary or involuntary, of disposing of or parting with—
(i) property; or
(ii) an interest in property.

(54A) The term "uninsured State member bank" means a State member bank (as defined in section 3 of the Federal Deposit Insurance Act) the deposits of which are not insured by the Federal Deposit Insurance Corporation.

(55) The term "United States", when used in a geographical sense, includes all locations where the judicial jurisdiction of the United States extends, including territories and possessions of the United States.

(*) As adjusted under section 104, effective April 1, 2007. Readjusted effective April 1, 2016.
(**) So in original. A comma should probably appear.
(***) So in original.

FAIR DEBT COLLECTION PRACTICES ACT

QUICK REFERENCE

Basic Definitions	
§ 1692 a(3)	Definition of a Consumer as any natural person obligated on or allegedly obligated on a debt
§ 1692 a(5)	Definition of a Debt as an obligation for money, goods, insurance, or services for primarily personal, family, or household purposes
§ 1692 a(6)	Definition of a Debt Collector as collectors, collection agencies, lawyers, forms writers
Contacting Third Parties	
§ 1692 b(1)	Contact of Third Party: Failed to identify themselves, or failed to state that collector is confirming or correcting location information
§ 1692 b(2)	Contact of Third Party: Stated that the consumer owes any debt
§ 1692 b(3)	Contact of Third Party: Contacted a person more than once, unless requested to do so
§ 1692 b(4)	Contact of Third Party: Utilized postcards
§ 1692 b(5)	Contact of Third Party: Any language or symbol on any envelope or communication indicating debt collection business
§ 1692 b(6)	Contact of Third Party: After knowing the consumer is represented by an attorney
Prohibited Communications Practices	
§ 1692 c(a)(1)	At any unusual time, unusual place, or unusual time or place known to be inconvenient to the consumer, before 8:00 am or after 9:00 pm
§ 1692 c(a)(2)	After it knows the consumer to be represented by an attorney unless attorney consents or is unresponsive
§ 1692 c(a)(3)	At place of employment when knows that the employer prohibits such communications
§ 1692 c(b)	With anyone except consumer, consumer's attorney, or credit bureau concerning the debt
§ 1692 c(c)	After written notification that consumer refuses to pay debt, or that consumer wants collector to cease communication
Harassment or Abuse	
§ 1692 d	Any conduct the natural consequence of which is to harass, oppress, or abuse any person
§ 1692 d(1)	Used or threatened the use of violence or other criminal means to harm the consumer or his/her property?
§ 1692 d(2)	Profane language or other abusive language?
§ 1692 d(3)	Published a list of consumers who allegedly refuse to pay debts?
§ 1692 d(4)	Advertised for sale any debts?
§ 1692 d(5)	Caused the phone to ring or engaged any person in telephone conversations repeatedly
§ 1692 d(6)	Placed telephone calls without disclosing his/her identity?
False or Misleading Representations in Communications	

§ 1692 e	Any other false, deceptive, or misleading representation or means in connection with the debt collection
§ 1692 e(1)	Affiliated with the United States or any state, including the use of any badge, uniform or facsimile
§ 1692 e(2)	Character, amount, or legal status of the alleged debt
§ 1692 e(3)	Any individual is an attorney or that any communication is from an attorney
§ 1692 e(4)	Nonpayment of any debt will result in the arrest or imprisonment of any person or the seizure, garnishment, attachment
§ 1692 e(5)	Threaten to take any action that cannot legally be taken or that is not intended to be taken
§ 1692 e(6)	Sale or transfer of any interest in the debt will cause the consumer to lose any claim or defense to payment of the debt
§ 1692 e(7)	Consumer committed any crime or other conduct in order to disgrace the consumer
§ 1692 e(8)	Threatens or communicates false credit information, including the failure to communicate that a debt is disputed
§ 1692 e(9)	Represent documents as authorized, issued or approved by any court, official, or agency of the United States or state
§ 1692 e(10)	Any false representation or deceptive means to collect a debt or obtain information about a consumer
§ 1692 e(11)	Communication fail to contain the mini-Miranda warning: "This is an attempt to collect a debt communication is from a debt collector.
§ 1692 e(12)	Debt has been turned over to innocent purchasers for value
§ 1692 e(13)	Documents are legal process when they are not
§ 1692 e(14)	Any name other than the true name of the debt collector's business
§ 1692 e(15)	Documents are not legal process forms or do not require action by the consumer
§ 1692 e(16)	Debt collector operates or is employed by a consumer reporting agency
Unfair Practices	
§ 1692 f	Any unfair or unconscionable means to collect or attempt to collect the alleged debt
§ 1692 f(1)	Attempt to collect any amount not authorized by the agreement creating the debt or permitted by law
§ 1692 f(2)	Accepted or solicit postdated check by more than 5 days without 3 business days written notice of intent to deposit
§ 1692 f(3)	Accepted or solicited postdated check for purpose of threatening criminal prosecution
§ 1692 f(4)	Depositing or threatening to deposit a post-dated check prior to actual date on the check
§ 1692 f(5)	Caused any charges to be made to the consumer, e.g., collect telephone calls
§ 1692 f(6)	Taken or threatened to unlawfully repossess or disable the consumer's property
§ 1692 f(7)	Communicated with the consumer by postcard
§ 1692 f(8)	Any language or symbol on the envelope that indicates the communication concerns debt collection
30 Day Validation Notice	
§ 1692 g	Failure to send the consumer a 30-day validation notice within five days of the

	initial communication
§ 1692 g(a)(1)	Must state Amount of Debt
§ 1692 g(a)(2)	Must state Name of Creditor to Whom Debt Owed
§ 1692 g(a)(3)	Must state Right to Dispute within 30 Days
§ 1692 g(a)(4)	Must state Right to Have Verification/Judgment Mailed to Consumer
§ 1692 g(a)(5)	Must state Will Provide Name and Address of original Creditor if Different from Current Creditor
§ 1692 g(b)	Collector must cease collection efforts until debt is validated
Multiple Debts	
§ 1692 h	Collector must apply payments on multiple debts in order specified by consumer and cannot apply payments to disputed debts
Legal Actions	
§ 1692 i(a)(2)	Brought any legal action in a location other than where contract signed or where consumer resides
Deceptive Forms by Creditor	
§ 1692 j	Forms been designed, compiled and/or furnished to create the false belief that person
Civil Liability	
§ 1692 k(a)	Except as otherwise provided by this section, any debt collector who fails to comply with any provision of this subchapter with respect to any person is liable to such person in an amount equal to the sum of --
§ 1692 k (a)(1)	Any actual damage sustained by such person as a result of such failure
§ 1692 k (a)(2)(A)	In the case of any action by an individual, such additional damages as the court may allow, but not exceeding $1,000;or
§ 1692 k (a)(2)(B)	In the case of a class action, (i) such amount for each named plaintiff as could be recovered under subparagraph (A), and (ii) such amount as the court may allow for all other class members, without regard to a minimum individual recovery, not to exceed the lesser of $500,000 or 1 per centum of the net worth of the debt collector; and
§ 1692 k (a)(3)	in the case of any successful action to enforce the foregoing liability, the costs of the action, together with a reasonable attorney's fee as determined by the court. On a finding by the court that an action under this section was brought in bad faith and for the purpose of harassment, the court may award to the defendant attorney's fees reasonable in relation to the work expended and costs.
§ 1692 k (c)	A debt collector may not be held liable in any action brought under this subchapter if the debt collector shows by a preponderance of evidence that the violation was not intentional and resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid any such error.

American Bankruptcy Institute

Supreme Court Allows Debt Collectors to File Time-Barred Proofs of Claim

"High court allows a business model that is based on the inadvertence of trustees and creditors."

Help Center

Resolving a split of circuits, the Supreme Court held 5/3 today in *Midland Funding LLC v. Johnson* that a debt collector who files a claim that is "obviously" barred by the statute of limitations has not engaged in false, deceptive, misleading, unconscionable, or unfair conduct and thus does not violate the federal Fair Debt Collection Practices Act.

Writing the opinion for the majority in favor of the debt collector, Justice Stephen G. Breyer said that the conclusion on one issue — false, deceptive or misleading — was "reasonably clear." The second issue — unfair or unconscionable — presented a "closer question," he said.

Although importuned to do so by the debt collector, the majority did not rule that the later adoption of the Bankruptcy Code impliedly repealed aspects of the FDCPA. However, the opinion opens the door for debt collectors to purchase time-barred claims for pennies on the dollar and profit by filing those otherwise uncollectable claims, because trustees and debtors will not always object.

Justice Sonia Sotomayor dissented, in an opinion joined by Justices Ruth Bader Ginsburg and Elena Kagan. Justice Sotomayor said, "It takes only common sense to conclude that one should not be able to profit on the inadvertent inattention of others." Justice Neil M. Gorsuch did not participate because he had not been seated on the Supreme Court when the case was argued in January.

Before the high court adjourns for the summer in late June, the justices will rule on a second FDCPA case, *Henson v. Santander Consumer USA Inc.*, and decide whether someone who purchases a claim outright becomes exempt from the FDCPA.

The Facts

The Supreme Court granted *certiorari* to review a decision from the Eleventh Circuit holding that the filing of a stale claim violates the FDCPA, thereby enabling the debtor to recover attorneys' fees and up to $1,000 in statutory damages. The case involved a proof of claim filed by a debt collector where the statute of limitations "had long since run," Justice Breyer said.

The face of the proof of claim disclosed the date of the last activity, from which a lawyer would have known that the claim would be uncollectible.

The chapter 13 debtor objected to the claim, and it was disallowed. The debtor then filed suit under the FDCPA in federal district court in Alabama. The district judge dismissed the suit, saying the FDCPA did not apply. The Eleventh Circuit reversed in May 2016. To read ABI's discussion of the Eleventh Circuit's opinion and the splits of circuits, click here and here.

The Majority Opinion

Justice Breyer broke his majority opinion into two parts. First, he asked whether filing a stale claim was "false, deceptive or misleading." The answer to that question, he said, was "reasonably clear."

Like "the majority of Courts of Appeals that have considered the matter," he said that filing stale claims was neither false, deceptive, nor misleading, in part because Alabama, like most other states, provides that "a creditor has a right to payment of a debt even after the limitations period has expired." He also said that Congress adopted the "broadest available definition of claim," defining the term in Section 101(5)(A) to include a disputed claim. The statute of limitations, Justice Breyer said, has always been an affirmative defense.

He said that the "audience" in a chapter 13 case is a trustee who "is likely to understand" when a claim is time-barred.

Although the courts of appeals have uniformly found a violation of the FDCPA when debt collectors file ordinary civil suits to collect a time-barred claims, Justice Breyer was careful to say that the Court was not deciding that issue.

The second issue — whether filing a time-barred claim is unfair or unconscionable — was a "closer question," Justice Breyer said. The "context of a civil suit differs significantly from" a bankruptcy claim, he explained, since a "knowledgeable trustee is available" when a debtor files a bankruptcy petition.

The FDCPA and the Bankruptcy Code, Justice Breyer said, have "different purposes and structural features." The FDCPA "seeks to help consumers," but not necessarily by "closing a loophole in the Bankruptcy Code." To invoke the FDCPA would upset a "delicate balance" and "authorize a new significant bankruptcy-related remedy in the absence of language in the [Bankruptcy] Code providing for it."

Effectively barring debt collectors from filing stale claims, Justice Breyer said, would require creditors to investigate the merits of affirmative defenses. "The upshot could well be added complexity" and a "change in settlement incentives."

Justice Sotomayor's Dissent

Joined by Justices Ginsburg and Kagan, Justice Sotomayor devoted a significant portion of her dissent to explaining how "[p]rofessional debt collectors have built a business out of buying stale debt, filing claims in bankruptcy . . . and hoping no one notices

that the debt is too old." She mentioned that the very same debt collector before the Supreme Court had entered into a consent decree with the government prohibiting the filing of further civil suits to collect stale debts and had paid $34 million in restitution.

Justice Sotomayor believes that filing a stale claim is unfair and unconscionable, just like filing an ordinary civil suit. She said, "Debt collectors do not file these claims in good faith; they file them hoping and expecting the bankruptcy system will fail."

"[E]veryone with actual experience in the matter insists" it is false, Justice Sotomayor said, to believe that bankruptcy trustees are effective gatekeepers who weed out time-barred claims.

Opinion Link: Opinion Link

Judge Name: Supreme Court

Case Citation: Midland Funding LLC v. Johnson, 16-348 (Sup. Ct. May 15, 2017)

Case Name: Midland Funding LLC v. Johnson

Case Type: Consumer

Court: Supreme Court

Bankruptcy Tags: Claims
Bankruptcy Litigation
Practice and Procedure
Consumer Bankruptcy
Consumer Debt
Finance and Banking

SCOTUS Finds Time-Barred POC Not FDCPA Violation

Posted by NCBRC - May 16, 2017

"Midland's filing of a proof of claim that on its face indicates that the limitations period has run does not fall within the scope of any of the five relevant words of the Fair Debt Collection Practices Act." *Midland Funding, LLC v. Johnson*, 2017 WL 2039159 (May 15, 2017) (case no. 16-348), reversing *Johnson v. Midland Funding, LLC*, 823 F.3d 1334 (11th Cir. 2016).

Justice Breyer delivered the majority opinion finding that, because, under state law, the holder of a debt that is uncollectible due to lapse of the statute of limitations, retains a "right to payment," a proof of claim on a time-barred debt falls within the meaning of "claim" in section 101(5)(A), and is not "false, deceptive, or misleading," within the meaning of the FDCPA. Relying on the language and structure of Bankruptcy Code provisions, the Court noted that the Code provides for the possibility that a claim, while prima facie valid, may be contingent or disputed. Upon objection, section 502(b)(1) provides a method for disallowing an unenforceable claim. Under this structure the statute of limitations is an affirmative defense.

Moreover, when considering whether a statement is false, deceptive or misleading, the sophistication of the recipient is a relevant factor. Here, the Court found the bankruptcy trustee was likely to understand that a time-barred debt is subject to disallowance.

The Court turned to the "closer question" of whether assertion of a time-barred debt is "unfair" or "unconscionable." In answering this question in the negative, the Court distinguished civil cases from bankruptcy. Factors in a civil suit, such as debtor ignorance of the statute of limitations defense, loss of records, and general embarrassment, may cause a debtor with a valid defense to nonetheless pay an uncollectible debt. Those considerations are attenuated in bankruptcy where the debtor has herself initiated litigation, there is a trustee to oversee the process and the Code provides for evaluation of claims.

Both the debtor, Aleida Johnson, and the United States as amicus argued that debt-buyers filing time-barred claims solely in the hope that they will successfully slip them past busy trustees and unsuspecting debtors is sanctionable and, therefore, "unfair" conduct. The Court disagreed, finding that the inherent protections in the Bankruptcy Code, as well as the possibility that the debtor herself could benefit from the stale claim being disallowed and discharged in bankruptcy, militated against carving out an exception to the affirmative defense rule.

The Court added that the differing purposes of the FDCPA—to protect consumers and possibly prevent bankruptcies, and the Bankruptcy Code—to strike a balance between rights of debtors and creditors, further supported treating the assertion of stale claims in bankruptcy differently from the way they are treated in the civil context.

Justice Breyer was joined in the majority by Chief Justice Roberts and Justices Thomas, Kennedy, and Alito.

Taking a real-world approach to the subject in which she recognized the extent of consumer debt and the proliferation of debt buyers, Justice Sotomayor dissented.

"Professional debt collectors have built a business out of buying stale debt, filing claims in bankruptcy proceedings to collect it, and hoping that no one notices that the debt is too old to be enforced by the courts. This practice is both 'unfair' and 'unconscionable.'"

Citing NACBA's amicus brief, Justice Sotomayor discussed the ever-growing industry of buying stale debts for pennies on the dollar. The practice relies on the likelihood that, after an extensive lapse of time, the debtor will not know or care to raise the affirmative defense of staleness. Because the state courts have uniformly found that

filing suit on a stale claim violates the FDCPA debt-buyers have increasingly turned to the bankruptcy system to achieve their goals.

Justice Sotomayor reasoned that the same considerations in state court findings of FDCPA violations, are present in the bankruptcy context. Bankruptcy debtors may feel pressure to make a small payment on the debt, thereby unwittingly restarting the running of the limitations period, or simply fail to realize that they have the ability to object to the claim. The gatekeeping function of the trustee is illusory. "The problem with the majority's *ipse dixit* [that the presence of the trustee is protection enough] is that everyone with actual experience in the matter insists that it is false."

Justice Sotomayor disagreed with the majority's reasoning that because the debtor in bankruptcy has initiated the legal process she should be held to a higher level of sophistication than a defendant in a civil debt collection action, noting that debtors are in bankruptcy often as a result of lack of sophistication. To the majority's reasoning that debtors could benefit from the filing of a stale claim because it may lead to disallowance and discharge, the dissent again interjected reality. In fact, a stale claim that slips through the bankruptcy process may result in resuscitation of an otherwise uncollectible debt and a debtor may find herself worse off after bankruptcy than before.

Justice Sotomayor ended with a ray of hope, "I take comfort only in the knowledge that the Court's decision today need not be the last word on the matter. If Congress wants to amend the FDCPA to make explicit what in my view is already implicit in the law, it need only say so."

Justice Sotomayor was joined her dissent by Justices Kagan and Ginsburg.

Justice Gorsuch did not take part in the decision.

Midland SCt opinion May 2017

Tags: FDCPA, Proof of Claim

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Professor Kenneth N. Klee and Whitman L. Holt on

Supreme Court's Holding in *Midland Funding, LLC v. Johnson*

2017 Emerging Issues 7560

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I. Summary of Holding and Lessons to Be Learned

In a 5-3 majority decision authored by Justice Breyer,[1] the United States Supreme Court concludes that a debt collector does not violate the Fair Debt Collection Practices Act, 91 Stat. 874, 15 U.S.C. § 1692 *et seq.* (the "Act") by filing, in a chapter 13 bankruptcy case, a proof of claim that on its face indicates that the statute of limitations governing collection of the claimed debt has expired. *Midland Funding, LLC v. Johnson*, 581 U.S. ___, 2017 U.S. LEXIS 2949, at *6–7 (May 15, 2017). Reversing the decision of the Eleventh Circuit Court of Appeals, the Court finds that the filing of "a proof of claim that is obviously time barred is not a false, deceptive, misleading, unfair or unconscionable debt collection practice within the meaning of the [Act]," and as such, does not give rise to a claim by the consumer debtor for civil damages under the Act. Id. at *18. In reaching this conclusion, the Court relies on the definition of a "claim" as a right to payment, whether or not enforceable under applicable state law, *id.* at *7–8, and the proposition that the bankruptcy system "treats untimeliness as an affirmative defense" to a claim, *id.* at *9–10, 13. Moreover, citing what it believes to be the "different purposes and structural features" of the Bankruptcy Code and the Act, the Court determines that to apply the Act on these facts would upset the "delicate balance" struck by the Bankruptcy Code between the protections and obligations of a debtor. *Id.* at *15–16.

The lessons to be learned from this decision are that even a typically "liberal" justice such as Justice Breyer may be swayed by technical arguments based on abstracted concepts about the operation of the bankruptcy system, even when those concepts are belied by day-to-day consumer practice on the ground. As Justice Sotomayor's dissent correctly details, debt collectors that file proofs of claim based on time-barred debts impose significant negative externalities throughout the bankruptcy system, all in an effort to extract unwarranted profits for themselves. Because a majority of the Supreme Court (and, before it, a majority of circuit judges to consider the issue) has concluded that this valueless (indeed, value-destroying) practice is not "unfair" or "unconscionable," debtors and their counsel will need to find another path—whether legislative, judicial, or technological—to check abusive claims filing practices.

II. Legal Background

Bankruptcy Code section 501(a) provides that a "creditor … may file a proof of claim" in a debtor's bankruptcy case. 11 U.S.C. § 501(a). 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." 11 U.S.C. § 101(5)(A). A creditor's

1 Chief Justice Roberts and Justices Kennedy, Thomas, and Alito joined Justice Breyer's opinion. Justice Sotomayor filed a dissenting opinion, which Justices Ginsburg and Kagan joined. Justice Gorsuch took no part in the consideration or decision of the case.

"right to payment" in bankruptcy is generally defined by applicable state law, *see Travelers Cas. & Sur. Co. of Am. v. PG&E*, 549 U.S. 443, 450 (2007), and the debtor's bankruptcy estate enjoys "the benefit of any defense available to the debtor as against any entity other than the estate, including statutes of limitation," 11 U.S.C. § 558. A properly filed proof of claim "constitute[s] prima facie evidence of the validity and amount of the claim," Fed. R. Bankr. P. 3001(f), and, in the absence of an objection, such a claim will be "deemed allowed" in the debtor's case, 11 U.S.C. § 502(a). If instead a party in interest objects to allowance of a claim, then the court must determine the amount of the claim and allow the claim in such amount, except to the extent that, *inter alia*, "such claim is unenforceable against the debtor and property of the debtor, under any agreement or applicable law for a reason other than because such claim is contingent or unmatured." 11 U.S.C. § 502(b)(1).

The Fair Debt Collection Practices Act was enacted in 1977 "to eliminate abusive debt collection practices by debt collectors, to insure that those debt collectors who refrain from using abusive debt collection practices are not competitively disadvantaged, and to promote consistent State action to protect consumers against debt collection abuse." 15 U.S.C. § 1692(e). To that end, the Act provides that a "debt collector may not use any false, deceptive, or misleading representation or means in connection with the collection of any debt" and "may not use unfair or unconscionable means to collect or attempt to collect any debt." 15 U.S.C. §§ 1692e & 1692f. Among the conduct expressly prohibited by the Act is the false representation by a debt collector of "the character, amount, or legal status of any debt" and the collection of any amount not "expressly authorized by the agreement creating the debt or permitted by law." 15 U.S.C. §§ 1692e(2)(A) & 1692f(1). A debt collector who violates the Act is subject to civil liability for actual damages, statutory damages, attorneys' fees, and costs.[2] 15 U.S.C. § 1692k(a).

Although the Supreme Court has not addressed the issue under the modern Bankruptcy Code, it has previously described the filing of a proof of claim as "a traditional method of collecting a debt." *Garner v. New Jersey*, 329 U.S. 565, 573, 91 L. Ed. 504 (1947).

III. Facts and Proceedings Below

In March 2014, Aleida Johnson (the "Debtor") filed an individual bankruptcy case under chapter 13 of the Bankruptcy Code. *Midland Funding, LLC*, 2017 U.S. LEXIS 2949, at *6. Two months later, Midland Funding, LLC ("Midland") filed a proof of claim in the Debtor's case asserting a credit-card debt in the amount of $1,879.71 and disclosing that the last activity on the Debtor's account was in 2003. Id. The Debtor filed a short objection to the claim, Midland failed to respond, and the bankruptcy court disallowed the claim. Id. Thereafter, the Debtor sued Midland in district court for actual damages, statutory damages, attorneys' fees, and costs for an alleged violation of the Fair Debt Collection Practices Act. Id. On Midland's motion to dismiss, the district court first determined that there is "an obvious tension between the Act and the Code" because "except where expiration

2 The Fair Debt Collection Practices Act applies only to "debt collectors," defined as "any person who uses any instrumentality of interstate commerce or the mails in any business the principal purpose of which is the collection of any debts, or who regularly collects or attempts to collect, directly or indirectly, debts owed or due asserted to be owed or due another." 15 U.S.C. § 1692a(6). A debt collector who appears to have violated the Act can avoid liability by showing, by a preponderance of the evidence, that the violation "was not intentional and resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid any such error." 15 U.S.C. § 1692k(c).

of the limitations period extinguishes the debt under applicable state law, the Code permits creditors to file proofs of claim in Chapter 13 proceedings on debts known to be time-barred," whereas "the Act prohibits debt collectors from engaging in such conduct." *Johnson v. Midland Funding*, 528 B.R. 462, 470 (S.D. Ala. 2015). Finding the Code and the Act to be "in irreconcilable conflict" on this point, the district court then applied the doctrine of implied repeal, concluding that the 1977 Act must yield to the more recently enacted 1978 Code to the extent of the conflict. Id. at 470, 473 (citing *EC Term of Years Trust v. United States*, 550 U.S. 429, 435, 167 L. Ed. 2d 729 (2007), for the proposition that a more recent law constitutes an implied repeal of an earlier law to the extent of irreconcilable conflicts between the two laws). Accordingly, the district court dismissed the Debtor's lawsuit under the Act. *Johnson*, 528 B.R. at 473.

The Debtor appealed, and the Eleventh Circuit Court of Appeals reversed. *Johnson v. Midland Funding, LLC*, 823 F.3d 1334, 1342 (11th Cir. 2016). The Debtor argued on appeal that the district court's decision conflicts with Eleventh Circuit precedent that "held that a debt collector violates the [Act] by knowingly filing a proof of claim in a bankruptcy proceeding on a debt that is time-barred." Id. at 1337 (citing *Crawford v. LVNV Funding, LLC*, 758 F.3d 1254, 1261 (11th Cir. 2014)). In *Crawford*, the Eleventh Circuit had declined to resolve the second question addressed by the district court in *Midland Funding*, namely whether the Bankruptcy Code precludes application of the Act when creditors misbehave in bankruptcy cases. *Johnson*, 823 F.3d at 1338 (citing *Crawford*, 758 F.3d at 1262 n.7). Turning to that question, the Eleventh Circuit concluded that although "the Code allows creditors to file proofs of claim that appear on their face to be barred by the statute of limitations," when a creditor who is designated as a debt collector under the Act files such a claim, "that debt collector will be vulnerable to a claim under the [Act]." *Johnson*, 823 F.3d at 1338. The court determined the Code does not preclude application of the Act in the context of a chapter 13 bankruptcy case because the Code and the Act are not, in fact, in irreconcilable conflict. Id. at 1340. Rather, the Act and the Code "differ in their scopes, goals, and coverage, and can be construed together in a way that allows them to coexist"—namely, the "Code establishes the ability to file a proof of claim," whereas the Act "addresses the later ramifications" when a debt collector files a claim in certain circumstances. Id. The court thus "read[s] these regimes together as providing different tiers of sanctions for creditor misbehavior in bankruptcy," including first, an objection to and disallowance of the claim under section 502(b) of the Code; second, sanctions for creditor misbehavior under section 105(a) of the Code; and third (only if the creditor is a debt collector whose behavior is unconscionable or deceptive), civil liability under the Act for damages to the debtor. Id. at 1341. Because the Act and the Code may be read to coexist, the court held "the Code does not preclude an FDCPA claim in the bankruptcy context." Id. at 1342.

Other circuit courts of appeals had rejected the central premise of *Crawford*—that debt collectors violate the Act by filing proofs of claims based on time-barred debts—often in split opinions. *See Dubios v. Atlas Acquisitions LLC (In re Dubois)*, 834 F.3d 522 (4th Cir. 2016) (2-1 decision); *Owens v. LVNV Funding, LLC*, 832 F.3d 726 (7th Cir. 2016) (2-1 decision); *Nelson v. Midland Credit Mgmt.*, 828 F.3d 749 (8th Cir. 2016) (3-0 decision). Still other circuit courts of appeals had issued decisions about the preclusion issue that, although arising in a different context, were at odds with the Eleventh Circuit's reasoning in *Midland Funding. See, e.g.*, *Walls v. Wells Fargo Bank, N.A.*, 276 F.3d 502 (9th Cir. 2002). In October 2016, the Supreme Court granted a petition for writ of certiorari

raising both the question regarding the applicability of the Act in the first instance and the preclusion question.

IV. Analysis

A. Majority Opinion

After explaining the relevant factual and statutory background, the Supreme Court determines it is "reasonably clear" that the filing of an obviously time-barred proof of claim in a bankruptcy case is not false, deceptive, or misleading within the meaning of the Act. *Midland Funding, LLC*, 2017 U.S. LEXIS 2949, at *7. In reaching that conclusion, the Court begins its analysis with the Bankruptcy Code's definition of a "claim" as a "right to payment" as determined under applicable state law. Id. (citing 11 U.S.C. § 101(5)(A) and *Travelers Casualty*, 549 U.S. at 45–51). In *Midland Funding*, the relevant state law is the law of Alabama, which "provides that a creditor has the right to payment of a debt even after the limitations period has expired." *Midland Funding, LLC*, 2017 U.S. LEXIS 2949, at *7. Rejecting the Debtor's argument that the Code's use of the word "claim" refers only to an "enforceable claim," the Court notes that the "word 'enforceable' does not appear in the Code's definition of 'claim'" and that such an interpretation would conflict with the proposition that "'Congress intended … to adopt the broadest available definition of 'claim.'" Id. at *8 (quoting *Johnson* v. *Home State Bank*, 501 U.S. 78, 83, 115 L. Ed. 2d 66 (1991)). The Court further reasons that because, for example, section 502(b)(1) of the Code disallows a "claim" that is "unenforceable against the debtor" and the definition of "claim" includes a "contingent" claim that is unenforceable in the event the contingency fails to arise, an "unenforceable claim is nonetheless a 'right to payment,' and hence a 'claim,' as the Code uses those terms." *Midland Funding, LLC*, 2017 U.S. LEXIS 2949, at *9. The Court finds further support for its holding in the law's treatment of the "unenforceability of a claim (due to the expiration of the limitations period) as an affirmative defense," which "the debtor is to assert after a creditor makes a 'claim.'" *Id.* at *9–10 (citing 11 U.S.C. §§ 502 & 558; Fed. R. Civ. P. 8(c)(1)). The Court therefore finds "nothing misleading or deceptive in the filing of a proof of claim that, in effect, follows the Code's similar system," particularly given that the audience in a chapter 13 bankruptcy case includes a trustee who "is likely to understand that, as the Code says, 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)." *Midland Funding, LLC*, 2017 U.S. LEXIS 2949, at *10.

"Whether Midland's assertion of an obviously time-barred claim is 'unfair' or 'unconscionable'" within the meaning of the Act presents a closer question (and the one on which the dissent focuses), which the Court ultimately answers in the negative as well. *Id.* at *10, *17–18. The Debtor argued that "in the context of an ordinary civil action to collect a debt, a debt collector's assertion of a claim known to be time barred is 'unfair.'" *Id.* at *10–11 (citing cases). The Court, however, determines that "the context of a civil suit differs significantly" from a chapter 13 bankruptcy case because ordinary concerns that an unsophisticated consumer might pay a stale debt due to an absence of records or to avoid the cost of a suit "have significantly diminished force in the context of a Chapter 13 bankruptcy" where the consumer initiates the proceeding, a "knowledgeable trustee is available," and procedural rules "more directly guide the evaluation of claims" through a "streamlined" process, thereby making it "considerably more likely that an effort to collect upon a

stale claim in bankruptcy will be met with resistance, objection, and disallowance." *Id.* at *11–12. The Court is also not persuaded by the argument advanced by the Debtor and the United States, as *amicus curiae*, that it is obviously unfair "for a debt collector to adopt a practice of buying up stale claims cheaply and asserting them in bankruptcy knowing they are stale and hoping for careless trustees." Id. at *13. Rather, the Court again observes that it is the trustee who "normally bears the burden of investigating claims and pointing out that a claim is stale" and that "protections available in a Chapter 13 bankruptcy proceeding minimize the risk to the debtor." *Id.* at *13–14. Moreover, the Court admonishes that "a change in the simple affirmative-defense approach, carving out an exception" for claims filed by debt collectors would require non-bankruptcy courts applying the Act to define that exception and answer bankruptcy-related questions, such as whether the prohibition applies only where "a claim's staleness appears 'on [the] face] of the proof of claim" and whether it applies "to other affirmative defenses or only to the running of a limitations period." *Id.* at *14–15.

More generally, the Court finds that the "Act and the Code have different purposes and structural features" as the "Act seeks to help consumers, not necessarily by closing what [the Debtor] and the United States characterize as a loophole in the Bankruptcy Code, but by preventing consumer bankruptcies in the first place." Id. at *15. As such, the Court determines that to apply the Act on these facts would upset the "delicate balance" struck by the Code between the protections and obligations of a debtor. Id. at *15–16. Substantively, "it would authorize a new significant bankruptcy-related remedy [under the Act] in the absence of language in the Code providing for it"; administratively, "it would permit postbankruptcy litigation in an ordinary civil court concerning a creditor's state of mind" to determine whether the violation of the Act was intentional; and procedurally, "it would require creditors (who assert a claim) to investigate the merits of an affirmative defense (typically the debtor's job to assert and prove) lest the creditor later be found to have known the claim was untimely." *Id.* Finally, the Court dismisses the United States' argument that Bankruptcy Rule 9011 is dispositive of the issue, explaining that although Rule 9011 imposes a general obligation on a claimant to certify that he or she has undertaken a reasonable inquiry to determine that a claim is warranted by law, that requirement does not impose an affirmative obligation on a creditor to make a pre-filing investigation into any potential statute of limitations defense and, in 2009, the Advisory Committee on Rules of Bankruptcy Procedure "specifically rejected a proposal that would have required a creditor to certify that there is no valid statute of limitations defense." *Id.* at *16–17.

Accordingly, the Court "conclude[s] that filing (in a Chapter 13 bankruptcy proceeding) a proof of claim that is obviously time barred is not a false, deceptive, misleading, unfair, or unconscionable debt collection practice within the meaning of the Fair Debt Collection Practices Act" and reverses the decision of the Eleventh Circuit to the contrary. Id. at *18.

The Court did not formally reach the second question presented regarding whether the Bankruptcy Code precludes application of the Act in the bankruptcy context, although the Court's discussion of the "delicate balance" struck by the Bankruptcy Code has some potential relevance to that question.

B. Justice Sotomayor's Dissent

Justice Sotomayor writes a dissent, joined by Justices Ginsburg and Kagan. The dissent would hold that the practice of " buying stale debt, filing claims in bankruptcy proceedings to collect it, and hoping that no one notices that the debt is too old to be enforced by the courts," is "both 'unfair' and 'unconscionable'" within the meaning of the Act. *Id.* at *18–19 (Sotomayor, J., dissenting). The dissent observes that after the Act's prohibitions on misleading and unfair conduct successfully stymied debt collectors from knowingly filing lawsuits to collect time-barred debts in state court, "debt buyers have 'deluge[d]' the bankruptcy courts with claims 'on debts deemed unenforceable under state statutes of limitations,'" prompting the government to sue one such debt buyer "'to address [its] systemic abuse of the bankruptcy process.'" *Id.* at *22–24.

The dissent asserts that the same dynamics that have led courts to conclude that a debt collector violates the Act by knowingly filing suit in an ordinary civil court to collect a time-barred debt are likewise present in bankruptcy cases because a "proof of claim filed in bankruptcy court represents the debt collector's belief that it is entitled to payment, even though the debt should not be enforced as a matter of public policy," and requires "ordinary and unsophisticated people (and their overworked trustees) to be on guard not only against mistaken claims but also against claims that debt collectors know will fail under law if an objection is raised." *Id.* at *26–27. The dissent rejects the majority's conclusion that "structural features of the bankruptcy process reduce the risk that a stale debt will go unnoticed and thus be allowed" as inconsistent with the empirical evidence and contends that "the rules of bankruptcy in fact facilitate the *allowance* of claims" and thus a "debtor is arguably more vulnerable in bankruptcy—not less—to the oversights that the debt buyers know will occur." *Id.* at *28–30. Finally, the dissent challenges the majority's suggestion that some debtors may benefit from the filing of proofs of claim on account of stale debts (the majority explains that once filed and disallowed, such debts will eventually be discharged), because obtaining a discharge of such a debt first requires the trustee to notice and object to the stale debt and second requires the debtor to fully perform under his or her chapter 13 plan so as to obtain a discharge, neither of which may occur in many cases. *Id.* at *30–31. Instead, the dissent opines, "most debtors who fail to object to a stale claim will end up worse off than had they never entered bankruptcy at all" because they "will make payments on the stale debts, thereby resuscitating them, and may thus walk out of bankruptcy court owing more to their creditors than they did when they entered it." Id. at *31.

In closing, the dissent reproves the majority for setting "a trap for the unwary" by permitting debt collectors "to profit on the inadvertent inattention of others," and effectively invites Congress to amend the Act to make explicit that it applies to prohibit debt collectors from knowingly filing claims on account of time-barred debts in bankruptcy cases. Id.

V. Practice Tips

Midland Funding is an unfortunate decision that ignores the practical realities of consumer bankruptcy practice. Proofs of claim based on stale debts are a pox on the system, one that imposes costs on numerous parties. If an objection is pursued, bankruptcy trustees and debtors need to devote their resources to disallowing claims that never should have been filed, and bankruptcy

courts need to unnecessarily devote their limited judicial resources to processing these objections. If an objection is not pursued, which may often be the case insofar as the sunk costs of the objection can exceed the economic benefit of disallowing a relatively small claim in a case paying claims in "bankruptcy dollars," the debt collectors extract value that properly belongs to other creditors. When the debtor has nondischargeable debts, such as student loans, the end result is that the debtor continues to owe other creditors more than he or she would if distributions had not been diluted in part by the time-barred claim. All of this is unjustifiable and not how Congress would have intended the bankruptcy system to function. It is regrettable that a majority of the Court did not perceive the inherent unfairness in large debt collectors' practices.

Right or wrong, *Midland Funding* is now the law under which consumer debtors and chapter 13 trustees must live. Debt collectors will undoubtedly continue to file proofs of claim based on time-barred debts, and may even be emboldened to do so after *Midland Funding*. What can be done about this?

One route would be to try to achieve legislative change, as Justice Sotomayor suggests. This route probably is unfeasible, at least in the near term. An alternative, and potentially more fruitful, legislative option may be to pursue legislation in the States to switch timeliness of consumer debts from an affirmative defense (i.e., a statute of limitations) to a more definitive liability bar (i.e., a statute of repose).

Another route would be to try to police creditor misconduct through litigation. Although *Midland Funding* eliminates civil liability under the Act, some bankruptcy courts may be willing to use their sanctioning power under Rule 9011 or their inherent authority to regulate debt collectors who make a practice of regularly filing proofs of claims for debt they know or should know is uncollectible.

A final route would be to try to address the problem through technological change. Just as the debt collectors have developed computer systems to reduce the administrative costs associated with filing proofs of claim, so too could associations of chapter 13 trustees and consumer debtor advocates attempt to develop a streamlined system for identifying and objecting to proofs of claim based on time-barred debt. Although this process will never be costless, technology may be able to assist in reducing the costs to a level that allows many more meritless proofs of claim to be weeded out of the system. If the Federal Rules of Bankruptcy Procedure are amended to require a plain statement by the claimant that the statute of limitations has run or to require that the claimant specifically identify the applicable nonbankruptcy law, it would make the technological solution more feasible.

In sum, the dispute in *Midland Funding* is not one that the Court resolved through technical statutory interpretation or based on its prior precedent. Instead, the issue presented was an instinctive one for most people—is the practice being utilized by debt collectors in bankruptcy cases "unfair"? Unfortunately for consumer debtors and the bankruptcy system, a majority of the members of the Supreme Court (like a majority of circuit judges before them) concluded that the practice of filing proofs of claims based on time-barred debts is not unfair. That conclusion, however, does not mean the practice is good social policy, and consumer debtors and advocates

should continue to fight to eliminate the scourge of frivolous proofs of claim from consumer bankruptcy cases.

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The views stated herein are those of the authors individually, not of the UCLA School of Law; Klee, Tuchin, Bogdanoff & Stern LLP; or any client. In the interests of disclosure, the authors note that they served as counsel of record and principal authors of an *amici curiae* brief submitted to the Supreme Court in the *Midland Funding* case by the National Association of Consumer Bankruptcy Attorneys and the National Consumer Bankruptcy Rights Center.

Director Addresses the 52nd Annual Seminar of the National Association of Chapter 13 Trustees
Clifford J. White III, Director of the United States Trustee Program
Thursday, July 13, 2017

STALE DEBT CLAIMS

I reported to you last year on the Program's efforts to curb the practice of a small number of consumer debt buyers filing a large volume of stale debt claims knowing that those claims must be withdrawn or denied upon objection. These claims are beyond state statutes of limitations and may not be pursued through state court action.

This practice of intentionally filing stale claims may harm debtors in some circumstances, but its certain harm is to legitimate creditors and the integrity and efficiency of the bankruptcy system. These claims may cause legitimate creditors to receive a lower distribution either because a stale debt claim is paid from their share of the distribution or the trustee's cost of objecting to such a claim is passed on to creditors. Furthermore, judicial resources are wasted in processing these claims and objections.

In mid-May, the Supreme Court ruled in Midland Funding, LLC v. Johnson, __ U.S. __, 137 S. Ct. 1407 (2017), that filing stale debt claims in bankruptcy does not violate the Fair Debt Collection Practices Act. It is important to note that the Court was not called upon to and did not address the USTP's ongoing litigation in which we assert that the intentional filing of a large volume of stale debt claims is an abuse of process. But the Court did describe the bankruptcy process and the expectation that trustees would object to these claims in bankruptcy court.

Although ongoing litigation may provide a systemic solution to the practice, a final resolution may not be achieved in the near term. If ultimately the courts do not find that the intentional filing of these claims is an abuse of process or other violation of bankruptcy law, then the USTP still will be satisfied that it has done its job because we will have identified a system-wide issue and policymakers can consider whether it is prudent to change the law.

That still leaves us with the issue of the chapter 13 trustees' obligation to review claims. Stale debt filers rely upon these claims proceeding undetected through the claims payment process. Most chapter 13 trustees already routinely file objections to stale debt claims. As a result, it appears that claims filers are avoiding filing such claims in the districts of those trustees.

Even though it increases the cost of administration, and those costs ultimately are borne by legitimate creditors, I am calling upon all chapter 13 trustees to identify stale debt claims and to object to stale debt claims that they uncover. Formal guidance is being considered.

I greatly appreciate your assistance in protecting the integrity of the bankruptcy process through your diligent efforts.