THE FAIR DEBT COLLECTION PRACTICES ACT AND THE BANKRUPTCY CLAIM PROCESS:

DEBTORS' RIGHTS AND REMEDIES UNDER THE FDPCA

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INTRODUCTION

Consumer debt is a major problem in the United States. At least one study claims that the average American household carries an average of $15,762 in credit card debt and $48,172 in student loan debt.[1] That is over $60,000 in debt, and may not include medical debt, which is quickly becoming an increasing burden on American household budgets. According to a recent report, forty percent (40%) of Americans owe medical debt.[2]

A great deal of consumer debt is traded, the original creditors selling their claims to a "debt collector," often at a hefty discount.

In some cases, the collector may attempt to collect the debt on behalf of the original creditor in exchange for a percentage of the amount collected. Collecting stale debt no longer in the hands of the original creditor poses problems for the collector under the Fair Debt Collection Practices Act (the "FDCPA") and/or the United States Bankruptcy Code (the "Bankruptcy Code").

This article summarizes bankruptcy courts' rulings under the FDCPA in bankruptcy cases and describes a split among the circuits on availability of the FDCPA's remedies in bankruptcy cases.

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[1] 2015 American Household Credit Card Debt Study, https://www.nerdwallet.com/blog/credit-card-data/average-credit-card-debt-household/ (last visited June 11, 2016).

[2] Why Americans Are Drowning in Medical Debt, http://www.theatlantic.com/health/archive/2014/10/why-americans-are-drowning-in-medical-debt/381163/ (last visited June 11, 2016).

WHAT ARE STALE CLAIMS AND WHY DO THEY MATTER?

A stale claim is one that is no longer enforceable at state law – perhaps the debt was discharged in a prior bankruptcy or the statute of limitations has run. Regardless of the reason a debt is no longer enforceable at state law, the claim may get new life in bankruptcy depending on the circuit in which the bankruptcy has been filed.

Nor are debtors the only parties with an interest in preventing collection on unenforceable claims. Because payment on a stale claim reduces the availability of assets for distribution to creditors whose claims are not stale, creditors have an incentive to oppose payment of those claims.

How do attempts to collect on time barred or otherwise unenforceable debts comport with the FDCPA? That question has generated different answers in different courts throughout the country.

HISTORY OF THE FDPCA

In response to "abundant evidence" concerning the use of "abusive, deceptive, and unfair debt collection practices by many debt collectors" that led to personal bankruptcies, marital instability, job loss, and invasions of individual privacy, 15 U.S.C. § 1692(a), Congress in 1977 enacted the FDCPA as a consumer protection shield. The act was intended 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 abuses." § 1692(e).

Title search: The Fair Debt Collection Practices Act and the Bankruptcy Claim Process: Debtors' Rights and Remedies under the FDPCA

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