

**THE FAIR DEBT COLLECTION
PRACTICES ACT AND THE
BANKRUPTCY CLAIM PROCESS:
DEBTORS' RIGHTS AND REMEDIES
UNDER THE FDPCA**

Hon. Douglas D. Dodd
United States Bankruptcy Judge
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Disclaimer

This information is not intended to be legal advice and may not be used as legal advice. Legal advice must be tailored to the specific circumstances of each case. Every effort has been made to assure this information is up-to-date. It is not intended to be a full and exhaustive explanation of the law in any area. It should not be used to replace the advice of your own legal counsel.

Hypothetical

- Mega-Portfolio VII, LLC has filed a proof of claim in your client's Chapter 13 case.
- Your client doesn't recognize Mega-Portfolio VII, LLC, but thinks the claim may relate to medical debt from over a decade ago.
- The claim has upset your carefully crafted Chapter 13 plan.
- **WHAT DO YOU DO? WHAT CAN YOU DO?**

Answer

- It depends on ...
 - In which circuit and/or state is your case located.
 - There is a circuit split and courts in the Fifth Circuit don't agree.
 - Is the "creditor" also a "debtor collector?"

What are stale (aka zombie) claims?

- No longer enforceable at state law.
 - Discharged in a prior bankruptcy?
 - Lack of documentation?
 - Statute of limitations has run?
- The claim may get new life in bankruptcy depending on the circuit in which the bankruptcy has been filed.

Why does it matter?

- Debtors are not the only parties with an interest in preventing collection on unenforceable claims.
- Creditors, too!
 - Payment on a stale claim reduces the availability of assets for distribution.

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

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First appeared as part of the conference materials for the
12th Annual Consumer Bankruptcy Practice session

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