

The Intersection of Bankruptcy, Debt Collection and the Supreme Court

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For years the interplay between the [Bankruptcy Code](#) and the [Fair Debt Collection Practices Act](#) (FDCPA) has vexed creditors and courts alike, leading to a split among the circuits as to whether the Bankruptcy Code preempts the FDCPA. But there may be some resolution very soon.

The U.S. Supreme Court on Tuesday will review a key case in how the two contrasting rules can coexist, or possibly determine if they can at all. The Supreme Court will review the decision of the U.S. Court of Appeals for the Eleventh Circuit in [Johnson v. Midland Funding, LLC](#), which found that the FDCPA and the Bankruptcy Code can coexist and that neither of the federal statutes must preempt the other. The case came on the heels of the Eleventh Circuit's 2014 ruling in [Crawford v. LVNV Funding, LLC](#), which held that filing a proof of claim for a time-barred debt violates the FDCPA. The Supreme Court denied an appeal of the *Crawford* decision.

Prior to the [Supreme Court taking up the Johnson case](#), consumer and creditor groups weighed in on the matter, filing nine Amicus curiae briefs to date. Johnson looks to settle the long simmering split in the circuit courts regarding the filing of proofs of claim for time-barred debts. The Fourth (*Dubois v. Atlas*), Seventh, (*Owens v. LVNV*) and Eighth (*Nelson v. Midland*) circuits have all reached similar conclusions that the filing of an accurate and complete claim on a time-barred debt did not violate the FDCPA. The parties are asking the Supreme Court to review all three cases and appeals in similarly situated cases are pending before the First, Third, Fifth and Sixth circuits. A case in the Third Circuit heard arguments in September prior to the Supreme Court taking on *Johnson*. We anticipate that lower court withholding any ruling on this issue pending any decision from the Supreme Court's case. Hopefully the country's highest court will clarify the risks associated with filing proofs of claim on time-barred debts and address whether or not the Bankruptcy Code preempts the FDCPA. Whatever the decision, the outcome of *Johnson* will be closely scrutinized by creditors and consumers alike.

For more information on the potential impact of *Johnson v. Midland Funding, LLC*, or to discuss bankruptcy-related debt collection issues, please contact [Joseph P. Schalk](#) at jschalk@barley.com.