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Newsletters

Consumer & Class Action Litigation Newsletter - May 2015

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Supreme Court to Article III Case – Does the Plaintiff in a Consumer Case Have Standing to Sue If There Are No Actual Damages?

On April 27, 2015, in *Spokeo Inc. v. Thomas Robins* No. 13-1339, 2015 WL 1879778, ---S.Ct.--- (Apr. 27, 2015), the U.S. Supreme Court granted a request to clarify whether a plaintiff must allege actual injury, rather than solely statutory damages, in order to have standing to sue in federal court. The issue in *Spokeo* is whether a plaintiff has standing to sue for federal statutory claims under the Fair Credit Reporting Act (FCRA) when the plaintiff seeks only statutory damages but suffers no economic loss or other harm.

Plaintiff in *Spokeo* filed a class action complaint claiming that defendant, a website that aggregates data about individuals, violated the FCRA by posting inaccurate information. Plaintiff claimed emotional distress and damage to his employment prospects. The district court held that plaintiff had not incurred any real injury and therefore lacked Article III standing. On appeal, the U.S. Court of Appeals for the Ninth Circuit held that a statutory right, with no damages requirement, does not require allegations of "actual injury" to establish standing.

The issue presented in *Spokeo* widely affects consumer protection statutes that allow for statutory damages even though the consumer suffers no actual loss or injury. The U.S. Supreme Court has decided to hear this case next term and its ruling could significantly impact consumer litigation. The Court grappled with this issue two years ago in *Edwards v First American* but ultimately did not issue an opinion.

For more information, please contact your Hinshaw attorney.

Supreme Court Denies *Certiorari* in *Crawford v. LVNV* Involving Proofs of Claims in Bankruptcy on "Out of Statute" Debt

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On April 20, 2015, the U.S. Supreme Court denied defendants' petition for *certiorari* in *Crawford v. LVNV Funding*, declining to answer the question of whether Fair Debt Collection Practices Act (FDCPA) liability may be premised on the filing of a proof of claim in a bankruptcy proceeding. The petition for *certiorari* followed the U.S. Court of Appeals for the Eleventh Circuit's July 10, 2014 decision that held the filing of a proof of claim on a time-barred debt could be the basis of FDCPA liability. 758 F.3d 1254 (11th Cir. 2014).

Favorable Post-*Crawford* Rulings, Including Some Hinshaw Victories

Despite the Supreme Court's refusal to take the *Crawford* petition, federal district and bankruptcy courts have dismissed FDCPA lawsuits holding that filing a proof of claim in a bankruptcy case on a debt subject to a statute of limitations defense are not actionable. Hinshaw obtained the victories in *LaGrone*, *Robinson* and *Donaldson*.

Covert v. LVNV Funding, LLC (4th Circuit)

The U.S. Court of Appeals for the Fourth District affirmed the dismissal of a post-confirmation FDCPA claim based on the filing of a proof of claim, finding that *res judicata* barred the statutory claim. The court observed that permitting post-confirmation FDCPA claims undermine the finality bankruptcy plans such as the one confirmed here are intended to promote. *Covert*, 2015 U.S. App. LEXIS 3278 at *14. *Covert v. LVNV Funding, LLC*, 2015 U.S. App. LEXIS 3278, *5-16 (4th Cir. Mar. 3, 2015).

LaGrone v. LVNV Funding, LLC (N.D. Ill. Bankr.)

In *LaGrone*, U.S. Bankruptcy Court for the Northern District of Illinois Judge Eugene R. Wedoff dismissed 15 U.S.C. § § 1692e(2)(A), e(10), e(5) and f claims in an adversary complaint based on filing proofs of claim on alleged time-barred debt. Judge Wedoff analyzed the differences between lawsuits filed against individuals and proofs of claim in a bankruptcy. The court dismissed the FDCPA claims, reasoning that a "debtor in bankruptcy is not in the same position as a consumer facing a collection lawsuit." The court held that by only alleging that defendants filed an "untimely proof of claim, the complaint failed to state an adequate claim for relief." *In re LaGrone*, 525 B.R. 419 (Bankr. N.D. Ill. Jan. 21, 2015).

Robinson v. eCast Settlement Corp. and Becket & Lee, LLP (N.D. Ill.)

In *Robinson*, the U.S. District Court for the Northern District of Illinois dismissed a 15 U.S.C. § 1692e(5) claim that filing proofs of claim on a time-barred debt was a threat to take legal action that could not be taken. The court dismissed the claim, holding that a "proof of claim form submitted to the bankruptcy court on a court approved form, fully compliant with Rule 3001(c), is a neutral statement that a debt existed at a certain time and is now owned by the claimant." *Robinson v. eCast Settlement Corp., et. al.,* 14-cv-8277 (N.D. Ill. Feb. 3, 2015).

Donaldson v. LVNV Funding, LLC (S.D. Ind.)

In *Donaldson*, the U.S. District Court for the Southern District of Indiana rejected a 15 U.S.C. § 1692e(2)(A) claim that filing proofs of claim mischaracterized the legal status of the debt, reasoning that under Indiana law "the money is still owed, and the FDCPA only regulates the remedies available to the debt collector." The Section 1692e(5) claim was rejected too because "there is no 'threat' in a Proof of Claim that accurately reflects information about an unsecured debt that the debtor himself has listed on his schedules." The Bankruptcy Code specifically states that such debts are allowed unless objected to by any party. The court also applied the "competent lawyer" standard to evaluate whether filing proofs of claim violated the FDCPA, noting that "with both a trustee and a lawyer looking out for the consumer in the bankruptcy context, the unsophisticated consumer standard has no real application." *Donaldson v. LVNV Funding, LLC*, No. 1:14-CV-01979-LJM, 2015 WL 1539607, at *1 (S.D. Ind. Apr. 7, 2015).

Torres v. Asset Acceptance, LLC (E.D. Pa.)

In *Torres* and its companion case, *Torres v. Calvary SPV I, LLC*, No. 2:14-cv-5915-ER (E.D. Pa. April 7, 2015), the U.S. District Court for the Eastern District of Pennsylvania discussed the split in the circuits that considering the question of whether proofs of claim filed on time-barred debs violated the FDCPA. The court discussed the U.S. District Court for the Eleventh Circuit's decision in *Crawford* and the U.S. District Court for the Second Circuit's decision in *Simmons v. Roundup Funding, LLC*, 622 F.3d 93 (2d Cir. 2010), which it followed to conclude that filing proofs of claim did not violate the

FDCPA. The court reasoned "[w]hile the risk of being duped into settling a stale debt is especially high for debtors who are not represented by counsel and who have little experience with the court system, this risk is attenuated for debtors in bankruptcy who aren't 'already under the protection of the bankruptcy court.'" The court found that the Bankruptcy Code provides adequate remedies to address potential creditor misconduct, and that plaintiff "[did] not explain why these remedies were insufficient or what justifies the bypassing of these remedies in favor of the 'more procedurally complicated route of filing an adversary complaint.'" *Torres v. Asset Acceptance LLC,* 2:14-cv-6542 (E.D. Pa. Nov. 13, 2014).