

In The
Supreme Court of the United States

CHAILLE DUBOIS and KIMBERLY ADKINS,
Petitioners,

v.

ATLAS ACQUISITIONS, LLC,
Respondent.

**On Petition For Writ Of Certiorari
To The United States Court Of Appeals
For The Fourth Circuit**

**BRIEF OF RESPONDENT
ATLAS ACQUISITIONS, LLC
IN OPPOSITION TO PETITION**

ALAN C. HOCHHEISER
Counsel of Record
MAURICE WUTSCHER LLP
2000 Auburn Drive
Suite 200
Beachwood, OH 44122
ahochheiser@
mauricewutscher.com
(216) 220-1129

DONALD S. MAURICE, JR.
THOMAS R. DOMINCZYK
MAURICE WUTSCHER LLP
5 Walter E. Foran Blvd.
Suite 2007
Flemington, NJ 08822
dmaurice@
mauricewutscher.com
(908) 237-4570

Counsel for Respondent

**COUNTERSTATEMENT OF
QUESTION PRESENTED**

This Court has already granted certiorari in a matter involving the exact same issues as this case in the matter of *Johnson v. Midland Funding, LLC*, No. 16-348. The questions presented in Johnson are identical to the questions presented in this petition and thus there is no need for this Court to grant certiorari in this matter. In fact, other than adding its first question presented, Petitioners have essentially copied the same questions presented in Johnson. As such, the question presented here is identical to the one presented in Johnson, specifically:

Whether the filing of an accurate proof of claim for an unextinguished time-barred debt in a bankruptcy proceeding violates the Fair Debt Collection Practices Act.

CORPORATE DISCLOSURE STATEMENT

Respondent Atlas Acquisitions, LLC is a limited liability company, has no parent entity and no publicly held company owns 10% or more of its stock.

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JURISDICTION

The judgment of the court of appeals was entered on August 25, 2016. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).



STATUTORY PROVISIONS AND RULES INVOLVED

Relevant provisions of the Bankruptcy Code, 11 U.S.C. §§ 101-1532; the Fair Debt Collection Practices Act, 15 U.S.C. §§ 1692-1692p; and the Federal Rules of Bankruptcy Procedure are reproduced in the appendix to Petitioners' Petition for Certiorari.



STATEMENT OF THE CASE

This case presents the identical issues already before this Court in *Johnson v. Midland Funding, LLC*, No. 16-348. Both cases involve the relationship between the United States Bankruptcy Code (Code) and the Fair Debt Collection Practices Act (FDCPA). The Code permits creditors to file proofs of claim in bankruptcy proceedings subject to the Bankruptcy Court Rules and the requirements of the Code. While the definition of a "claim" is extremely broad, the Code and Bankruptcy Rules set forth various procedures to address improperly filed claims and any objections that a debtor or other interested party may have to that

claim. The FDCPA prohibits debt collectors from engaging in unfair, deceptive, or misleading debt-collection practices.

The question presented here, as in *Johnson*, is whether a debt collector violates the FDCPA by filing an otherwise accurate proof of claim for a debt that is subject to a statute of limitations defense in a bankruptcy proceeding. Unlike the petition in *Johnson*, the Fourth Circuit did not address Respondent's argument below regarding the preclusion of the FDCPA by the Bankruptcy Code. As such, it is not properly before this Court.

Respondent is a debt purchaser who acquired Petitioners' defaulted accounts. When Petitioners filed for bankruptcy, Respondent filed proofs of claim in Petitioners' bankruptcy cases. Both proofs of claim accurately listed the amount of the debt and other required information, including the date of the last transaction on Petitioners' accounts. It is undisputed that the last transaction date was more than three years prior to the date the claims were filed and thus both claims were subject to a statute of limitations defense under Maryland law. Petitioners both filed adversary complaints objecting to Respondent's claims and sought damages under the FDCPA. Respondent stipulated to the disallowance of both proofs of claim and then moved to dismiss the adversary complaints. The bankruptcy court granted Respondent's consolidated motions to dismiss holding that the filing of a proof of claim did not constitute debt collection subject to the FDCPA. The Fourth Circuit permitted Petitioners to

appeal directly to the Circuit Court pursuant to 28 U.S.C. § 158(d)(2).

The Fourth Circuit held that filing a proof of claim is debt collection activity that is subject to the FDCPA. Nevertheless, the Fourth Circuit also concluded that even though a debt may be subject to a statute of limitations defense, it is still a claim within the broad definition of claim under the Code and held that filing such a proof of claim did not violate the FDCPA. The Fourth Circuit joins the Second, Seventh, Eighth and Ninth Circuits who have all held that filing proofs of claim cannot subject a debt collector to liability under the FDCPA. Standing alone is the Eleventh Circuit's decisions in *Johnson* and *Crawford v. LVNV Funding, LLC*, 758 F.2d 1254 (11th Cir. 2014). Petitioners acknowledge that the issues before the Court in this petition are identical to those that were recently argued before the Court on January 17, 2017 in *Johnson v. Midland Funding, LLC*, No. 16-348.



OPPOSITION TO THE PETITION FOR CERTIORARI

The petition for certiorari seeks to distinguish itself from *Johnson* on one hand but then also alternatively requests that this petition be consolidated with *Johnson*. However, one of the bases for distinguishing this case from *Johnson* was not even at issue in the Fourth Circuit. Petitioners cite to the Fourth Circuit's opinion in *Covert v. LVNV Funding, LLC*, 779 F.3d 242

(4th Cir. 2015) and its holding that a confirmed bankruptcy plan is a final judgment on the merits. *Covert v. LVNV Funding, LLC*, 779 F.3d 242 (4th Cir. 2015). Perhaps if Petitioners were parties to the *Covert* case and sought to appeal that court's ruling it might have relevance to the matter at hand, but the fact is that the Fourth Circuit did not rely on *Covert's* confirmation language, nor was that reasoning in any way essential to or even mentioned in the opinion below.

Second, Petitioners appear to argue that the Fourth Circuit's opinion is unique in its discussion of whether the filing of a proof of claim is debt collection activity that is subject to the FDCPA. However, such a holding is not unique. On the contrary, because the questions presented in *Johnson v. Midland Funding, LLC*, No. 16-348 are identical to those here, the briefing in *Johnson* required an analysis of the FDCPA and whether it applies to bar the conduct at issue. Further, the Fourth Circuit's decision here, like the Eleventh Circuit's in *Johnson*, held that the filing of a proof of claim under the facts presented is regulated by the FDCPA. *Dubois v. Atlas Acquisitions LLC (In re Dubois)*, 834 F.3d 522, 528 (4th Cir. 2016) ("Accordingly, we find that filing a proof of claim is debt collection activity regulated by the FDCPA."); *Johnson v. Midland Funding, LLC*, 823 F.3d 1334, 1337 (11th Cir. 2016); see also *Crawford*, 758 F.3d at 1261. Respondent has not challenged the Fourth Circuit's ruling and ostensibly, neither are the Petitioners. Therefore the question is not properly before the Court.

Simply put, there is only one issue that can be before this Court: Whether the FDCPA is violated by the filing in a Chapter 13 bankruptcy case of a proof of claim for a debt subject to the defense of an expired, state law limitations period. That same issue has already been extensively briefed by the consumer and debt collector in *Johnson* as well as a wide range of *amici* including DBA International Inc., the United States Chamber of Commerce, ACA International, NARCA, the United States Solicitor General, the National Association of Chapter Thirteen Trustees, the National Association of Consumer Bankruptcy Attorneys and Public Citizens, Inc. Oral argument was held in *Johnson* on January 17, 2017, where the issues presented here were thoroughly and completely argued. There is no need to further burden this Court with the same arguments and Petitioners' petition for certiorari should be denied.



CONCLUSION

The petition for certiorari should be denied.

Dated: January 26, 2017

Respectfully submitted,

ALAN C. HOCHHEISER
Counsel of Record
MAURICE WUTSCHER LLP
2000 Auburn Drive
Suite 200
Beachwood, OH 44122
ahochheiser@
mauricewutscher.com
(216) 220-1129

DONALD S. MAURICE, JR.
THOMAS R. DOMINCZYK
MAURICE WUTSCHER LLP
5 Walter E. Foran Blvd.
Suite 2007
Flemington, NJ 08822
dmaurice@
mauricewutscher.com
(908) 237-4570

Counsel for Respondent