No. 18-328

# In The
# Supreme Court of the United States

KEVIN ROTKISKE,

*Petitioner,*

v.

PAUL KLEMM, et al.,

*Respondents.*

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

**BRIEF OF RECEIVABLES MANAGEMENT ASSOCIATION INTERNATIONAL, INC., AS *AMICUS CURIAE* IN SUPPORT OF RESPONDENTS AND FOR AFFIRMANCE OF THE DECISION OF THE COURT BELOW**

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## CORPORATE DISCLOSURE STATEMENT

*Amicus* Receivables Management Association International, Inc. is a non-profit corporation, has no parent entity and no publicly held company owns 10% or more of its stock.

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## INTEREST OF *AMICUS CURIAE*

RMAI is the nonprofit trade association that represents more than 500 companies that purchase or support the purchase of performing and non-performing receivables on the secondary market.[1]

A. Purchasers of consumer debt can be subject to the Fair Debt Collection Practices Act (FDCPA), 15 U.S.C. §§ 1692 *et seq*. *Barbato v. Greystone All., LLC*, 916 F.3d 260, 268 (3d Cir. 2019). The question presented in this matter is whether the "discovery rule" applies to the FDCPA's limitations period. Applying the discovery rule would have a material adverse impact on RMAI members by breathing new life into old, stale claims.

B. The existence of the secondary market is critical to the functioning of the primary market in which credit originators extend credit to consumers.[2] An efficient secondary market lowers the cost of credit extended to consumers and increases the availability

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[1] Pursuant to Rule 37.3(a) Receivables Management Association International, Inc. (RMAI) received the consent of all parties to file this *amicus* brief. Pursuant to Rule 37.6 no counsel for a party authored this brief in whole or in part, and no counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than *amicus curiae*, its members, or its counsel made a monetary contribution to its preparation or submission.

[2] See generally, "The Value of Resale on the Receivables Secondary Market," David E. Reid, RMAI White Paper (April 2016), publicly available at https://rmaintl.org/wp-content/uploads/2019/01/RMAI-Secondary-Market-White-Paper-2016-FINAL.pdf, last accessed July 16, 2019.

and diversity of such credit. To be sure, a recent study of empirical data found that greater barriers to debt collection activities have a direct correlation to *decreases* in both consumer access to credit and financial health.[3]

C. As an international leader in promoting strong and ethical business practices within the receivables industry, RMAI launched the Receivables Management Certification Program (RMCP) in 2013 with the stated mission to "provide enhanced consumer protections through rigorous and uniform industry standards of best practice."[4] RMAI requires all its member companies that are purchasing receivables on the secondary market to become certified through RMAI's RMCP as a requisite for membership.[5]

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[3] Federal Reserve Bank of New York, "Access to Credit and Financial Health: Evaluating the Impact of Debt Collection." Julia Fonseca, Katherine Strair, Basit Zafar, Staff Report No. 814 (May 2017), publicly available at https://www.newyorkfed.org/medialibrary/media/research/staff_reports/sr814.pdf?la=en and last accessed July 16, 2019.

[4] RMAI Receivables Management Certification Program, p. 1, publicly available at https://rmaintl.org/wp-content/uploads/2019/03/Certification-Policy-version-7.0-FINAL-with-Hyperlinks.pdf and last accessed July 16, 2019.

[5] Receivables Management Certification Program, publicly available at https://rmaintl.org/wp-content/uploads/2019/03/Certification-Policy-version-7.0-FINAL-with-Hyperlinks.pdf and last accessed July 16, 2019.

The RMCP is a comprehensive and uniform source of industry standards that has been recognized by the collection industry's federal regulator, the Consumer Financial Protection Bureau, as "best practices."[6]

In addition to requiring that certified companies comply with local, state and federal laws and regulations concerning collection activity, the RMCP goes above and beyond the requirements of local, state and federal laws and regulations by requiring its member companies to comply with additional requirements not addressed by existing laws and regulations.

The RMCP has enhanced both the accuracy and integrity of debt collection by certified companies. By RMAI estimates, since the CFPB began tracking debt collection complaints in 2013, when calculating the percentage of certified companies' complaints over the total of "debt collection" complaints, almost all certified companies had nearly zero percent or no complaints.



[6] Consumer Fin. Prot. Bureau, *Small Business Review Panel for Debt Collector and Debt Buyer Rulemaking, Outline of Proposals Under Consideration* p. 38 (July 28, 2016), publicly available at http://files.consumerfinance.gov/f/documents/20160727_cfpb_Outline_of_proposals.pdf, last accessed July 16, 2019 ("To establish a baseline for understanding the impacts of the proposals under consideration, this section describes the [CFPB's] understanding or practices of collectors that seek to comply with the FDCPA and follow industry best practices such as those outlined in DBA International's (DBA) certification program . . . "). RMAI was formerly known as DBA International.

## SUMMARY OF ARGUMENT

The Fair Debt Collection Practices Act (FDCPA), 15 U.S.C. §§ 1692 *et seq.* does not contain a discovery rule. Like the Fair Credit Reporting Act (FCRA), 15 U.S.C. §§ 1681 *et seq.*, the FDCPA is part of the Consumer Credit Protection Act (CCPA), 15 U.S.C. §§ 1601 *et seq.* For the same reasons that the Court would not read a discovery rule into FCRA, one should not be read into the FDCPA.

## ARGUMENT

### I. CONGRESS'S DECISION TO TIE THE COMMENCEMENT OF THE FDCPA's LIMITATIONS PERIOD TO THE OCCURRENCE OF THE VIOLATION PRECLUDES APPLICATION OF THE DISCOVERY RULE.

Pursuant to 15 U.S.C. § 1692k(d) all claims under the FDCPA must be brought within one year from the date on which the violation occurs. In particular, 15 U.S.C. § 1692k(d) provides that "an action to enforce any liability" arising under the FDCPA "may be brought . . . within one year from the date on which the violation occurs." The discovery rule is not applicable here because, as the Court of Appeals for the Third Circuit found, when Congress legislates limitations periods, it may choose to have the period commence when the injury is discovered or when it occurs. *Rotkiske v. Klemm*, 890 F.3d 422, 425 (3d Cir. 2018). Here, Congress's choice of tying the commencement of

the limitations period to the occurrence of the violation precludes application of the discovery rule. *Id.*

### A. Congress's Post-*TRW* Amendment of the FCRA Limitations Period Supports the Third Circuit's Rationale as Interpreting No Congressional Intent to Apply the Discovery Rule to the FDCPA.

In *TRW Inc. v. Andrews*, the Court held that the discovery rule could not be applied to save a late claim under 15 U.S.C. § 1681p because of the statute's "text and structure." *TRW Inc. v. Andrews*, 534 U.S. 19, 28, 122 S. Ct. 441, 447, 151 L.Ed.2d 339, 348 (2001). There, the text of § 1681p provided: "An action to enforce any liability created under [the Act] may be brought . . . within two years from the date on which the liability arises. . . ." *Id.*

Subsequent to *TRW*, Congress amended § 1681p to expressly provide for a discovery rule. Fair and Accurate Credit Transactions Act of 2003, 108 P.L. 159, 117 Stat. 1952 (2003). Section 1681p now expressly provides for a discovery rule:

> An action to enforce any liability . . . may be brought . . . not later than the earlier of—(1) 2 years after the date of discovery by the plaintiff of the violation that is the basis for such liability; or (2) 5 years after the date on which the violation that is the basis for such liability occurs.

15 U.S.C. § 1681p.

When Congress amends existing law, its views are to be afforded significant weight. *Seatrain Shipbuilding Corp. v. Shell Oil Co*., 444 U.S. 572, 596, 100 S. Ct. 800, 814, 63 L.Ed.2d 36, 54 (1980). By altering § 1681p through the 2003 amendment, Congress recognized that the original text, "within two years from the date of which liability arises," did not permit application of the discovery rule. In this same way, the FDCPA's use of similar text—"within one year from the date on which the violation occurs"—should be read to mean a discovery rule does not apply.

The FDCPA and the FCRA are part of the Consumer Credit Protection Act (CCPA), 15 U.S.C. §§ 1601 *et seq*. The CCPA is a "comprehensive statute designed to protect consumers." For the same reasons that the Court would not read a discovery rule into the FCRA, one should not be read into the FDCPA.



## CONCLUSION

For these reasons, RMAI respectfully requests that the Court affirm the Circuit Court's decision below finding the discovery rule does not apply to the one-year limitations period under the Fair Debt Collection Practices Act, 15 U.S.C. §§ 1692, *et seq*.

July 18, 2019

Respectfully submitted,

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