

Creating a Circuit Split Regarding the Fair Debt Collection Practices Act: *Rotkiske v. Klemm*, — F.3d —, 2018 WL 2209120 (3d Cir. May 15, 2018)

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The United States Court of Appeals for the Third Circuit issued its opinion in *Rotkiske v. Klemm*, a unanimous, en banc decision yesterday that creates a clear split with the Fourth and Ninth Circuits. The Third Circuit ruled that the statute of limitations for FDCPA violations is one year from the date of violation, not from the date of discovery.

Judge Hardiman, writing for the full court, stated:

This appeal requires us to determine when the statute of limitations begins to run under the Fair Debt Collection Practices Act (FDCPA or Act), 91 Stat. 874, 15 U.S.C. § 1692 et seq. The Act states that “[a]n action to enforce any liability created by this subchapter may be brought in any appropriate United States district court ... within one year from the date on which the violation occurs.” 15 U.S.C. § 1692k(d). The United States Courts of Appeals for the Fourth and Ninth Circuits have held that the time begins to run not when the violation occurs, but when it is discovered. See *Lembach v. Bierman*, 528 Fed.Appx. 297 (4th Cir. 2013) (per curiam); *Mangum v. Action Collection Serv., Inc.*, 575 F.3d 935 (9th Cir. 2009). We respectfully disagree. In our view, the Act says what it means and means what it says: the statute of limitations runs from “the date on which the violation occurs.” 15 U.S.C. § 1692k(d).

Rotkiske v. Klemm, No. 16-1668, 2018 WL 2209120, at *1 (3d Cir. May 15, 2018)

The opinion addresses one exception when it states:

We conclude by emphasizing that our holding today does nothing to undermine the doctrine of equitable tolling. Indeed, we have already recognized the availability of equitable tolling for civil suits alleging an FDCPA violation. See *Glover v. F.D.I.C.*, 698 F.3d 139, 151 (3d Cir. 2012) (considering and rejecting an equitable tolling argument where no extraordinary barrier existed to plaintiff’s suit). We do not reach the question in this case only because *Rotkiske* failed to raise it on appeal. Accordingly, our opinion should not be read to foreclose the possibility that equitable tolling might apply to FDCPA violations that involve fraudulent, misleading, or self-concealing conduct. See, e.g., *Bailey v. Glover*, 88 U.S. (21 Wall.) 342, 348, 22 L.Ed. 636 (1874) (“[W]here the party injured by the fraud remains in ignorance of it without any fault or want of diligence or care on his part, the bar ... does not begin to run until the fraud is discovered, though there be no special circumstances or efforts on the part of the party committing the fraud to conceal it”).

Rotkiske v. Klemm, *supra*, at *5.

Otherwise a civil action alleging a violation of the FDCPA has to be brought within one year of the violation.