



## News Release

For Immediate Release

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### **DRI Files Amicus Brief with the Supreme Court in *Crawford v. LVNV Funding LLC***

**CHICAGO – (February 24, 2014)**— DRI – The Voice of the Defense Bar has filed an amicus brief before the U.S. Supreme Court supporting the petition for certiorari in the case of *Crawford v. LVNV Funding LLC*. The brief asks the Court to address a decision by the Eleventh Circuit Court of Appeals. Under that decision, bankruptcy debtors can bring adversary proceedings asserting a Fair Debt Collection Practices Act (FDCPA) claim based on a bankruptcy creditor filing a proof of claim on a debt that could be barred by a statute of limitations. The brief was filed by DRI’s Center for Law and Public Policy.

After the bankruptcy court dismissed the proceedings and the U.S. District Court for the Middle District of Alabama affirmed the dismissals, the debtor appealed. The Eleventh Circuit reversed, holding that the filing of a proof of claim subject to a statute of limitations defense can trigger liability under the FDCPA. The Eleventh Circuit reasoned that the “least-sophisticated consumer” would be misled by such filings. Creditors (LVNV Funding LLC; Resurgent Capital Services LP; and PRA Receivables Management LLC), filed a petition for a writ of certiorari with the Supreme Court. They argue that the Eleventh Circuit’s decision created a circuit conflict as to whether the filing of a proof of claim in bankruptcy can violate the FDCPA and whether the least sophisticated consumer standard should apply to FDCPA claims in bankruptcy.

DRI’s amicus brief expands on two points from that petition. DRI explains that the expansion of liability under the FDCPA to include filing a proof of claim on an “out-of-statute debt” will yield negative unintended consequences for the bankruptcy process and for lawyers and the creditors for whom they work.

As stated in the brief, the bankruptcy process was designed as an efficient method to resolve debts. Injecting the FDCPA into the proof of claim process thwarts that goal. DRI further argues that the least sophisticated consumer standard should not apply to FDCPA claims that are based on a creditor’s participation in a consumer’s bankruptcy proceeding. This is especially the case when the consumer typically is represented by counsel, and a bankruptcy trustee is appointed to protect the estate, including from improper claims.

DRI brief co-authors C. Mitchell Brown, B. Rush Smith III, and Carmen Harper Thomas of Nelson Mullins Riley and Scarborough in Columbia, South Carolina, are available for interview or for expert comment through DRI's Communications Office.

To read DRI's brief in its entirety, [click here](#).

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*For more than fifty years, DRI has been the voice of the defense bar, advocating for 22,000 defense attorneys, commercial trial attorneys, and corporate counsel and defending the integrity of the civil judiciary. A thought leader, DRI provides world-class legal education, deep expertise for policy-makers, legal resources, and networking opportunities to facilitate career and law firm growth. For more information, log on to [www.dri.org](http://www.dri.org)*