No. 25-___

In the

Supreme Court of the United States

NORTH AMERICAN CREDIT SERVICES, INC.,
Petitioner,

v.

ABDUL CRAWFORD,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

The questions presented are:

1. Whether the FDCPA requires third party debt collectors to conduct an independent preemptive investigation to review for all potential defects or challenges to the debt, including its legal status, before mailing the 1692g notice of validation, irrespective of any reasonable reliance upon the creditor's representations?

2. Whether the FDCPA's bona fide error defense is limited only to the third party debt collector's own internal policies and procedures, and excludes any development of pre-placement procedures with the original creditor to avoid violations?

3. Whether a medical debt incurred during the course and scope of the patient's employment and subject to Florida's Worker's Compensation Act, is not considered a consumer debt under the FDCPA?

CORPORATE DISCLOSURE STATEMENT

The Petitioner, North American Credit Service, Inc., (NACS) is a for-profit Tennessee corporation. Petitioner has no parent corporation, and has no publically held company owning 10% or more of its stock.

TABLE OF CONTENTS

Page(s)

TABLE OF AUTHORITIES

Cases **Page(s)**

Statutes

Rules and Procedures:

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PETITION FOR A WRIT OF CERTIORARI

North American Credit Services, Inc., respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Eleventh Circuit in this case.

OPINIONS BELOW

The opinion of the court of appeals regarding the issues raised on the questions at issue is unreported but published at 2025 U.S. App. LEXIS 16105, 2025 LX 207395, 2025 WL 18052218 (11th Cir. July 1, 2025). The decision is reproduced at App. A. The district court's order denying the petitioner's

motion for summary judgment and granting the respondent's summary judgment is reported at 953 F. Supp. 3d 1280 (M.D. Fla. 2024). The decision is reproduced at App. B.

JURISDICTION

The judgment of the court of appeals was entered on July 1, 2025. The jurisdiction of this Court is involved under 28 U.S.C. § 1254(1)

STATUTORY PROVISIONS INVOLVED

The subject provisions involved in this case are the Fair Debt Collection Practices Act, Pub. L. No., 15 U.S.C. §§ 1692a(5), 1692e(2)(A), and 1692k(c). In addition, certain provisions of Florida's Workers' Compensation Act, namely FLA. STAT. § 440.11(1) and FLA. STAT. § 440.015 are also involved in this case.

INTRODUCTION

The Fair Debt Collection Practices Act ("FDCPA") provides a statutory mechanism for consumers to inform debt collectors of disputes or challenges to an alleged debt obligation claimed due by the original or current creditors. This process was designed by Congress to allow consumers to dispute alleged debt obligations and to request the debt collector to provide verification or validation of the debt within 30 days of the mandated notice under 15 U.S.C. § 1692g. Congress also designed this statutory scheme to encourage the parties to exchange information relating to potential errors or

disputes that may have existed between the creditor and consumer but are unknown to the third-party debt collector.

The FDCPA further provides a statutory defense entitled the "bona fide error" defense that entitles a third-party debt collector to avoid liability from an alleged violation if it can demonstrate the "bona fide error". 15 U.S.C. § 1692k(c). The FDCPA, however, is only actionable against third party debt collectors that are seeking repayment of debts that are defined as "consumer debts", namely, debts that are derived from "any obligation or alleged obligation of a consumer to pay money arising out of a transaction in which the money, property, insurance, or services which are the subject of the transaction are *primarily for personal, family, or household purposes*, whether or not such obligation has been reduced to judgment" (emphasis added). 15 U.S.C. § 1692a(5)

Contrary to the statutory scheme deliberately designed by Congress, the Eleventh Circuit in this case held that NACS, a medical debt collector, was not entitled to utilize the bona fide error defense unless it had independently developed a policy or procedure to take preemptive action and review potential errors that may lead to a violation before sending its 1692g validation language. This ruling places debt collectors in the untenable position of violating the statute by failing to discover the unknown error or issue without taking preemptive or investigatory action before sending their federally required validation notice.

Further, the Eleventh Circuit categorically determined that medical debt obligations are consumer debts as defined by the FDCPA without conducting the required analysis to determine if the debt obligation was primarily for personal, family, or household purposes. NACS asserted that the Florida Legislature created an immunity for medical debt obligations for the patients if the medical debt was incurred as a work-related illness or injury under Chapter 440 of the Florida Statutes and thus, by definition, was not a 'consumer debt' as defined by the FDCPA.

STATEMENT OF THE CASE

This action was initiated in the United States District Court for the Middle District of Florida, Orlando Division, seeking statutory and alleged actual damages under the federal Fair Debt Collection Practices Act 15 U.S.C. § 1692 ("FDCPA"). As this matter comes to the Court, the case presents three separate and essential questions which consider the statutory structure designed by Congress in providing a consumer with notice from a third party debt collector under 15 U.S.C. § 1692g(a) and the debt collector's obligation or duty, if any, to take any preemptive or investigative action to determine any errors, mistakes, or issues *before* sending the required validation notice to the consumer.

The Respondent, Abdul Crawford ("Crawford"), sought alleged damages under 15 U.S.C. § 1692e(2)(A) against Petitioner, North American Credit Services, Inc. ("NACS"), claiming

that it violated the statute by sending its federally mandated validation notice to him regarding a medical debt obligation claimed due to the original creditor, Advent Health. The subject medical debt obligation arose from emergency medical services provided to Crawford, following an auto accident in which Crawford was acting in the course and scope of his employment for Advent Health. *[App. C]* Crawford asserted that the subject medical services incurred due to a work-related injury and thus under Florida's Workers' Compensation Act, he was not personally responsible for the debt obligation. However, unknown to NACS, Advent Health, while Crawford's employer and creditor, erred in categorizing his hospital expense as a self-pay debt obligation and sent payment reminder letters to Crawford directly. The medical debt was even reviewed by Crawford's auto insurance carrier, Aetna, and provided him with an Explanation of Benefits.

After Advent Health's efforts to collect these two accounts were exhausted, they sent the accounts to NACS for collection. On November 8, 2022, NACS, in compliance with 15 U.S.C. § 1692g(a), sent Crawford its standard validation notice. Crawford confirmed receipt of the validation notice letter but did not contact NACS in writing or via telephone to indicate any dispute or challenge of the underlying debt obligation. On November 17, 2022, Advent Health sent a second past-due medical account to Crawford**.** On December 20, 2022, NACS received the second past-due medical account and subsequently sent its 30-day validation notice to Crawford. Again, no response from Crawford.

On December 12, 2022, Crawford filed a claim with Florida's Office of Judges of Compensation Claims ("OJCC"), and on January 13, 2023, filed his Petition for Worker's Compensation Benefits for the Advent Health accounts. In those proceedings, Advent Health's Response to the initial Petition for Benefits dated December 20, 2022, indicates,

> *This is my first notice of these requests because the claimant has not made a reasonable faith effort under Section 440.192 to resolve the dispute over benefits with the employer/carrier before filing the Petition for Benefits; the Petition for Benefits should be dismissed.*
>
> *[App. D]* (emphasis added)

Advent Health is not only Crawford's employer but also the creditor and workers' compensation administrator for his employee-related claims. In the case below, NACS denied these allegations and asserted various affirmative defenses, including the FDCPA's bona fide error defense. NACS also argued it is entitled to judgment as a matter of law because the debt obligation fails to meet the definition of "consumer debt" as defined by the FDCPA.

Advent Health and NACS collectively maintain debt collection and billing policies and procedures to prevent Florida and federal collection law violations. As a part of those policies and procedures, the two businesses agree not to collect

debt obligations incurred due to a work-related injury or illness from the patient. As part of this process, Advent Health has policies and procedures in place to prevent sending work-related injury or illness accounts to NACS through their internal procedures. As a part of NACS' own procedures, NACS also reasonably relies upon the fact that Advent Health will not refer any medical debts to NACS for collection against a patient in which a work-related event caused the injury or illness, based on its implemented policies and procedures.

A. Background

The FDCPA requires that Crawford demonstrate that the underlying debt obligation is defined as a "consumer debt." 15 U.S.C. § 1692a(5) defines "debt" or "consumer debt" as any obligation or alleged obligation of a consumer to pay money arising out of a transaction in which the money, property, insurance, or services which are the subject of the transaction are *primarily for personal, family, or household purposes*, whether or not such obligation has been reduced to judgment. "To establish a claim under the FDCPA, a plaintiff must allege that he was the object of collection activity arising from 'consumer debt.'" *Ham v. Nationstar Mortg., LLC,* No. 3:15-CV-939-J-39-JBT, 2016 U.S. Dist. LEXIS 196199, 2016 WL 11578643, at 6 (M.D. Fla. Dec. 21, 2016), *adopted by*, 2017 U.S. Dist. LEXIS 223703, 2017 WL 11002076 (M.D. Fla. Jan. 26, 2017). To make out a cause of action under the FDCPA, a plaintiff must offer evidence permitting a jury to conclude that the debt at issue falls within this statutory definition. *See Burton v. Kohn Law*

Firm, S.C., 934 F.3d 572, 579-80 (7th Cir. 2019)(explaining that "a plaintiff proceeding under this theory still must offer evidence to establish that the 'debt' was a 'consumer debt'").

In most situations, the factual inquiry as to the characterization of the underlying debt obligation is clear and straightforward, particularly when the debt obligation arises from receiving medical services rendered upon the consumer. In these situations, the debt would be considered "personal" in nature and, thus, defined as a "consumer debt" under the FDCPA. However, in some circumstances, the characterization of whether the debt is a "consumer debt" requires a deeper analysis in which the court looks at the primary purpose or reason the debt obligation was incurred. As explained in *Woods v. LVNV Funding, LLC,* 27 F.4th 544 (7th Cir. 2022), the Seventh Circuit focused on the language in 15 U.S.C. § 1692a(5), "explained that "[e]vidence of *the* types of purchases made on the credit card may be relevant to the question whether those purchases were made primarily for personal, family, or household purposes." *Id.* at 584. It is further indicated in *Burton* that, "[t]he card's transaction log, however, did not tell a coherent story one way or the other, revealing purchases at a range of vendors—from "gas stations and convenience stores" to "office supply and auto parts stores, a local pizza establishment, and the local school district." *Id.* Further, the court stated, "[m]any of these purchases, we reasoned, could plausibly have been made for a business purpose, even if they did not "obviously signal" such a purpose. *Id.* The court

continued that, "[f]aced with a toss up, we concluded that Burton had not done enough to show that the debt fell within the FDCPA's scope." *Id.*

Similarly, while the subject debt obligation arose from Crawford's medical services that were performed upon him personally, Crawford simultaneously argued that Florida law does not make him personally responsible for the medical services since the medical injury occurred while *"acting in the course and scope of his employment"* and thus subject to Florida's Workers' Compensation statute. *[App. C]*

For years, FDCPA plaintiffs have attempted to claim damages under the FDCPA and Florida's state law equivalent ("FCCPA") by asserting the benefit of both sides of this coin. On one side, these Plaintiffs argue that the debt is a "consumer debt," which is subject to the FDCPA and FCCPA. At the same time, they claim that they are not responsible for the medical services since the medical debts were "work-related" injuries and thus violating Section 1692e(2)(A). NACS has asserted that Crawford cannot have it both ways.

As in *Woods,* the FDCPA's protections apply only to consumer debts, which the Act defines as any obligation to pay money "arising out of a transaction" entered into "primarily for personal, family, or household purposes." 15 U.S.C. § 1692a(5). This is particularly true even when the FDCPA plaintiff claims they were the victim of identity theft. *See Burton,* 934 F.3d at 580 (explaining that "a plaintiff proceeding under this theory still must offer

evidence to establish that the debt was a consumer debt") (emphasis deleted). *See also Arora v. Midland Credit Management*, 2023 U.S. Dist. LEXIS 79840 (N.D. Ill 2023).

In this case, Crawford did not seek to demonstrate that the debt obligation was primarily for personal, family, or household purposes but took the position that the medical debt obligation incurred as he was acting in the course and scope of his employment duties. NACS asserts that the court erred in determining that the debt obligation was a 'consumer debt' merely by finding that the debt was incurred from medical services. Both the district court and Eleventh Circuit relied on the holding in *Mais v. Gulf Coast Collection Bureau,* 768 F.3d 1110 (11th Cir. 2014), in support of the position that medical debts are consumer debts. However, in *Mais*, a case brought under the Telephone Consumer Protection Act, the plaintiff's medical debt was not a work-related injury requiring an analysis of a consumer debt.

B. Procedural History

On July 23, 2023, the Respondent, by and through counsel, filed his Complaint for Damages, asserting his claim against Petitioner, alleging a violation of 15 U.S.C. § 1692e(2)(A). On July 15, 2023, the case was removed to the United States District Court for the Middle District of Florida, Orlando Division, and assigned to the Honorable Robert B. Dalton. On June 4, 2024, NACS filed its motion for summary judgment against Crawford, and on the same date, Crawford filed his counter-

motion for summary judgment against NACS. On October 16, 2024, the district court entered an order denying NACS' motion for summary judgment and granting Crawford's motion for summary judgment. *See [App. B]*. NACS filed its Notice of Appeal with the United States Court of Appeals for the Eleventh Circuit on December 3, 2024. On July 1, 2025, the Eleventh Circuit issued its opinion affirming the district court's order granting summary judgment in favor of Crawford and against NACS. *See App. A.*

REASONS FOR GRANTING THE PETITION

The questions presented in this case are of essential importance to the debt collection industry, one of the fundamental economic industries that drives the nation's economy. Since 1977, the debt collection industry, through its technology and methodology, has attempted to modernize its processes while still adhering to the original structure and prohibitions drafted within the FDCPA. Until December 2021, when some debt collection concerns were clarified in Regulation F, 12 CFR part 1006, the primary source of interpretation and guidance has been provided by inconsistent and vague lower court judicial opinions regarding statutory interpretations of "consumer debt" and the boundaries imposed by the "bona fide error" defense. While Congress has occasionally amended the FDCPA, this Court has also reviewed the bona fide error defense in *Jerman v. Carlisle, McNellie, Rini, Kramer & Ulrich, PA*, 559 U.S. 573 (2010).

The *Crawford* opinion erodes the statutory framework provided by Congress for both consumers

and debt collectors under 15 U.S.C. § 1692g, as well as imposes unworkable restrictions governing the "bona fide error" defense by judicially creating a preemptive, pre-placement, and investigative requirement upon debt collectors contrary to the congressional intent in 15 U.S.C. §§ 1692g, 1692k.

A. This Court Should Grant Review to Decide Whether the FDCPA requires a Debt Collector To Take Preemptive Investigative Action to Determine Any Errors or Inaccuracies in the Debt Obligation before Sending the Validation Notice Pursuant to 15 U.S.C. § 1692g.

Congress requires third-party debt collectors to comply with the provisions of 15 U.S.C. § 1692g(a)(1-5). Specifically, subsections 3 and 4 require a debt collector to include in the validation notice:

> Within five days after the initial communication with a consumer in connection with the collection of any debt, a debt collector shall, unless the following information is contained in the initial communication or the consumer has paid the debt, send the consumer a written notice containing –
>
> (3) *a statement that unless the consumer, within thirty days after receipt of the notice, disputes the validity of the debt, or*

> *any portion thereof, the debt will be assumed to be valid by the debt collector;*
>
> (4) a statement that if the consumer notifies the debt collector in writing within the thirty days that the debt, or any portion thereof, is disputed, the debt collector will obtain verification of the debt or a copy of a judgment against the consumer, and a copy of such verification or judgment will be mailed to the consumer by the debt collector;

Emphasis added.

In response, 15 U.S.C. § 1692g(b) then provides a consumer the opportunity to take the following action:

> If the consumer notifies the debt collector in writing within the thirty days described in subsection (a) of this section that the debt, or any portion thereof, is disputed, or that the consumer requests the name and address of the original creditor, the debt collector shall cease collection of the debt, or any disputed portion thereof, until the debt collector obtains verification of the debt or a copy of a judgment, or the name and address of the original creditor, and a copy of such verification or judgment, or name and address of the original creditor, is mailed to the consumer by the debt collector.

The statute only provides that, "[t]he failure of a consumer to dispute the validity of a debt under this section may not be construed by any court as an admission of liability by the consumer." *See* 15 U.S.C. § 1692g(c). Nothing in the FDCPA statutory framework requires a third-party debt collector to take any preemptive or investigative review of the debt obligation to vet all possible errors or inaccuracies, whether discoverable or not, *before* sending the 30-day validation notice. In fact, 15 U.S.C. § 1692g was enacted to serve as that vetting period for both the consumer and the debt collector. As such, courts have stated that "[t]he FDCPA does not require a debt collector to engage in an independent investigation of the debt referred for collection." *Sayyed v. Wolpoff & Abramson, LLP,* 733 F. Supp. 2d 635, 640 (D. Md. 2010) (citing *Jenkins v. Heintz*, 124 F.3d 824, 834 (7th Cir. 1997)) (holding that a debt collector has no obligation to conduct an independent debt validity investigation); *Elane v. Revenue Maximization Grp.*, 233 F. Supp. 2d 496, 500 (E.D.N.Y. 2002) (noting that defendant was entitled to rely on its client's representation that the debt was valid). Thus, a misrepresentation made by the debt collector solely as a result of inaccurate information provided by its client would be a bona fide error as defined under 15 U.S.C. § 1692k(c). *Id.* (citing *Smith v. Transworld Sys., Inc.*, 953 F.2d 1025, 1032 (6th Cir. 1992) (holding the defendant reasonably relied on its client's calculation of the debt owed, and the resulting misrepresentation in a subsequent communication was a bona fide error)).

In *Cornette v. I.C. System,* 280 F. Supp. 3d 1362 (S.D. Fla. 2017), the court provided the most

straightforward interpretation of the debt collector's duties under the FDCPA at this stage, stating "[n]owhere in the FDCPA does the statute specially require a debt collector to validate a debt before seeking collection of such a debt. In fact, the FDCPA specifically provides in 15 U.S.C. § 1692g(a)(3) the opportunity to assume that the debt is valid if not disputed by the consumer within the thirty-day validation period. In *Cornette*, the court further stated, "A reading of the FDCPA that requires pre-collection investigation would therefore render 15 U.S.C. § 1692g(a)(3) superfluous, especially as applied to the first communication between a debt collector and consumer." *Id.* at 1370.

Other courts have found that "debt collectors are entitled to rely on the information they receive from the creditor. They are not held strictly liable when they mistakenly attempt to collect amounts in excess of what is due if they reasonably relied on information provided by their clients." *In re Cooper*, 253 B.R. 286, 292 (Bankr. N.D. Fla. 2000) (citing *Smith,* 953 F.2d at 1032); *Jenkins v. Union Corp.*, 999 F. Supp. 1120, 1140-41 (N.D. Ill. 1998); *Ducrest v. Alco Collections, Inc.*, 931 F. Supp. 459, 462 (M.D. La. 1996); *see also Solomon v. Baer & Timberlake, P.C.*, 504 Fed. App'x 702, 704 (10th Cir. 2012).

When the Eleventh Circuit first addressed the requirements for reasonable procedures under the third prong of the bona fide error defense, it acknowledged the "time and resource constraints" under which debt collectors operate. *Owen v. I. C. Sys., Inc.*, 629 F.3d 1263, 1276 (11th Cir. 2011). It held that a debt collector had an "affirmative

statutory obligation to maintain procedures reasonably adapted to avoid *readily discoverable* errors," but need not "independently investigate and verify the validity of a debt." (emphasis added) *Id*. However, the court has never addressed the circumstance when the error is undiscoverable to the debt collector, or when the actions of the creditor enhanced the reliance that the debts were valid. This is the problematic issue involved in this case.

Crawford sought to impose liability for only receiving a federally mandated validation letter that informed Crawford of a debt that the creditor, Advent Health, reported to be past due and owing by him. Although NACS employs numerous procedures targeted at avoiding the collection of debts subject to workers' compensation, the district court found that it could not establish a bona fide error as a matter of law because none of NACS' procedures prevented the "error of omission" underlying the alleged violation. Implicit in this decision is a heightened standard that requires NACS to avoid errors that are not "readily discoverable" on the records transmitted by the creditor without regard for reasonableness. This exceeds the requirements of the FDCPA.

15 U.S.C. § 1692k(c) provides that a debt collector may not be held liable under the FDCPA if it shows by a preponderance of the evidence that the violation "(1) was not intentional; (2) was a bona fide error; and (3) occurred despite the maintenance of procedures reasonably adapted to avoid any such error." *See Edwards v. Niagara Credit Sols., Inc.*, 584 F.3d 1350, 1353 (11th Cir. 2009); *see also* 15 U.S.C. § 1692k(c). The third prong is a two-step

inquiry. *Owen,* 629 F.3d at 1273-74. "The first step is 'whether the debt collector maintained—i.e., actually employed or implemented—procedures to avoid errors." The second step is "whether the procedures were reasonably adapted to avoid the specific error at issue." *Id.* at 1274 (quoting *Johnson v. Riddle,* 443 F.3d 723, 729 (10th Cir. 2006) (internal citations omitted)). The "specific error at issue" is the alleged statutory violation. *Marchisio v. Carrington Mortg. Servs., LLC,* 919 F.3d 1288, 1309 (11th Cir. 2019). In this case, the attempt to collect a debt is subject to the protections of Florida's Workers' Compensation Law, § 440.11, et seq., Florida Statutes.

When addressing this step, the courts below focused only on the fact that NACS had relied on information received from the creditor without independently verifying the workers' compensation status. Creating an "error of omission" reason for the cause of the violation is problematic and contrary to the intent of Congress in drafting the bona fide error defense. This standard imposes too high a burden and exceeds the requirements of the FDCPA. In fact, an error made without contrary information to avoid the violation is necessary to show the element of a bona fide ("unintentional") error on the part of the debt collector. To satisfy bona fide error defense, a debt collector needs only to employ procedures reasonably adapted to avoid the specific statutory violation at issue. A debt collector is not required to prevent every error that could give rise to the alleged violation, specifically in the legal 'land mine' imposed upon NACS in this case.

The Eleventh Circuit touched on this distinction in *Marchisio*. Addressing whether the debt collector's procedures were "reasonably adapted to avoid the specific error at issue," the court clarified that "the specific error at issue is the statutory violation alleged." *Id.* at 1309 (citing *Owen*, 629 F.3d at 1273-74). *Marchisio* concerned claims under Florida's Consumer Collection Practices Act ("FCCPA"), § 559.72, et seq., Florida Statutes, arising from the mailing of a lender-placed insurance letter on a settled debt. *Id.* at 1306-07. The parties disputed whether the error to be prevented concerned the defendant's broader deficiencies in recording and disseminating settlement terms or, more narrowly, tracking insurance for loans that were second liens when no insurance was required. *Id.* at 1308-09.

Applying *Owen* and *Marchisio* to this case, the specific error is falsely implying that the consumer is liable for a debt that is subject to workers' compensation coverage. The FDCPA "does not require debt collectors to take every conceivable precaution to avoid errors; rather, it only requires reasonable precaution." *See Kort v. Diversified Collection Servs.,* 394 F.3d 530 (7th Cir. 2005) "The bona fide error defense is used when the Defendant demonstrates that reasonable procedures are in place to prevent errors; the procedures need not be foolproof." *Tucker v. CBE Grp., Inc.*, 710 F. Supp. 2d 1301, 1306 n.5 (M.D. Fla. 2010).

In short, the Eleventh Circuit's opinion creates a continuing inconsistency between the debt collector's duties and obligations before sending its

required 15 U.S.C. § 1692g validation notice. Under this current holding, the third-party debt collector is now required to scan all possible issues, legal, factual, known, and unknown, before sending the federally mandated validation notice, or be deprived of the bona fide error defense. Further, the opinion places the burden upon the unknowing debt collector to be strictly liable for a violation of 15 U.S.C. § 1692e(2)(A) by merely notifying the consumer of the debt obligation claimed due by the original creditor. This Court is requested to grant review of this issue since the Eleventh Circuit's analysis directly conflicts with the Congressional intent of the provisions of 15 U.S.C. § 1692g and the provisions of the bona fide error defense in 15 U.S.C. § 1692k(c).

B. This Court Should Grant Review to Decide Whether a Debt Collector Can Develop and Maintain Policies and Procedures in Coordination with the Original Creditor to Avoid its Own Preemptive and Investigative Action to Determine Any Errors or Inaccuracies in the Debt Obligation.

The Eleventh Circuit's rationale attempted to limit as well as criticize NACS' defense of the alleged 15 U.S.C. § 1692e(2)(A) violation by assuming that Petitioner was "scapegoating" the original creditor, Advent Health. While an original creditor may not be liable under the FDCPA, an original creditor can potentially be liable for the same conduct under FLA. STAT. 559.72(9). The FCCPA contains the same "bona fide error" defense to encourage creditors to

also implement and maintain policies and procedures to avoid similar violations.

However, this case demonstrates three fundamental errors in the Eleventh Circuit's analysis of the case. First, the factual circumstances in this case demonstrate that Advent Health, as the creditor, employer, and its own workers' compensation administrator stood in the vastly superior position to have knowledge as to the proper characterization of this debt. Advent Health's act in sending its own self-pay notices to Crawford demonstrated, reinforced, and represented through Advent Health's internal processes that the debt obligation was collectible as a self-pay debt at the time the accounts were placed for collection with NACS. Second, Crawford, after receiving the two validation notices, did not reply with a dispute or a request for verification, and thus, pursuant to 15 U.S.C. § 1692g(a)(3), NACS assumed the debt was valid. Third, any preemptive review of Florida's OJCC website would not have indicated that Crawford's medical debt obligation was a work-related injury since the claim was not filed after NACS sent its validation notice to Crawford.

Instead, NACS provided evidence that it employs multiple procedures to avoid collecting debts subject to workers' compensation. This includes the policies and procedures implemented by the original creditor to avoid the same consumer protection errors. Where a healthcare provider errs by placing an account for collection – based on the delay of payment or other reason – that identifies a workers' compensation carrier as the guarantor, this

error should not be assessed against the debt collector since there is no possible discoverable preemptive action or policy that could be taken to allow the debt collector to prevent the error passed on from the creditor. To impose this level of third party review defeats the congressional intent of *fair* debt collection practices.

The Eleventh Circuit's opinion erred in not reversing the district court's finding that NACS' procedures were not reasonably adapted to prevent the specific statutory violation – the false implication that the consumer is liable for a debt that is subject to workers' compensation coverage – because they did not prevent the specific error that gave rise to the violation – namely, the creditor's omission of any indication that the account was subject to workers' compensation. This standard exceeds the requirements of the FDCPA. Furthermore, the Eleventh Circuit erred by not reversing the district court's order, failing to consider the reasonableness of NACS' reliance on the creditor's information or the unreasonableness of the alternative options. This is contrary to the Eleventh Circuit's finding in *Owen*, which held that "[t]he FDCPA does not require debt collectors to independently investigate and verify the validity of a debt to qualify for the bona fide error defense." 629 F.3d at 1276. In *Owen,* the Eleventh Circuit addressed the third prong of the bona fide error standard. It stated, "debt collectors have no duty to independently investigate and verify debts" to satisfy bona fide errors. *Id.* at 1276. However, it concluded that the debt collector did not meet the exception because the error was "readily discoverable" on the face of the document. *Id.* at

1275-1276, n. 18; *see also Reichert v. Nat'l Credit Sys.*, 531 F.3d 1002, 1007 (9th Cir. 2008) ("To qualify for the bona fide error defense under the FDCPA, the debt collector has an affirmative obligation to maintain procedures designed to avoid *discoverable* errors. . . ." (emphasis added)). Clearly, the court erred in this case regarding NACS, as the work-related status of the accounts was not discoverable at the time of the validation letter. Furthermore, the court failed to consider that Advent Health's billing actions reinforced the accounts' self-pay status.

This analysis essentially reasons that the scrubbing procedure is not reasonable because it relies on information received from the creditor without independently verifying that information. Similarly, it dismissed the contractual safeguards as impermissibly shifting the burden of compliance to the creditor. As noted previously, the error defendant must prevent is not the "error of omission" but the false implication that plaintiff owed the debt. *See Marchisio,* 919 F.3d at 1308 (citing *Owen*, 629 F.3d at 1273-74).

Notably, the creditor's records identified Plaintiff as the financially responsible party and, in the absence of evidence of willful blindness, the fact that the alleged error was not "readily discoverable" should have supported a finding of bona fide error. This fact aligns the case with *Smith*, which the *Owen* court distinguished when resolving the third prong of the bona fide error defense against the debt collector. *Owen*, 629 F.3d at 1276 n.18. The *Owen* court stressed that its holding did not require independent verification because the error was

apparent on the face of the document. *Id.* It was observed that the creditor in *Smith* had wrongly reported the accounting figures to the debt collector. *Id.* at 1277 n.18.

Like *Smith*, the creditor in this case wrongly reported Crawford as the guarantor. The reasoning in *Owen* implies that the Court may have reached a different result if, like in this case, the error was *not* readily discoverable. *Id.* at 1275 ("Importantly too, the errors here were not errors requiring ICS to further investigate the validity of AAA's listed charges. Instead, *the errors were discernible on the face of AAA's documents* forwarded to ICS and therefore readily discoverable by ICS")(emphasis added). The fact that *Owen* was concerned with a miscalculation rather than a false implication should not change the analysis.

Crawford and the Eleventh Circuit both erroneously relied upon the 2021 unpublished opinion in *Kottler v. Gulf Coast Collection Bureau, Inc.,* 847 Fed. Appx. 542 (11th Cir. 2021). However, the factual circumstances in this case clearly demonstrate that the rationale in *Kottler* suffers from a fundamental flaw in the analysis and general fairness. In *Kottler*, the district court held that the debt collector was required to maintain and demonstrate a specific "preemptive" policy and procedure that would have attempted to prevent the FDCPA violation *before* sending the initial notice under Section 1692g. Four issues have occurred since that opinion that differentiate this case from the holding in *Kottler*. First, since that case, the collection industry has developed a "scrubbing"

software program that did not exist before *Kottler*. This program searches the OJCC website to determine if the patient's medical debt is subject to a pending workers' compensation claim relating to an alleged work-related injury. The district court in *Kottler* suggested that this search may serve as a reasonable preemptive policy to support a bona fide error defense. However, in this case, the initial validation notice sent to Crawford predated any OJCC filing by Crawford's counsel, and therefore, the search would not have indicated that Crawford had a workers' compensation claim. Second, unlike *Kottler,* the original creditor in this case is the actual employer and workers' compensation administrator for its own employees, which provides a stronger and more effective creditor reliance that any accounts placed for collections are not debts that originated from the creditor's own employees. Third, the Consumer Financial Protection Bureau created a provision within Regulation F to require debt collectors to utilize a model validation notice with limited options to provide additional information as a "safe harbor" from liability under Section 1692g. Regulation F, in essence, changed the characterization of this first notice to a "validation notice" rather than an overt debt collection "dunning letter." Finally, unlike *Kottler*, NACS has provided sufficient evidence of a policy structure to prevent violations of the FDCPA and FCCPA related to workers' compensation debts, and has demonstrated a high degree of reliance on debts related to the creditor's own employees' work-related injuries.

To the extent the district court adequately considered available alternative procedures, it erred

by failing to consider their reasonableness. The district court in *Kottler* cited a manual review of the OJCC data as an alternative procedure to prevent the perceived "error of omission." As the district court in *Kottler* reasoned, "because of the incomplete information received from the creditor, Defendant could not have identified the error notwithstanding its 'scrubbing' policy. In this case, therefore, Defendant's internal procedure is not reasonably adapted to avoid the violation of the FDCPA because the procedure could never remedy an error of omission." *Gulf Coast Collection Bureau, Inc.*, No. 19-cv-61190-BLOOM/Valle at *6 (S.D. Fla. June 9, 2020).

However, it never considered whether the absence of an OJCC case filing or the failure to file an OJCC matter is an indication to support a bona fide error defense. As stated, unlike *Kottler*, a manual review of the OJCC website would not have yielded a confirmation that the debt was not subject to a workers' compensation claim. NACS receives hundreds of thousands of accounts each month from Advent Health. Under the collection process, Advent Health does not send workers' compensation debts for "self-pay" billing or collections. There was strong evidence that the debt was not a work-related injury. Particularly, as Advent Health was the employer, creditor, and administrator.

Notably, reviewing the OJCC data would not guarantee identification of all accounts claiming workers' compensation. The website only references the docket of proceedings of contested or disputed claims of workers' compensation benefits. Many

disputed claims are resolved and/or settled by the carrier without determining the applicability of employee immunity or conducting an investigation into whether the treatment is truly related to a work-related injury. The website only displays petitions for benefits. It does not capture accounts arising from a workplace injury if the consumer has not filed a petition for benefits. Therefore, NACS would still be exposed to the risk of FDCPA liability even if it expended the substantial cost of manual review, or if the accounts, as in this case, were missed. Where there is no requirement for independent verification and manual review is not reasonable, the availability of the OJCC data should have been disregarded when assessing the reasonableness of NACS' procedures. *See Hyman v. Tate*, 362 F.3d 965, 968 (7th Cir. 2004) (holding that verifying bankruptcy status against external sources was not reasonable in light of cost and in the absence of a duty to investigate independently). The availability of this external data also factored into the Court's determination that NACS blindly relied on the creditor's representations. NACS is not precluded from the bona fide error defense merely because it relied on data provided by the creditor. "Nowhere in the FDCPA does the statute specifically require a debt collector to validate a debt before seeking collection of such debt." *Cornette*, 280 F. Supp. 3d at 1369.

The Eleventh Circuit erred in not reversing the district court's finding that there is no genuine issue of material fact with respect to the lack of procedures addressing the specific issue in this case. At a minimum, a genuine dispute exists regarding

the reasonableness of NACS' procedures in light of the unreasonableness of the alternatives and the firm reliance upon the creditor's representations and actions that the debt was self-pay. Because of this, and the fact that a debt collector is not required to verify debts independently and needs only to avoid readily discoverable errors, the Court should reverse the order granting summary judgment and provide the trier of fact with the opportunity to consider this alternative procedure when assessing the reasonableness of NACS' actual procedures.

Whether a defendant is entitled to the bona fide error defense will almost always depend, as it does in this case, on act-specific circumstances. *See Wilhelm v. Credico, Inc.*, 519 F.3d 416, 421 (8th Cir. 2008). For example, a debt collector may invoke the bona fide error defense when the debt it seeks to collect was verified through account statements furnished by the creditor. *See Long v. McMullen, Drury & Pinder, P.A.,* 2011 U.S. Dist. LEXIS 108402, 2011 WL 4458849, at 5-6 (D. Md. Sep. 23, 2011) (citing *Sayyed*, 733 F. Supp. 2d at 640) (dismissing FDCPA claim under bona fide error defense because defendant debt collector reasonably relied on client's representations as to amount and status of alleged debt, and confirmed by documentation). Similarly, the defense may be invoked by a debt collector when the attempt to collect the debt is supported by "the underlying documentation from its client, as well as a sworn affidavit from its client stating that the records were accurate." *Sayyed,* 733 F.3d at 647.

To the extent a violation occurred, it resulted

from the original creditor and employer sending two past-due medical debt obligations to NACS for self-pay collections. A powerful presumption and reliance occurred since Advent Health, as the employer and creditor, continued to claim that the debt obligations were due and owing by Plaintiff directly. Following its FDCPA compliance policies and procedures, NACS' representative then attempted to communicate with Crawford as required by Section 1692g that the creditor was seeking payment of these two past-due medical debt obligations. NACS utilized and mailed the approved Model Validation Notice authorized by Regulation F. Despite receiving each of the validation notices, Crawford declined to communicate with NACS to dispute the validity of the debt or to communicate that the underlying debt obligation was a work-related debt. From these exchanges, it is objectively understandable that NACS was acting in good faith that Plaintiff's medical debt was accurately characterized as a "self-pay" medical debt and was not subject to a work-related injury, since Advent Health itself was sending out its own invoices for the same debt obligations. Hence, any error in that regard was *bona fide*. Both the district court and the Eleventh Circuit ruled that NACS is precluded from having a trier of fact determine the reasonableness of the policies and procedures unless NACS possessed "preemptive" methods before sending the validation notice to vet all possible errors or issues, irrespective of whether they are discoverable or not by the third-party debt collector.

The undisputed record demonstrated that NACS was entitled to present its evidence to support

its FDCPA *bona fide* error defense. It is widely accepted that defendant's procedures designed to prevent unintentional violations of the FDCPA must be reasonable only and need not be "foolproof." *Bacelli v. MFP, Inc.*, 729 F. Supp. 2d 1328, 1333 (M.D. Fla. 2010) ("Section 1692k(c) does not require debt collectors to take every conceivable precaution to avoid errors; rather, it only requires reasonable precaution, and a creditor's procedures *need not be foolproof*") (emphasis added); *see also Rhinehart v. CBE Grp., Inc.,* 714 F. Supp. 2d 1183, 1185 (M.D. Fla. 2010) (creditor's procedures need not be foolproof) (emphasis added); *see also Ross v. RJM Acquisitions Funding, LLC*, 480 F.3d 493, 497-498 (7th Cir. 2007) (the word "reasonable" in the FDCPA defense cannot be equated to "state-of-the-art") (emphasis added); *see also Garcia v. Miramed Rev. Grp.,* No. 18-CV-1384, 2019 U.S. Dist. LEXIS 138814, *5 (E.D. Ill., Aug. 16, 2019) (procedures in place need not be perfect or state-of-the-art to be reasonable) (emphasis added); *see also Davis v. Nat'l Credit Sys.,* No. 4:12-CV-3147, 2014 U.S. Dist. LEXIS 190123, *16-17 (D. Neb., Apr. 29, 2014) (debt collector need not demonstrate that its procedures for avoiding FDCPA violations are foolproof—only that its procedures constitute a reasonable precaution) (emphasis added); *see also Neeley v. Express Recovery Servs.,* No. 2:10-CV-604 DAK; 2012 U.S. Dist. LEXIS 65431, *8 (D. Utah, May 9, 2012) (defendant not required to show policies and procedures were perfect, only that they show reasonable precaution); *Washington v. Convergent Outsourcing, Inc.*, No. 15 C 7043, 2017 U.S. Dist. LEXIS 41814, *11 (E.D. Ill., Mar. 23, 2017) (procedures do not need to achieve perfection to be

reasonable for purposes of § 1692k(c)) (emphasis added).

The Eleventh Circuit has agreed with other circuits that determining the reasonableness of procedures is a "fact-intensive inquiry." *Owen,* 629 F.3d 1263, at 1273-74 (the legal analysis has proceeded on a case-by-case basis and depended upon the particular facts and circumstances of each case); s*ee also Johnson,* 443 F.3d at 732 (triable issues of fact exist regarding each prong of the defense); *see also Jackson v. Nat'l Credit Sys.*, No. 1:16-CV-01029-ODE-WEJ, 2017 U.S. Dist. LEXIS 163117, *25 (N.D. Ga., Feb. 27, 2017) (reasonable jury could find procedure adequate to satisfy the third prong of the bona fide error defense; plaintiff has not shown that defendant's procedures were inadequate as matter of law); *see also Lynch v. Fin. Asset Recovery Servs. of Minn., Inc.*, No. 12-60945-CIV-ZLOCH, 2013 U.S. Dist. LEXIS 191236, *13 (S.D. Fla., Sept. 30, 2013) (genuine issues of material fact remain with respect to the defense). NACS acknowledged that while its procedures and training policies might not be "perfect" or "foolproof" (or meet *Crawford's* exacting standard), they at least satisfy the reasonableness standard of the FDCPA. In fact, under the factual circumstances displayed in this case, the jury should have been able to consider all of the facts of this case to determine if the bona fide error defense applies to NACS, including the actions and preventive measures designed by Advent Health before any self-pay accounts are sent to NACS for further collection activity.

While NACS asserted that its procedures are

reasonable, the trier of fact should have been provided an opportunity to review the degree of reliance upon the original creditor, including how Crawford's medical bills were erroneously passed through Advent Health's self-administered workers' compensation claims handling bureaucracy, to a self-pay third-party status. Therefore, the Eleventh Circuit's reasoning that NACS' reliance would shift the burden upon the creditor to circumvent its own responsibility is misplaced both in this circumstance and in light of FDCPA's debt validation process implemented by 15 U.S.C. § 1692g. Accordingly, NACS submitted that there existed genuine issues of material facts regarding its entitlement to the FDCPA *bona fide* error defense. Thus, the Eleventh Circuit's opinion erred in failing to reverse the order summarily granting summary judgment in favor of Crawford without allowing the trier of fact to consider the evidence to support the bona fide error defense.

C. This Court Should Grant Review to Provide Clear Guidance as to How a Reviewing Court shall Determine Whether a Debt Obligation is a Consumer Debt as Defined Under the FDCPA.

It is well recognized that not all debt obligations are automatically protected under the FDCPA. *See Boosahda v. Providence Dane, LLC*, 462 F.App'x 331, 335 (4th Cir. 2012) *per curiam*, (noting that "a person can be sued in his individual capacity even for a business debt"); *Beaton v. Reynolds, Ridings, Vogt & Morgan, PLLC*, 986 F. Supp. 1360,

1362 (W.D. Okla. 1998)(rejecting the argument that a business debt can be covered if it is incurred by a natural person); *Lewis v. Sole Law, PLLC*, 2023 U.S. App. LEXIS 30769, 2023 WL 11018147 (6th Cir. 2023)(FDCPA claim dismissed since business debt not covered by FDCPA if owed in individual capacity).

For example, the Eleventh Circuit held in *Hawthorne v. Mac Adjustment*, 140 F.3d 1367 (11th Cir. 1998) and *Parham v. Seattle Service Bureau*, 656 Fed. Appx. 474 (11th Cir. 2016) that the FDCPA does not apply to debts that do not arise from a consumer "transaction" and, therefore, does not apply to subrogation damages arising from non-consensual torts from automobile accidents. Analyzing the nature of how the debt obligation was incurred, the Eleventh Circuit held:

> As further support for our holding, we explained that the statute's "language further limits application of the FDCPA to debts arising from consumer transactions" and noted that the debt at issue "[did] not arise out of a consumer transaction; it ar[ose] from a tort."
>
> *Id*.

The same type of analysis is applicable here. The distinction between whether the subject debt was "primarily" for personal, family, or household purposes requires the Court to consider whether the debt's purpose appropriately falls within the statutory definition of "consumer debt" as defined by

15 U.S.C. § 1692a(5). Whether the alleged debts at issue constitute "consumer debts" is important because, as noted in *Schaefer*, "[t]o recover under both the FDCPA and the FCCPA ... a plaintiff must make a threshold showing that the money being collected qualifies as a 'debt.'" *See Schaefer v. Seattle Service Bureau, Inc.*, 2015 U.S. Dist. LEXIS 168468 at 7 (quoting *Oppenheim v. I.C. System, Inc.*, 627 F.3d 833, 836-37 (11th Cir. 2010)); *see also Brown v. Federated Capital Corp.*, 2014 U.S. Dist. LEXIS 14201 (D. Utah 2014); *Gibbons v. Weltman, Weinberg & Reis Co., LPA*, 2018 U.S. Dist. LEXIS 187146 (E.D. Pa. 2018). Consequently, the FDCPA protects only individuals who have incurred a debt for personal use, and not individuals who have incurred a debt for commercial or business-related purposes.

In this case, Crawford admitted that the cause of the medical debt obligation was not attributed to his own personal family or household reasons but incurred during the course and scope of his work-related activities. *Simmonds & Narita, LLP v. Schreiber*, 566 F. Supp. 2d 1015 (N.D. Cal. 2008) is instructive as to the proper analysis of the end use and not the characterization of the debt itself. The court, reviewing the analysis in *Dean v. Gillette*, 2005 U.S. Dist. LEXIS 15303, 2005 WL 1631093 (D. Kan. July 11, 2005), rejected the consumer's argument that the FDCPA applied because the debt was incurred for personal purposes, finding that,

> [T]he mere fact that [defendant] sought to recover debt from plaintiff personally has no bearing on the nature of the transaction underlying the debt.

> Because the "legal services were provided for the purpose of assisting plaintiff with various commercial endeavors," the debt did not arise out of a transaction "primarily for personal, family or household purposes."

Id. at *3.

The Ninth Circuit has held that the FDCPA applies only to consumer debts and not business loans. *See Bloom v. I.C. Systems*, 972 F.2d 1067, 1068 (9th Cir. 1992). In *Bloom*, the court stated

> When classifying a loan, courts typically "examine the transaction as a whole," paying particular attention to "the purpose for which the credit was extended to determine whether [the] transaction was primarily consumer or commercial in nature."

Id. at 1068.

The Eleventh Circuit adopted the district court's simplistic argument that since Crawford incurred medical services *personally,* the debt is automatically a "consumer debt" under the FDCPA. This argument defies the congressional intent of the statute.

NACS provided a realistic example of an individual using their credit card to purchase

services or products. Suppose an individual uses their credit card to purchase an airline ticket, dinner, a rental car, and a hotel room. In that case, the determination of whether the debt obligations are "consumer debt" is based on the reason the consumer made these purchases. If the debts were incurred to visit a client, in the course of employment, the transactions are not subject to the FDCPA. If the debts were incurred while the consumer was on vacation, the FDCPA applies. In this case, it was undisputed that the medical debt was incurred when Crawford was engaging in activities that were in "the course and scope of his job performance." Under the Eleventh Circuit's analysis, any debt would be considered a "consumer debt" merely because the individual personally benefited from the product or services by using transportation, sleeping in the hotel, and eating the restaurant's food. This defies the need to look at the *purpose* of the debt transaction. In both this example and Crawford's actual situation, the debt transaction was incurred while he was working and serving the interests of his employer, Advent Health. It is, in fact, this status that Crawford sought damages against NACS, asserting that under Florida's workers' compensation statute, he was not personally responsible for the debt because the transaction (i.e., the need for medical services) involved activities conducted while he was an employee of Advent Health.

FLA. STAT. § 440.11(1) (1978) was amended to extend the employer's immunity from tort liability to co-employees acting to further the employer's business. In characterization, an employer's immun-

ity from employee litigation encourages employers to maintain workers' compensation coverage for work-related illnesses or accidents. As to the purposes of the workers' compensation regime, at least some workers' compensation laws treat it as "compensation". This suggests that the treatment itself (and liability for the treatment) inure to the detriment of the employer (via its workers' compensation carrier) and thus does not constitute a debt under the FDCPA. Meaning, although the individual receives the services, the services were provided for the employer's benefit as compensation to the employee—it is, fundamentally, a "wage-loss" mechanism that employers must bear so that injured workers do not become a burden on society as a whole. Put another way, when an individual gets hurt at work and needs treatment, he's *entitled* to compensation in the same way as when he provides labor for his employer within the scope of his employment. The Eleventh Circuit's opinion failed to conduct this analysis.

The Florida legislature pronounced, "[i]t is the intent of the Legislature to ensure the prompt delivery of *benefits* to the injured worker" (emphasis added). *See* FLA. STAT. § 440.015. The provision of benefits in the employer-employee relationship is categorically *not* a consumer transaction. Outside of the employment relationship, the medical debt may or may not still exist—depending on whether the consumer had the wherewithal and financial means to seek treatment—but for an injury within the scope of a defined employment relationship, the treatment constitutes an employment benefit covered by the employer via the workers'

compensation carrier.

"Workers' compensation is a *quid pro quo* statute; the employee foregoes the right to sue in exchange for the employer's assumption of liability without fault." *Fitzgerald v. S. Broward Hosp. Dist.*, 840 So. 2d 460, 462 (Fla. 4th DCA 2003)*(citing Grice v. Suwannee Lumber Mfg. Co.,* 113 So.2d 742, 745–46 (Fla. 1st DCA 1959)). In sum, when an individual seeks treatment for a work-related injury that falls within the workers' compensation statute, that treatment constitutes a "transaction" with the provider but for the employer's benefit in the context of the employer's relationship with the employee—and *that* is precisely why the employer is liable for it. If, on the other hand, the transaction turns out to be *not* related to the scope of the individual's employment, then the individual is liable for the transaction. The determination of the compensability of the claim is based on (1) the employee timely submitting a claim and (2) the carrier and/or the OJCC ultimately ruling on the cause of the injury.

NACS asserted that it is not liable to Crawford for claims under the FDCPA since Crawford failed to demonstrate that the underlying debt obligation was a consumer debt as defined by 15 U.S.C. § 1692a(5). It is undisputed that the medical services were rendered by the employer/creditor while its employee/patient was performing his duties for the employer. Thus, debt obligations incurred while performing tasks for his employer are not consumer debts as contemplated by the FDCPA. Therefore, NACS asserted that the district court

erred in characterizing Crawford's medical debt as a consumer debt despite the undisputed evidence that the debt obligation was incurred while Crawford was performing his functions for his employer, Advent Health. As such, the debt could not be considered to be incurred "primarily for personal, family or household purposes" as defined by the FDCPA, and thus, the court's ruling against NACS and in favor of Crawford should have been reversed as a matter of law.

For the same reasons, the nature of the cause of the medical debt was not a transaction, as the source of the claim was an auto accident, raising a tort claim and not a voluntary transaction. As such, the debt could not be considered to be incurred a "transaction" as defined by the FDCPA, and thus, the court's ruling against NACS and in favor of Crawford, should be reversed as a matter of law.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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