



PRESS RELEASE

**For Immediate Release**

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### **Commercial Law League of America Files Amicus Brief**

Rolling Meadows, IL 11/21/18 — The Commercial Law League of America has filed an amicus brief in support of the Respondent in *Obduskey v. McCarthy & Holthus, et al*, pending before the United States Supreme Court. The issue in *Obduskey* is whether the Fair Debt Collection Practices Act applies to a non-judicial foreclosure remedy under state law. The consumer alleged that McCarthy & Holthus continued to send notices with regard to the foreclosure after receiving a request to verify the debt. Both the District Court and the Tenth Circuit Court of Appeals held that a non-judicial procedure to foreclose a lien does not constitute debt collection under the FDCPA.

CLLA argued that the lower courts were correct. It focused on the prior Supreme Court decision in *BFP v. Resolution Trust Corporation* where the court held that a federal statute should not be interpreted to impinge upon an area of significant state concern unless the statute explicitly indicates an intent to displace state law. The *BFP* case found that the value received in a non-collusive foreclosure sale conducted in accordance with state law would be conclusively presumed to be reasonably equivalent value under 11 U.S.C. §548. In doing so, Justice Scalia noted the strong state interest in the security of title to real estate. The League argued that just as the Bankruptcy Code was interpreted so as not to impinge upon state law foreclosures, so should the FDCPA be interpreted to avoid conflict with state law non-judicial foreclosure remedies.

#### **About the CLLA**

Since 1895, the not-for-profit Commercial Law League of America has connected experienced attorneys with credit grantors, lending institutions and other commercial credit, bankruptcy and general finance industry members through networking, education, legislative advocacy and specialized legal services. The association's members include attorneys, collection agencies, judges, accountants, trustees, turnaround managers and other credit and finance experts. For more information on the CLLA, please visit [www.CLLA.org](http://www.CLLA.org).

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