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No. 16-\_\_\_\_\_

**In the Supreme Court of the United States**

**CHAILLE DUBOIS and KIMBERLY ADKINS,**

*Petitioners,*

-v-

**ATLAS ACQUISITIONS, LLC,**

*Respondent.*

**On Petition for Writ of Certiorari to the United  
States Court of Appeals for the Fourth Circuit**

**PETITION FOR WRIT OF CERTIORARI**

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## QUESTIONS PRESENTED

This Court recently granted certiorari in *Johnson v. Midland Funding, LLC*, No. 16-348, to determine questions surrounding the application of the Fair Debt Collection Practices Act to the filing of proofs of claim on time-barred debt in bankruptcy. This case presents the same issues and a parallel set of facts, with a greater focus on a question not explicitly included but predicate to a determination of *Johnson*. The questions presented are:

1. Whether the filing of a proof of claim is debt collection as defined by the Fair Debt Collection Practices Act.

2. Whether the Bankruptcy Code, which governs the filing of proofs of claim in bankruptcy, precludes the application of the Fair Debt Collection Practices Act to the filing of a proof of claim for an unextinguished time-barred debt.

3. Whether the filing of a proof of claim for an unextinguished time-barred debt in a bankruptcy proceeding violates the Fair Debt Collection Practices Act.

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## PETITION FOR WRIT OF CERTIORARI

This case presents an important, recurring question of federal law currently subject to a circuit split: does the FDCPA apply to proofs of claim on time-barred debt? Because the Court has already granted review to consider that question in *Johnson v. Midland Funding, LLC*, No. 16-348, 580 U.S. \_\_\_ (Oct. 17, 2016), this petition should be held pending *Johnson's* resolution. Moreover, because the *Johnson* case involves a question of estoppel not implicated in this case and because this case discusses in greater depth a question necessary to but not certified in *Johnson*, the Court may wish to consider granting this petition and consolidating it with *Johnson*.



## OPINIONS BELOW

The opinion of the court of appeals is reported at *Dubois v. Atlas Acquisitions LLC (In re Dubois)*, \_\_\_ F.3d \_\_\_, 2016 WL 4474156 (4th Cir. Aug. 25, 2016) (App.1a-28a). The order of the bankruptcy court granting respondent's motion to dismiss (App.31a-32a) is unreported.



## JURISDICTION

The judgment of the court of appeals was entered on August 25, 2016. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).



## STATUTORY PROVISIONS AND RULES INVOLVED

Relevant provisions of the Bankruptcy Code, 11 U.S.C. §§ 101-1532; the Fair Debt Collection Practices Act, 15 U.S.C. §§ 1692-1692p; and the Federal Rules of Bankruptcy Procedure are reproduced in the appendix to this petition (App.33a-41a).



## STATEMENT OF THE CASE

Respondent Atlas Acquisitions, LLC (“Atlas”) seeks out time-barred debt in the name of those in bankruptcy and files proofs of claim seeking payment. “Atlas plays the odds, representing itself as entitled to part of the debtors’ estates. If someone notices the claims and objects, as happened here, Atlas grins sheepishly—‘You caught me!’—and admits that the claim is meritless.” *Dubois v. Atlas Acquisitions LLC (In re Dubois)*, \_\_\_ F.3d \_\_\_, 2016 WL 4474156 (4th Cir. Aug. 25, 2016) (App.20a). This case represents one of the rare instances in which the bankruptcy system functioned as it should with respect to time-

barred debt. Petitioners' attorney identified and objected to the stale debt claims. More often, however, neither attorneys nor trustees tasked as gatekeepers of the bankruptcy system notice or object to the claims. Carrying the presumption of validity that attaches to all proofs of claim, these claims evade detection, and Atlas gets paid even when doing so harms the interests of the debtors, legitimate creditors, and the integrity of the system. Atlas makes money only when the bankruptcy system fails; its continued and lucrative operation provides tangible illustration of the shortfalls of the process in addressing such schemes.

Petitioners Chaille Dubois and Kimberly Adkins both had payday loan debt attributed to them. Neither petitioner scheduled the debt in their Chapter 13 bankruptcies. Ms. Dubois had forgotten about the debt; Ms. Adkins, a victim of identity theft, was unaware such debt even existed. Within days after they filed their bankruptcy petitions, however, Atlas, ever attentive to potential opportunity on bankruptcy dockets, filed proofs of claim in both cases.

Petitioners filed adversary proceedings objecting to the proofs of claim and bringing claims against Atlas for violation of the Fair Debt Collection Practices Act ("FDCPA") and the Maryland Consumer Debt Collection Act ("MCDCA") based on the theory that Atlas wrongfully, misleadingly, and unfairly sought payment on a debt that it knew was unenforceable.

Ruling on Atlas' Motions to Dismiss in a consolidated proceeding, Judge Thomas J. Catliota of the U.S. Bankruptcy Court for the District of Maryland adopted the reasoning of Judge Chasanow in *Covert*



*v. LVNV Funding, Inc.*, No. DKC 13-0698, 2013 U.S. Dist. LEXIS 175651 (D. Md. Dec. 9, 2013), to dismiss Petitioners' FDCPA and MCDCA claims. (App.31a-32a; CA JA 88-90.) Atlas consented to Petitioners' objections.

Judge Catliota certified the case for direct appeal to the Court of Appeals for the Fourth Circuit, which heard oral argument on May 10, 2016. The Fourth Circuit issued a split decision on August 25, 2016. Judge Henry Floyd, writing for the majority, reasoned that "the filing of a proof of claim is debt collection activity regulated by the FDCPA" but determined that, notwithstanding the flaws in the system relied upon by Atlas, action within the bankruptcy process represented the more appropriate remedy. (App.7a-9a) In dissent, Judge Albert Diaz argued that the FDCPA represents the proper supplement to an exploited bankruptcy system. (App.21a-25a) He further rejected the notion that the Bankruptcy Code implicitly repeals the FDCPA. (App.25a-28a)



## REASONS FOR GRANTING THE PETITION

Because this case presents the same questions on the merits as will be considered by the Court this Term in *Johnson v. Midland Funding, Inc.*, Petitioners respectfully request that the Court hold this case pending its decision in *Johnson*. Moreover, because this case does not implicate the potential estoppel issues in *Johnson* and because it more squarely addresses the proof of claim as debt collection issue necessary to a decision in *Johnson*, the Court may

wish to grant this petition, consolidate this case with *Johnson*, and order expedited briefing.

**I. QUESTIONS TWO AND THREE MIRROR THOSE GRANTED IN *JOHNSON V. MIDLAND FUNDING, LLC*, WITH PARALLEL FACTS**

Like *Johnson*, the instant Petition addresses the applicability of the FDCPA to proofs of claim on time-barred debt. Indeed, the facts are nearly identical: in both *Johnson* and here, Midland Funding, LLC and Atlas, respectively, filed proofs of claim on debt that was well beyond the statute of limitations. The respondent in *Johnson*, like petitioners, sought recourse under the FDCPA. In *Johnson*, the respondent filed in district court, while the petitioners here opted for an adversary proceeding in bankruptcy court.

Likewise, Questions Two and Three presented here are nearly identical to those granted in the *Johnson* petition. The only distinction is that petitioners here decline to concede the accuracy of the proofs of claim. That minor distinction, however, does not affect the applicability of the Court's decision where a proof of claim *is* accurate.

**II. UNLIKE *JOHNSON*, THIS CASE HAS NO POTENTIAL ESTOPPEL ISSUE**

This case raises the same issues on the merits as those presented in *Johnson*. However, the Fourth Circuit, in *Covert v. LVNV Funding, LLC*, determined *sua sponte* that “[a] finding for the Plaintiffs on [the FDCPA] would entail a holding that the Defendants’ proofs of claim are invalid, which would directly contradict the bankruptcy court’s plan confirmation

order approving those proofs of claim as legitimate.” *Covert v. LVNV Funding, LLC*, 779 F.3d 242, 247 (4th Cir. 2015). The *Covert* court noted that “confirmation of a bankruptcy plan is a final judgment on the merits” and that “Plaintiffs were not free to raise statutory objections after the court had entered its confirmation order when those objections were known or should have been known to them during the bankruptcy proceedings.” *Id.* at 246, 248.

In *Johnson*, though the debtor objected to the claim, it did so on the basis of insufficient documentation rather than on the basis of the statute of limitations. This case has no such potential estoppel issues: Petitioners objected to the proofs of claim on the basis of staleness as part of their adversary proceedings. Consolidation, therefore, would ensure that even if this Court finds that the respondent in *Johnson* is estopped, it has an appropriate vehicle to provide much-needed guidance to the lower courts on the application of the FDCPA to proof of claims.

### III. THIS CASE ALSO DIRECTLY ADDRESSES A PREDICATE QUESTION IN *JOHNSON*, WHICH COULD PERMIT THIS COURT TO BETTER ILLUMINATE THE CORRECT APPLICATION OF THE FDCPA

The Court may likewise wish to grant this petition and consolidate this case with *Johnson* because the Fourth Circuit focused its opinion on questions not raised in the *Johnson* petition but predicate to a decision on the merits. In *Johnson*, the Eleventh Circuit focused on the preclusive effect of the Bankruptcy Code on the FDCPA. The questions certified in *Johnson* address only preclusion of the FDCPA by the Bankruptcy Code and application of the FDCPA to the

proofs of claim on time-barred debt. *Johnson*, No. 16-348. In order to reach the applicability of the FDCPA to proofs of claim, however, the Court must determine whether the filing of a proof of claim amounts to debt collection. The Fourth Circuit opinion discusses this question at length, and it was the primary basis for the ruling of the Bankruptcy Court. (App.7a-9a); CA JA 88-90. Consolidation would thus provide a more robust basis for determining all issues involved in the *Johnson* case.



**CONCLUSION**

The petition for a writ of certiorari should be either held pending the outcome of or granted and consolidated with *Johnson v. Midland Funding, LLC*, No. 16-348.

Respectfully submitted,

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