

For Immediate Release

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**Tim Kolly** 312-698-6220 | [tkolly@dri.org](mailto:tkolly@dri.org)**DRI Files Amicus Brief With U.S. Supreme Court In *Bank of America v. City of Miami****Brief Maintains That Directness Between Plaintiffs Injury and Defendant's Action Is Necessary In Federal Causes of Action*

**CHICAGO – (September 15, 2016)**—DRI – The Voice of the Defense bar has filed an amicus brief supporting Bank of America's position in *Bank of America v. City of Miami*. The brief was filed by DRI's Center for Law and Public Policy.

The City of Miami brought separate Fair Housing Act suits against Bank of America and Wells Fargo in the Southern District of Florida. In each case, the local government is represented by plaintiffs' law firms on a contingency basis, not by its own city attorney's office.

The City alleged that the banks provided loans to minorities on less favorable terms than to non-minorities; that some of those loans defaulted because of those allegedly-discriminatory terms; that some of those defaults led to foreclosures; that some of those foreclosures led to decreased property values not only at the foreclosed property but at other nearby properties as well; and that those decreases in property values in turn led to decreased tax revenue (and increased municipal-service costs) for the city government. The City claims "hundreds of millions" of dollars in damages.

The banks each moved to dismiss arguing, among other things, that the City did not adequately allege that the banks proximately caused the City's injury. The district court agreed, and dismissed both cases. The City appealed, and the Eleventh Circuit reversed. In its *Bank of America* decision, the court held that proximate cause is satisfied so long as the plaintiff's injury could have been foreseen by the defendant. The Eleventh Circuit refused to apply the test for proximate cause the Supreme Court has applied to other federal statutes—like RICO, the Lanham Act, and the antitrust laws—which requires some degree of "directness" between the plaintiff's injury and the defendant's conduct. The Supreme Court granted certiorari on June 28, 2016, and consolidated the Bank of America and Wells Fargo cases.

The DRI brief asserts that to date, the Supreme Court has consistently held that the proximate cause requirement Congress is presumed to include in federal causes of action requires not only that the plaintiff's injury be foreseeable, but also that there be some degree of directness between a plaintiff's injury and defendant's conduct. As the Supreme Court has recognized, at a broad level "all consequences ... may be foreseen" and "[c]onditioning liability on foreseeability, therefore, is hardly a condition at all." *Consol. Rail Corp. v. Gottshall*, 512 U.S. 532, 553 (1994).

"As the district court recognized, it is exceedingly difficult to determine with any reasonable certainty what amount of lost tax revenue and resource expenditures were attributed to (alleged) unfair lending practices, given all of the other economic factors responsible for the City's losses," the brief states.

DRI brief author Matthew Nelson of Warner Norcross & Judd LLP in Grand Rapids, MI, is available for interview or for expert comment through DRI's Communications Office.

For the full text of the amicus brief, click [here](#).

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