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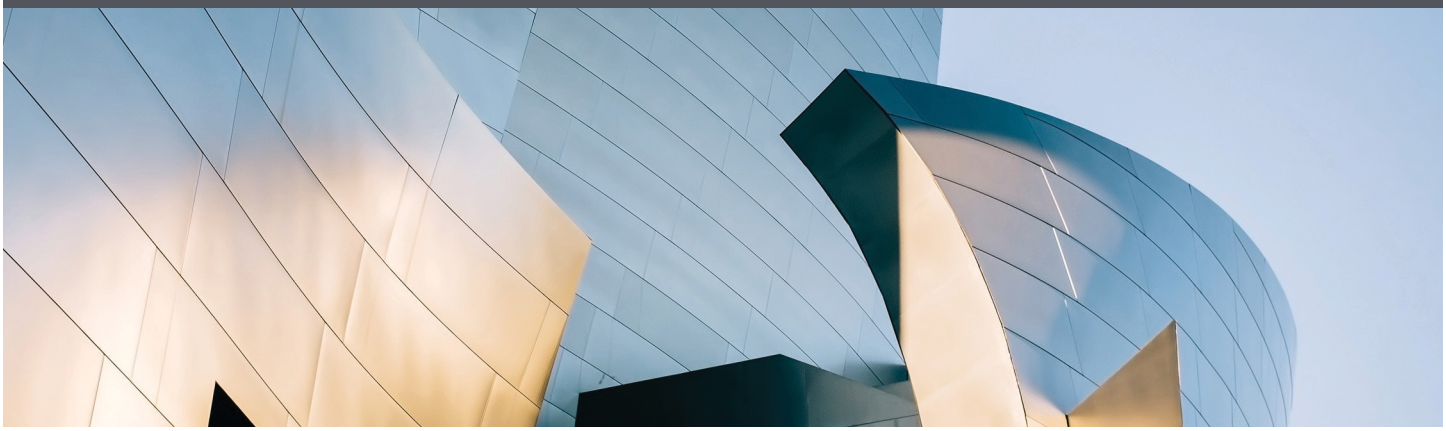

APRIL 26, 2021 • NO. 7

The Hunstein Effect – Examining the Eleventh Circuit's Ruling and What's Next for Debt Collectors and Their Third-Party Service Providers

The U.S. Court of Appeals for the Eleventh Circuit has delivered a novel and highly consequential interpretation of the Fair Debt Collection Practices Act that is potentially transformative for debt collectors and their third-party service providers.

On April 21, 2021, in *Hunstein v. Preferred Collection* and Management Services, Inc., – F.3d – (2021), the U.S. Court of Appeals for the Eleventh Circuit issued a decision on a case of first impression, finding that a debt collector's transmittal of a consumer's personal information to its letter vendor constituted a prohibited third-party communication "in connection with the collection of any debt" within the meaning of section 1692c(b) of the Fair Debt Collection Practices Act ("FDCPA"). As discussed below, this ruling has broad ranging ramifications for the accounts receivable management industry and will likely foster a new wave of litigation under the FDCPA.

By way of background, this lawsuit originated from unpaid bills for medical treatment at a hospital. The hospital assigned the unpaid bills to a debt collector that had contracted with a third-party vendor for printing and mailing its collection letters. The collector electronically transmitted to its vendor certain information about the plaintiff/debtor such as: (1) his status as a debtor, (2) the exact balance of his debt, (3) the entity to which he owed the debt, (4) that the debt concerned his son's medical treatment, and (5) his son's name. The vendor then used that information to generate and send a dunning letter to the debtor. The debtor received the dunning letter and then filed a lawsuit in the Middle District of Florida alleging violations of both the FDCPA and the Florida Consumer Collection Practices Act. The district court dismissed the lawsuit for failure to state a claim by concluding that the debtor had not sufficiently alleged that the collector's transmittal of information to the letter vendor was a communication "in connection with the collection of a debt." The debtor then appealed to the Eleventh Circuit.

Before addressing the merits of the claim, the Eleventh Circuit concluded that a violation of section 1692c(b) gives rise to a concrete injury under Article III of the Constitution, thus finding that the plaintiff had standing to bring this lawsuit. The Eleventh Circuit then turned its focus onto whether the alleged communication was "in connection with the collection of a debt" such that it violated section 1692c(b). Notably, the parties agreed that the collector's transmittal of information to the letter vendor constituted a "communication" within the meaning of the FDCPA. Other than referring to the parties' agreeability as "helpful," the decision does not provide insight into the context nor explicate the specific definition and application agreed upon. In conjunction with this agreed upon interpretation of "communication," the Eleventh Circuit

deployed a quiescent textual view of the section 1692c(b) phrase, "in connection with the collection of any debt" finding that the phrase "has a discernible ordinary meaning" that "must mean something more than a mere demand for payment." Consequently, because the defendant's transmittal of the plaintiff's personal debt-related information to a letter vendor constituted a communication "in connection with the collection of any debt" the Eleventh Circuit concluded that the plaintiff adequately stated a claim under section 1692c(b).

In its decision, the Eleventh Circuit acknowledged the gravity of its ruling and that it "runs the risk of upsetting the status quo in the debt-collection industry."

> *"We presume that, in the ordinary course of business, debt collectors share information about consumers not only with dunning vendors like Compumail, but also with other third-party entities. Our reading of § 1692c(b) may well require debt collectors (at least in the short term) to in-source many of the services that they had previously outsourced, potentially at great cost. We recognize, as well, that those costs may not purchase much in the way of "real" consumer privacy, as we doubt that the Compumails of the world routinely read, care about, or abuse the information that debt collectors transmit to them. Even so, our obligation is to interpret the law as written, whether or not we think the resulting consequences are particularly sensible or desirable."*

Notwithstanding its recognition that the results from this decision will not be "sensible" or "desirable" the Eleventh Circuit deferred to Congress as to whether section 1692c(b) should be amended.

Going forward, this case will likely lead to a significant increase in FDCPA litigation and cause debt collectors to reexamine their operations to minimize liability in light of this decision.

Along these lines, as an interpretative determination of first impression, this holding will likely have implications within the retroactive one-year limitation period for filing suit. What's more, although the decision is only precedential for the Eleventh Circuit, it may be used elsewhere as persuasive authority. Finally, it should be noted that this decision may apply to a broad range of third-party providers.

For questions about this ruling, defending copycat cases, or assistance in adapting to the consequences of this ruling, Blank Rome's Consumer Financial Services Litigation & Compliance Team is ready to assist. Also, please note that this decision remains within the Eleventh Circuit's timeline for a Petition for Rehearing En Banc for 21 days of the opinion filing date. Finally, there are interpretative regulatory interpretations, including from the Federal Trade Commission,[1] and analogous opinions[2] that may be helpful in reassessing compliance and distinguishing this highly consequential decision.

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1. Statements of General Policy or Interpretation Staff Commentary on the Fair Debt Collection Practices Act, 53 FR 50097-02 (Dec. 13, 1988).
2. *See Zortman v. J.C. Christensen & Assocs., Inc.,* 870 F. Supp. 2d 694, 707 (D. Minn. 2012); *Davis v. Phelan Hallinan & Diamond PC,* 687 F. App'x 140, 144 (3d Cir. 2017)