CARLTON FIELDS

More Is Not Merrier: Eleventh Circuit Sends Message to Debt Collectors Using Third-Party Vendors

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The Eleventh Circuit's decision in *Hunstein v. Preferred Collection & Management Services Inc.* has already changed the status quo in the debt collection industry, as the court itself predicted. Whether it will lead to any improvements in "real" consumer privacy is yet to be determined, but debt collectors must be mindful that their practices of using vendors to assist with collection efforts may expose them to more litigation.

Richard Hunstein received a debt collection letter concerning medical debt, which was printed by a third-party vendor, and he sued for violations of the Fair Debt Collection Practices Act (FDCPA), arguing that the debt collector's use of a third-party vendor violated the FDCPA's prohibition on communicating with third parties in connection with the collection of any debt.

While the district court dismissed Hunstein's complaint, the Eleventh Circuit ruled otherwise. In doing so, the Eleventh Circuit issued two important rulings that likely will have significant ramifications.

First, the Eleventh Circuit held that a plaintiff in such circumstances has Article III standing by virtue of having suffered an injury in fact. Given several recently published Eleventh Circuit decisions, including an en banc decision issued by the author of the *Hunstein* opinion, the decision ruling that there is Article III standing can be seen as a little bit of a surprise. Specifically, in the last two years, the Eleventh Circuit has found that plaintiffs do not automatically have Article III standing when they claim the FDCPA is violated by providing inaccurate information and issued an en banc decision taking a generally narrow view of Article III standing.

Here, however, the court focused on the tie between the specific statutory injury and the common law tort of defamation and essentially held that publishing information about somebody's debt to a third party was sufficiently analogous to the common law tort of defamation.

The other part of the decision — and the part that will upset the apple cart — is the portion of the decision that essentially finds that the outside vendors that a debt collector hires to perform the administrative functions related to the debt collection are covered by the statute. While the specific circumstances of the case only dealt with the company that printed the letters, one does not have to think too hard to imagine several other potential vendors covered by this setup.

One notable part of the decision is the court's explicit acknowledgment that any entity that is covered by the FDCPA may be at substantial risk of being sued in federal court in Florida, Alabama, or Georgia to the extent they use outside vendors for any part of the debt collection process. Entities covered by the statute that are subject to being sued in any of the three states in the Eleventh Circuit could also have risk even if they are not collecting debts there, as such an entity would be subject to personal jurisdiction in those states.

This interpretation may also impact the state law analogs to the FDCPA. In Florida, it's the Florida Consumer Collection Practices Act (FCCPA), and a critical difference between the federal FDCPA and the state FCCPA is while the FDCPA does not apply to a party collecting its own debt, the FCCPA does. If the interpretation of the FDCPA and sharing information with third parties as set forth in *Hunstein* is extended to the state FCCPA, the scope of the decision can be considerably greater.

Take, for instance, a medical practice that sends letters to its patients for overdue bills but does not use an outside debt collection company and instead simply gathers a list of files and hires an outside mailing company to print the letters, stuff the envelopes, and take them to the post office. That is a situation that will play out in the coming months.

Likewise, Alabama and Georgia have statutes under which debt collection claims are frequently brought — the Alabama Deceptive Trade Practices Act and the Georgia Fair Debt Collection Practices Act — so it will be critical to watch if there are any *Hunstein* implications for those types of cases.

Last, we note that *Hunstein* has already had its effect. In the last two weeks since the decision was issued, at least a dozen lawsuits have been filed under the statute.

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