

# ACA Playbook: What To Do If You Get Sued Under a *Hunstein* Theory

With *Hunstein* copycat cases cropping up at an alarming rate and variations on the theme emerging as the plaintiff's bar conducts its speculative penetration testing in state and federal courts across the nation, every agency must understand how to competently handle a *Hunstein* copycat case.

If the accounts receivable management industry works together to resist the spread of the misguided *Hunstein* analysis and raises a strategic defense wherever and whenever it's merited, then it should be possible for the industry to largely contain the opinion to the 11th Circuit—assuming that it survives the *en banc* review process, which itself will be an uphill climb. As always, ACA International is here to help you navigate those waters!

**To that end, we provide some guidance below on how agencies facing a *Hunstein* suit might effectively handle it. We hope this will serve as a useful playbook if you receive a suit, but remember: ACA is not your attorney and nothing in here should be construed as legal advice. Accordingly, if you find yourself facing a *Hunstein* claim, you need to discuss the specifics with your own legal counsel.**

1. **INSURANCE:** Speak with your insurance carrier to determine coverage. File a claim if you have coverage and work with your insurer to locate appropriate defense counsel. (See #3 below.)
2. **REPORTING:** Report to your creditor-clients as required, even if they have not been named in the lawsuit. Log the claim in your claim tracker and consider whether and how it affects your policies and procedures, then update your clients if you plan to implement changes.
3. **DEFENSE COUNSEL:** Quickly locate competent defense counsel. Look to retain an experienced attorney who specializes in FDCPA defense and has a record of success in this context. *If you're insured through Collectors Insurance Agency, you have the benefit of QBE's defense panel, a group of litigation defense attorneys that QBE has vetted for handling consumer claims. For more information, contact Collectors Insurance Agency at [collectorsinsurance@acainternational.org](mailto:collectorsinsurance@acainternational.org) or 952-926-6547.*
4. **BE STRATEGIC:** Immediately engage in strategic discussions with your defense counsel. These discussions should include an evaluation of whether to file an answer or other responsive pleading in the case (or, if facing a pre-suit demand, whether to settle before the plaintiff files suit), as well as a risk analysis that weighs the likelihood of success given the venue, jurisdiction, judge, facts, and other considerations. **While the success of any nationwide legal strategy would hinge on members' willingness to fiercely resist *Hunstein* claims and variations when they arise—as opposed to settling simply to avoid the fight—we believe that *not every case needs to be litigated*. We need to be strategic about when, where, and how we respond to these claims. Setting bad legal precedent in other circuits could be at least as damaging as feeding the plaintiff's bar with unwarranted settlements.** (Or, to quote Sun Tzu: “He will win who knows when to fight and when not to fight.”)
5. **CONSIDER IAF SUPPORT:** If your agency needs financial support to fight a claim when the time comes to do so, reach out to ACA's Industry Advancement Fund (IAF) for financial support by emailing [IAF@acainternational.org](mailto:IAF@acainternational.org). The IAF exists for exactly this reason, so don't be shy about reaching out to make an inquiry and seek guidance on submitting an application!
6. **NOTIFY ACA:** Please notify ACA of any *Hunstein* copycat lawsuits by emailing ACA Corporate Counsel Colin Winkler at [winkler@acainternational.org](mailto:winkler@acainternational.org) using the subject line: “*Hunstein* Copycat [Agency Name] [Jurisdiction].” *Note: This is not a substitute for contacting your own defense counsel; you must work with your own attorney to avoid missing any important deadlines*

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*that may be in play.*

7. **COLLABORATE:** We strongly encourage agencies and their counsel to reach out to Colin Winkler via email at [winkler@acainternational.org](mailto:winkler@acainternational.org) so he can connect you with Members Attorney Program attorneys who may be able to provide guidance (or legal advice if the member hires the attorney as defense counsel) based on what we're seeing around the country. **Again, ACA cannot provide legal advice, but we can help you and your defense counsel make sound strategic decisions by providing information about claims, defenses and outcomes that we're seeing in other courts and jurisdictions.**