

Consumer Harm Resulting From the 11th Circuit's *Hunstein* Case

ACA International, the largest trade association for the accounts receivable management industry, represents credit grantors, third-party collection agencies, asset buyers, attorneys and vendor affiliates.

What Happened in the 11th Circuit's *Hunstein* Case?

- On April 21, 2021, a three-judge panel in the U.S. Court of Appeals for the 11th Circuit released an opinion in *Hunstein v. Preferred Collection and Management Services Inc.*
- The *Hunstein* opinion was in response to the use of a letter vendor by a collection agency, a common practice that even the Consumer Financial Protection Bureau has acknowledged in the debt collection rule it finalized last year.
- The court held that the mere transmission of information to a letter vendor to facilitate the automated processing and mailing of a letter to a consumer was a “communication” with the letter vendor under the Fair Debt Collection Practices Act, even though not a single person at the letter vendor ever saw the information that had been processed through automation.
- The *Hunstein* opinion, if it stands, will undermine many important compliance protections built into using vendors and also have an adverse impact when limiting consumer options.

Do Other Industries Use Letter Vendors?

- Yes, letter vendors, and all types of vendors, are commonly used throughout the financial services industry and in many other industries. This opinion, if left unchecked, could have far-reaching consequences for the entire financial services industry and the consumers that rely on it for products and services.

Will Consumers Be Harmed By This Decision?

- Yes, letter vendors are an important part of informing consumers about their options and are an important part of ensuring compliance with consumer protection laws and regulations.
- If the accounts receivable management industry and creditors are forced to curtail sending letters, they may have to turn to litigation more quickly. This takes the control out of the hands of consumers. Litigation is typically the last resort in the collections process, and sending a letter is often one of the first attempts to open the lines of communication. Similarly, curtailing the use of letters will likely force creditors to turn to credit reporting more quickly, rather than trying to engage in an early dialogue with consumers.

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- Consumer communication preferences were studied for many years by the CFPB. Those preferences, such as the preference to receive communications by email, are reflected in the CFPB's debt collection rule. This decision does not account for consumer preferences.
- Other industries are also impacted by this opinion. For example, in the mortgage industry, mortgage servicers will be stymied from communicating with loss mitigation vendors. This will make it more difficult for consumers to avoid foreclosure and may increase the number of bankruptcies.
- This opinion could also result in consumer harm related to consumers not understanding disclosures because debt collectors might be forced to move to an oral disclosure of the debt in accordance with existing statutory and regulatory provisions. They also may have to start making calls sooner in the process, leading to an increase in the total number of calls.
- Using a letter allows many agencies to wait for the consumer to attempt to contact the agency in the consumer's preferred communication channel (letters invite a consumer to go to portal, email, text, or call).

400+

Number of copycat lawsuits filed in the first month after the *Hunstein* opinion. These suits are depleting resources from U.S. small businesses and creditors.

What Can Congress Do?

- The financial services industry as well as consumers are all being negatively and unnecessarily impacted by this opinion. Less than a month after the *Hunstein* opinion, over 400 copycat lawsuits have been filed, even though there is no actual harm to consumers being alleged. Instead, the resources of small businesses and creditors are being depleted fighting needless and pointless copycat lawsuits while notices going to consumers informing them of their rights decline precisely because automated lettering using vendors has been called into question—a true negative for consumers.
- The court invited Congress to provide additional clarity on this issue. We disagree that there is ambiguity about whether transmitting information to a letter vendor is an impermissible act. In fact, we think it is clear that it is not. However, since the 11th Circuit has muddied the waters and thrown consumers and the financial services industry into a state of chaos, **it is important for Congress to act to provide clarity on this issue.**