DREHER TOMKIES LLP ALERT

FOR CLIENTS AND FRIENDS OF DREHER TOMKIES LLP

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NEW 11TH CIRCUIT DECISION PLACES DEBT INFORMATION SHARING WITH COLLECTION VENDORS INTO QUESTION

The U.S. Court of Appeals for the Eleventh Circuit has held that sharing specific information regarding a consumer's debt with a mail vendor is a "communication in connection with the collection of any debt" and that a debt collector could violate the federal Fair Debt Collection Practices Act's ("FDCPA") prohibition on third party communications by engaging in such information sharing. *Hunstein v. Preferred Collection & Management Services, Inc.*, No. 19-14434 (11th Cir. Apr. 21, 2021). This decision has significant implications for third-party debt collectors and creditors that share debt information with third-party vendors to perform debt collection.

In *Hunstein*, a hospital referred a medical debt to a third-party collection agency. The collection agency transmitted data concerning the consumer's debt electronically to a mail vendor that used the data to create, print and mail a dunning letter to the consumer. Shared data included the consumer's name, his outstanding balance, the fact that the debt related to medical treatment for the consumer's son and his son's name. In its decision, the 11th Circuit analyzed whether the consumer had Article III standing as well as the merits of the alleged violation of Section 1692c(b) (third party communication prohibition).

Regarding the merits of the claim, the court's analysis focused on whether the transmission of specific debt information to a third-party mail vendor was a communication "in connection with the collection of a debt" under Section 1692c(b). The parties agreed that the information sharing was a "communication" under the FDCPA.

The 11th Circuit concluded that information sharing with a third party to prepare a dunning letter was a communication "in connection with the collection of a debt." The court's decision was based on the plain language meaning of the phrase "in connection with," which the court interpreted to mean "concerning," "with reference to" or bore a "relationship or association" to the collection of the consumer's debt. The court rejected the collection agency's argument and prior district court decisions that "in connection with the collection of a debt" requires a communication to have an express or implicit demand for payment. The 11th Circuit said that such a demand-for-payment requirement defies the language and structure of Section 1692b(c) rendering the exceptions to the third-party communication prohibition superfluous because the types of excepted communication do not involve demands for payment like a communication to a creditor.

In responding to other arguments proffered by the collection agency, the court acknowledged that its interpretation of Section 1692c(b) runs the risk of upsetting the status quo in the debt collection industry and that debt collectors share information about consumers with third-party vendors other than mail vendors. The court continued that its reading of Section 1692c(b) could require debt collectors to bring services that they had previously outsourced in-house at greater cost to the debt collector. The court also recognized that the cost of taking services in-house may not do much in the way of furthering "real" consumer privacy. But the court said its job is to interpret the law as written, whether or not the court thinks the resulting consequences are particularly sensible or desirable. The court ended by saying that if Congress disagrees with the court's interpretation of Section 1692c(b), then Congress may act.

On the point of standing, the 11th Circuit held that Section 1692c(b) involves individual privacy rights and bears a close relationship to the long-recognized common law tort of invasion of privacy. Thus, a violation of Section 1692c(b) constituted a concrete injury and gave the consumer standing to sue.

The *Hunstein* decision has caught the attention of industry and the plaintiff's bar. Less than a day after the 11th Circuit's *Hunstein* decision, a class action lawsuit has been filed in New York federal court accusing a debt collector of violating Section 1692c(b) and Section 1692f of the FDCPA by transmitting personal information to a letter vendor to send collection letters. *See Colamarino v. Balanced Healthcare Receivables,* No. 21-02214 (E.D.N.Y. Apr. 21, 2021).

The *Hunstein* decision has implications for creditors as well as debt collectors. Some state debt collection laws applicable to creditors could incorporate the FDCPA by reference or have prohibitions on third party communications substantially similar to the FDCPA. Many aspects of collections involve the transfer of debt-related information between creditors, debt collectors and other vendors.

We anticipate challenges to the *Hunstein* decision. In the meantime, we are available to discuss strategies to manage the legal risks created by the 11th Circuit's *Hunstein* decision. ❑

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