



ELEVENTH CIRCUIT TO REHEAR HUNSTEIN CASE

Yesterday, the U.S. Court of Appeals for the Eleventh Circuit issued an order on its own authority to rehear *Hunstein v. Preferred Collection and Management Services, Inc.* before the entire court. The debt collector was preparing to request a rehearing but before they could, one judge on the Eleventh Circuit requested to poll the other judges and a majority of the active judges voted for rehearing. The order expressly vacated the previous ruling issued by a panel of the Eleventh Circuit, meaning that the opinion is no longer binding precedent in the Eleventh Circuit.

The *Hunstein* decision was set to change the debt collection industry when a panel of the Eleventh Circuit held 2-1 in April that transmitting data to a mail vendor to send collection letters to consumers is an unauthorized third-party disclosure in violation of the Fair Debt Collection Practices Act ("FDCPA"). Since April, many debtors filed copycat lawsuits with the same allegation, while debt collectors waited to see if the Eleventh Circuit would grant rehearing. After the *Hunstein* decision was released, the Supreme Court issued a ruling in *TransUnion v. Ramirez* to require actual harm to the plaintiff more than a bare procedural violation for a plaintiff to be able to sue.

The next step will be for the Eleventh Circuit to state the specific issues on which it requests briefing and establish the timing for rehearing before the full panel. The Eleventh Circuit could consider a procedural issue of standing raised in *TransUnion* as applied to the FDCPA, the substantive issue about whether a mail vendor is a third party disclosure under the FDCPA, or both. We will provide more updates as events unfold in the Eleventh Circuit. □

✧ *Mike Tomkies and Ben Hurford*

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