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Locke Lord QuickStudy: A Stunning Opinion on “Dunning” Letters

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Last Wednesday the United States Court of Appeals for the Eleventh Circuit released a landmark decision which could have a profound impact upon a number of industries. In *Hunstein v. Preferred Collection & Mgmt. Services, Inc.*, 19-14434, 2021 WL 1556069 (11th Cir. Apr. 21, 2021), the Court reviewed a debtor’s Article III standing as well as a debt collector’s liability under 15 U.S.C. §1692c(b) for communications with a third party. Of particular significance is the Court’s holding that the debt collector’s transmission of a debtor’s information to a third-party vendor who created and mailed “dunning” letters – a notice to a debtor of an overdue payment – was a violation of 15 U.S.C. §1692c(b).

The transmitted information at issue contained specific details about the purported debt, including the consumer’s name, the outstanding account balance, the source of the debt, and the consumer’s status as a debtor. This information was transferred so that the vendor could create, print, and mail the dunning letter to the purported debtor in the course of the vendor’s relationship with the creditor. Despite the fact that the information was transmitted on behalf of the debt collector and not the third-party vendor, the Court found this communication was a violation of the Statute. The Court did so even while understanding that the interpretation “runs the risk of upsetting the status quo in the debt-collection industry.” *Hunstein* at *8.

Indeed, the Court was well aware its reading of the statute “may well require debt collectors (at least in the short term) to in-source many services that they had previously outsourced, potentially at great cost.” *Id.*

The Court ultimately realized its obligation is to “interpret the law as written, whether or not we think the resulting consequences of that reading are particularly sensible or desirable.” *Id.*

The Court did not address to what extent a third party would have sufficient connection to the collection of a debt but did reason the statutory language was sufficiently broad to encompass the communication at issue. Astute general counsel and litigators in any field where a consumer debt is collected with the involvement of a third party vendor will rightly recognize the legitimacy of concern.

It is anticipated that review of the decision, whether via rehearing or appeal, is likely to be sought, but until that time debt collectors and their counsel should be aware of the potential seismic impact of this decision and prepare accordingly.

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