



L-R: Cindy Salvo of The Salvo Law Firm, Jibrael Hindi of The Law Offices of Jibrael S. Hindi, John Lynch of Troutman Pepper Hamilton Sanders, and Richard Perr of Kaufman Dolowich Voluck. Courtesy photos

NEWS

'Copycat Attorneys Come Out': 11th Circuit Ruling Prompts Plaintiffs to Launch New Attack on Debt Collectors

"In our world, once a bad opinion comes out, the copycat attorneys come out nationally," said John Lynch of Troutman Pepper Hamilton Sanders in Virginia Beach, Virginia, who represents defendants in Fair Debt Collection Practices Act suits.

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Financial Services and Banking

[Charles Toutant](#) ↗

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What You Need to Know

- Collection agencies are facing suits accusing them of Fair Debt Collections Practices Act violations when they send printing jobs to outside vendors.
- A federal appeals court ruled in April that a plaintiff had standing to bring a claim that sending debtor information to a printing company violates the act's ban on third-party disclosure.
- Defense lawyers say a recent U.S. Supreme Court ruling hinted that the justices would find such claims are not actionable.

A novel ruling from a federal appeals court has prompted a nationwide flood of suits against debt collectors over their use of outside vendors to print and mail letters to consumers.

The barrage of suits against collection agencies began in April, when the U.S. Court of Appeals for the Eleventh Circuit issued its ruling in *Hunstein v. Preferred Collection and Management Services*. Since then, lawyers for plaintiffs across the nation have alleged in suits that a debtor's privacy is violated when debt collectors outsource printing of correspondence.

In *Hunstein*, the court said the plaintiff had standing to bring a claim that the credit agency's sharing of debtor information with a printing company violates the Fair Debt Collection Practices Act's ban on third-party disclosure.

The defendant is seeking en banc review of the Eleventh Circuit decision.

'The Industry Went Crazy'

No other courts of appeals have addressed the issues from *Hunstein*, and district courts have gone in both directions.

The ruling and resulting litigation have caused much anxiety among debt collectors, said Cindy Salvo, a West Caldwell, New Jersey, lawyer who represents defendants in FDCPA suits.

"The industry went crazy. Everyone said, 'Oh my god, what do we do now?'" Then people started calming down a little. It's the Eleventh Circuit. It's not binding in other places. No mandate has been issued. The whole collection industry is sitting back and saying, 'Let's see what happens,'" Salvo said.

Suits following the lead of *Hunstein* are numerous, because it's no secret that nearly all collection agencies contract with outside companies to print and mail their letters, said John Lynch of Troutman Pepper Hamilton Sanders in Virginia Beach, Virginia, another lawyer representing defendants in FDCPA suits.

"In our world, once a bad opinion comes out, the copycat attorneys come out nationally," Lynch said.

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Plaintiffs lawyers "are taking a shot at it, but I doubt it's going to be successful," Lynch said of the litigation. "Some of them may be in it to get

some sort of nuisance settlement."

But Jibrael Hindi, a Fort Lauderdale, Florida, lawyer who said he is bringing "dozens" of suits in Florida over the use of printing vendors by collection agencies, said he feels obligated to file those cases.

"I think it would be imprudent not to bring *Hunstein*-violation claims on behalf of my clients that have these types of claims, when the 11th Circuit has clearly stated that such conduct is in violation of the law," Hindi said.

The Eleventh Circuit panel, Hindi noted, acknowledged that its ruling "runs the risk of upsetting the status quo in the debt-collection industry." He cited a section of the ruling acknowledging that the ruling might require debt collectors to in-source services they previously outsourced, which could add to their costs.

In that section, the court said that the additional costs "may not purchase much in the way of 'real' consumer privacy," since printing contractors are unlikely to take note of the information debt collectors transmit to them. "Even so, our obligation is to interpret the law as written, whether or not we think the resulting consequences are particularly sensible or desirable," the panel said.

'Do you want to put a target on your back?'

The *Hunstein* ruling may be impractical for collection agencies to put into practice, but in Florida and the rest of the Eleventh Circuit, “it’s still the law of the land,” Hindi said.

Salvo, the New Jersey attorney, said some defendants are opting to settle the *Hunstein* suits, while others are planning to fight them.

“There are two schools of thought. To settle is always cheaper than to fight. But do you want to put a target on your back and have people know this agency settled?” Salvo said.

Salvo said the *Hunstein* ruling is unlikely to be adopted by other circuit courts. “It’s too crazy,” she said.

Richard Perr of Kaufman Dolowich Voluck in Philadelphia, who represents defendant Preferred Collection and Management Services in the 11th Circuit case, likewise thinks other courts hearing suits over outsourcing of printing by collection agencies will not follow the 11th Circuit.

Perr cited a [July 23 ruling from U.S. District Judge Gary Brown](#) of the Eastern District of New York, dismissing six FDCPA suits that termed the outside printing of letters an unlawful disclosure. The suits failed to sufficiently allege a concrete and particularized injury to satisfy Article III standing, Brown ruled.

And Perr also pointed to the U.S. Supreme Court’s [June 25 decision in *TransUnion v. Ramirez*](#), which concerned alleged violations of the Fair Credit Reporting Act. A footnote in that decision said sending information to a printing vendor was not an actionable publication for defamation purposes.

“I tend to think that after the Supreme Court itself, in *Ramirez*, questioned the standing of a claim based on someone providing information to a letter vendor, it would seem hard to think that too many courts would not stay in their lane and listen to what is a strong indicator of what the Supreme Court thinks on this issue,” Perr said.

Attorney: More than 1,000 cases

Perr said the sheer volume of letters that collection agencies send to debtors dictate the need to outsource printing.

Perr said another spurt of FDCPA suits came after a 2014 ruling from the U.S. Court of Appeals for the Third Circuit, in *Douglas v. Convergent Outsourcing*, that a mailing allowing a consumer’s account number to be viewed through the transparent address window on an envelope constitutes a violation.

“That also was the subject of multiple copycat decisions across the country. Everywhere else, [the cause of action] was rejected but the Third Circuit stuck with it. What we’re seeing now is something similar in the Eleventh Circuit,” Perr said.

Manuel Newburger, an attorney with Barron & Newburger in Austin, Texas, said he is aware of more than 1,000 cases focusing on outsourcing of printing by collection agencies. ACA International, a trade group for debt collectors, said it was tracking almost 750 of the cases.

Newburger said he knows some plaintiff-side firms that litigate FDCPA claims but have chosen not to bring *Hunstein* claims. He said vendors who print and mail letters have procedures in place to protect the privacy of data.

Newburger said, “Vendors provide a measure of compliance that is harder for collectors to achieve internally.”

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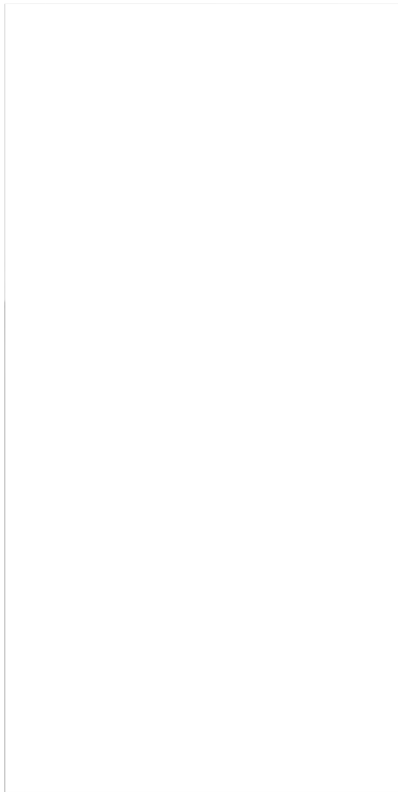
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