For FDCPA Litigators, New Lessons on Standing

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The doctrine of standing—determining who is a proper plaintiff to bring a particular lawsuit—seems straightforward. Most lawyers are familiar with the multi-pronged test flowing from the Supreme Court's 1992 decision in *Lujan v. Defenders of Wildlife*: To have standing, a plaintiff must demonstrate an injury-in-fact, caused by the alleged wrongdoing, and capable of redress by the court.

But recent court decisions underscore the complexity of standing in the context of the Fair Debt Collection Practices Act (FDCPA). Whether you represent FDCPA plaintiffs or defendants, the cases summarized below provide new insight on how standing issues may affect your case.

- The Seventh Circuit has been active in dismissing FDCPA claims for lack of standing. Most recently, in *Pennell v. Global Trust Mgmt., LLC*, No. 20-1524, 2021 WL 925494, *3 (7th Cir. Mar. 11, 2021), the court concluded that the plaintiff's claims of "stress and confusion" from an allegedly wrongful collection letter lacked sufficient concreteness to meet the injury-in-fact requirement. The *Pennell* decision is the latest in a line of cases in which the Seventh Circuit has taken an active role in scrutinizing FDCPA standing questions under the Supreme Court's *Spokeo* standard. *See, e.g.*, *Casillas v. Madison Ave. Assocs., Inc.*, 926 F.3d 329, 331 (7th Cir. 2019); *Larkin v. Fin. Sys. of Green Bay, Inc.*, 982 F.3d 1060, 1063 (7th Cir. 2020).
- The D.C. Circuit held that a consumer's confusion and other "informational" injuries, without any allegation by the plaintiff that he relied on misstatements in dunning letters to his detriment, did not rise to the level of a concrete and particularized injury for Article III purposes. *See Frank v. Autovest, LLC*, 961 F.3d 1185, 1188 (D.C. Cir. 2020).
- Building on the D.C. Circuit's *Autovest* decision, and the Seventh Circuit decisions, the Eleventh Circuit recently dismissed a case on standing grounds where a plaintiff alleged only informational injuries that created a "risk of being defrauded" that never materialized. *See Trichell v. Midland Credit Mgmt., Inc.*, 964 F.3d 990, 994 (11th Cir. 2020).

On the whole, these recent decisions demonstrate a new willingness by courts to strictly enforce the Supreme Court's *Spokeo* edict that statutory harms must be tangible to meet Article III standing requirements.

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