No. 14-370

In The
Supreme Court of the United States

MED-1 SOLUTIONS, LLC,

Petitioner,

v.

MARK SUESZ,

Respondent.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Seventh Circuit

RESPONDENT'S BRIEF IN OPPOSITION

DANIEL A. EDELMAN
Counsel of Record
CATHLEEN M. COMBS
JAMES O. LATTURNER
MICHELLE R. TEGGELAAR
EDELMAN, COMBS, LATTURNER
& GOODWIN, LLC
20 S. Clark Street, Suite 1500
Chicago, IL 60603
(312) 739-4200
dedelman@edcombs.com

Attorneys for Respondent Mark Suesz

October 2014

COCKLE LEGAL BRIEFS (800) 225-6964
WWW.COCKLELEGALBRIEFS.COM

TABLE OF CONTENTS

TABLE OF AUTHORITIES

TABLE OF AUTHORITIES – Continued

Page

OTHER AUTHORITIES

INTRODUCTION

Under the Fair Debt Collection Practices Act ("FDCPA"), a debt collector may bring an action against a consumer "in the judicial district or similar legal entity" in which the consumer signed the contract sued on or in which the consumer resides. 15 U.S.C. §1692i. This venue limitation is important because the location of the courthouse in which a consumer is sued can impact the consumer's ability to participate in and defend himself against the lawsuit. In this case, the debt collector, petitioner Med-1 Solutions LLC, sued in small claims court for Pike Township, in the northwest corner of Marion County, Indiana, when respondent Mark Suesz signed a contract in Lawrence Township, in the northeast corner of Marion County, and resided in a different county.

The question in this case is whether Med-1 violated the FDCPA by suing in the wrong judicial district. More specifically, the issue is the application of 15 U.S.C. §1692i where a state maintains both (i) countywide tribunals and (ii) municipal courts or other courts which handle cases (generally of lesser amount) on a more limited geographic scope ("limited courts").

Because the lower courts agree on the proper reading of §1692i and the decision below is correct, the question does not warrant this Court's review. There is no conflict among the Circuits or other reason warranting review by this Court, nor does the

Seventh Circuit's *en banc* decision intrude on the ability of state and local authorities to provide courts as needed.

BACKGROUND

Med-1 sued Suesz to collect a hospital bill. It did not sue in the small claims court for Lawrence Township, located in the northeast corner of Marion County, where the hospital was located and Suesz signed admission forms. It did not sue where Suesz resided, in Hamilton County, which is the county immediately to the north of Marion County. Instead, it sued him in the small claims court in Pike Township, which is in the northwest corner of Marion County.

Marion County occupies 400 square miles and contains just under 1 million people. It is square and has nine townships, laid out in three rows of three:

Each Township had its own small claims court, authorized to hear cases up to $6,000. The courts were created by the Township authorities and were funded by the Townships. Each court had one judge, elected by persons residing in the Township. All fee income generated by the court was paid to the Township.

Consumers had the absolute right to have a collection case heard in the Township Court for the township in which they resided or the transaction arose – if they understood their rights, appeared and filed a motion within 10 days of service. This system of "preferred venue" is similar to that applicable to

larger cases on a statewide basis – a case may be filed in any county in the State of Indiana, with the defendant having a right to move the case to the "preferred venue," being the county with a nexus with the defendant or the facts. Marion County is the only Indiana county which has limited courts based on townships – presumably because Marion County and the City of Indianapolis have a unique, unitary government – but there are scores of limited city and town courts throughout the state.

Med-1 regularly filed collection cases in Pike Township, regardless of where contracts were signed or the consumers resided. This presents a serious logistical problem, particularly for persons who are dependent on public transportation, because the transportation network in Marion County is radial in pattern and intended to bring people from outlying areas downtown and vice versa. As pointed out in a report by the Indiana court system concerning abuses in the small claims courts (John G. Baker & Betty Barteau, Marion County Small Claims Courts Task Force, Report on the Marion County Small Claims Courts (2012), *available at* www.in.gov/judiciary/3844.htm. ["Report"] at ¶¶54-57), getting across Marion County by public transportation is not easy.

In addition, also as noted in the report, as well as a later report by a legal services attorney (The Poplicola Report on Marion County Small Claims Courts, *available at* http://media.ibj.com/Lawyer/websites/opinions/index.php?pdf=2013/august/poplicola.pdf), debt collectors filed cases in the Township where they felt

the judge was most likely to favor their interests. While the intent of creating the Township Courts was to create a convenient forum for the public, debt collectors perverted the system to abuse debtors. Consumers would, out of ignorance or because they had to physically appear in the inconvenient court to exercise their rights, not file a motion to transfer the case to the "preferred" court. The result was that judges who were most favorably disposed toward debt collectors got all of the judicial business, and those who protected consumers' rights found their dockets dwindling to nothing. (Report, ¶¶59-61). Among the manner in which the favored township judges assisted debt collectors was by allowing debt collectors to take over rooms at the courthouse and conduct settlement conferences with unrepresented consumers, conducting admit/deny hearings without the judge present, and have settlement agreements and default judgments approved and entered by the clerk without judicial approval. (Report, ¶¶28-41).

PROCEEDINGS BELOW

Section 1692i provides:

§1692i. Legal actions by debt collectors

(a) Venue

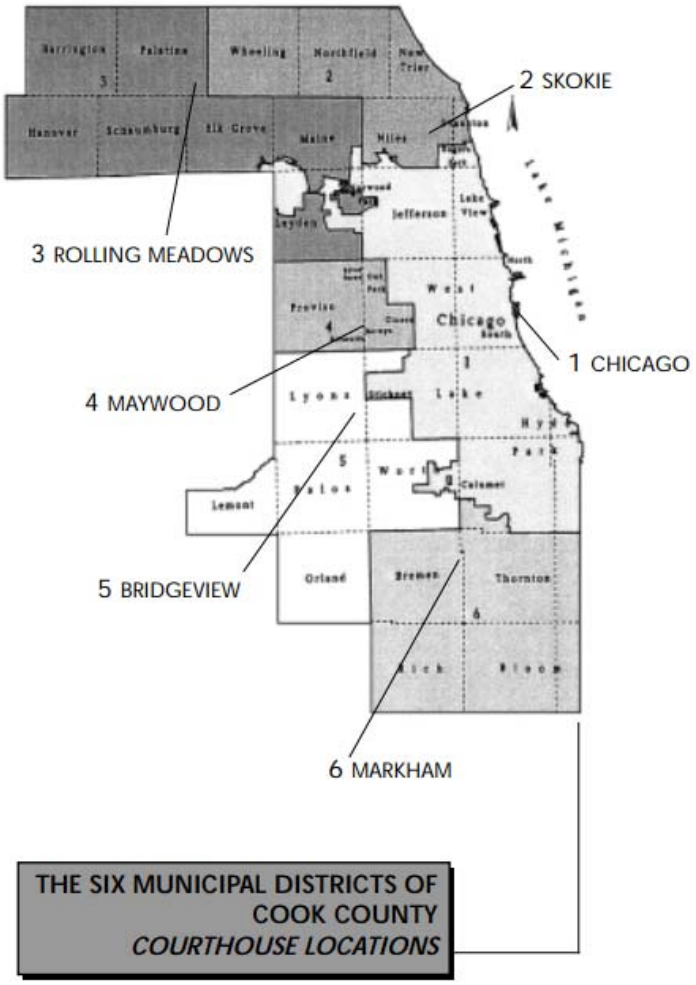
Any debt collector who brings any legal action on a debt against any consumer shall –

(1) in the case of an action to enforce an interest in real property securing the

> consumer's obligation, bring such action only in a judicial district or similar legal entity in which such real property is located; or
>
> (2) in the case of an action not described in paragraph (1), bring such action only in the judicial district or similar legal entity –
>
> (A) in which such consumer signed the contract sued upon; or
>
> (B) in which such consumer resides at the commencement of the action.
>
> (b) Authorization of actions
>
> Nothing in this subchapter shall be construed to authorize the bringing of legal actions by debt collectors.

Suesz filed suit, alleging a §1692i violation. The district court dismissed the action, relying on the Seventh Circuit decision in *Newsom v. Friedman*, 76 F.3d 813 (7th Cir. 1996).

Newsom involved Cook County, Illinois. In Cook County, Illinois, cases involving less than $30,000 are handled by the Municipal Department of the Circuit Court of Cook County. The Municipal Department is divided into six Districts, with a courthouse in the center of each District. The First District is supposed to handle cases arising from the City of Chicago. The Second through Fifth Districts cover specified townships and areas in suburban Cook County:



As in Marion County, the public transportation network in Cook County is geared toward bringing people into downtown Chicago. Cook County covers 1,635 square miles, and the distance from the northwest extremity to the southern extremity is over 60 miles.

Debt collectors abused the system by, e.g., filing cases in the Second District, in Skokie, or the Third District, in Rolling Meadows, against persons residing in the Sixth District, a relatively poor area in Southern Cook County, even though there was a courthouse in Markham, Illinois to handle that area. Getting from one end of Cook County to the other during rush hour using public transportation can take several hours, with multiple transfers.

The *Newsom* court nevertheless decided that since the six districts were not created by statute but by administrative order of the Circuit Court itself, they should be ignored in determining what the "judicial district or similar legal entity" was.

A divided panel affirmed the district court decision in *Suesz*, in reliance on *Newsom.* There was a strong dissent by Judge Posner, asserting that *Newsom* was wrongly decided. Suesz petitioned for rehearing *en banc,* which was granted.

The *en banc* Court reversed *Newsom* and held that "the correct interpretation of 'judicial district or similar legal entity' in §1692i is the smallest geographic area that is relevant for determining venue in the court system in which the case is filed," citing *Hess v. Cohen & Slamowitz LLP*, 637 F.3d 117, 123-24 (2d Cir. 2011). *Suesz v. Med-1 Solutions, LLC*, 757 F.3d 636, 638 (7th Cir. 2014) (*en banc*). Therefore, debt collectors electing to file cases in the Township Small Claims Courts had to file in the Township

where the consumer signed the contract on which the suit was based, or resided when the lawsuit was filed.

The Seventh Circuit noted that many counties, including Cook, are quite large and that limited courts were created to prevent inconvenience in such cases. The Seventh Circuit cited the example of San Bernardino County, California, which also has a system of limited courts with assigned geographic areas, and has 20,105 square miles. (757 F.3d at 646) This is larger than the entire states of Connecticut, Delaware, Maryland, Massachusetts, New Hampshire, New Jersey, Rhode Island, and Vermont – all of which are divided into judicial districts.

The Seventh Circuit expressly stated that "Our approach is similar to that of the Second Circuit" in *Hess v. Cohen & Slamowitz LLP*, 637 F.3d 117, 123-24 (2d Cir. 2011). (757 F.3d at 646) *Hess* involved the City Court of Syracuse, New York, which was supposed to handle cases arising from Syracuse and its immediate suburbs. Syracuse is located in Onondaga County, New York, and there were some 20 other town and village courts in Onondaga County that were supposed to handle small cases arising in other towns and villages, as well as a trial court of general jurisdiction – the New York Supreme Court – handling larger cases for all of Onondaga County. Onondaga County covers 806 square miles. Debt collectors would file suit in the City Court against persons residing anywhere in the County. The consumer had the right to be sued in the "correct" court, but a judgment entered by the City Court against someone

not within its assigned geographic territory was valid if no objection was timely made. The Second Circuit held that filing suit against consumers who did not reside in or sign a contract in Syracuse or its immediate suburbs violated §1692i.

> Where, as here, a state law outlines the required nexus between the residence or activities of the consumer and the location of the court, we hold that such a law sets forth the appropriate "judicial district" for purposes of the FDCPA with respect to debt collection actions brought in that court, regardless of whether that provision is styled as jurisdictional or otherwise. (637 F.3d at 123-24)

REASONS FOR DENYING THE PETITION

A. There Is No Split Between the Circuits

The lower courts are now in agreement that when a debt collector chooses to file in limited courts, §1692i applies to the geographical areas assigned to the limited courts. In addition to the decision below, *Suesz v. Med-1 Solutions, LLC*, 757 F.3d 636, 638 (7th Cir. 2014) (*en banc*), and *Hess v. Cohen & Slamowitz LLP*, 637 F.3d 117, 123-24 (2d Cir. 2011), the Fifth Circuit so held in *Addison v. Braud*, 105 F.3d 223 (5th Cir. 1997).

Three district court decisions are in agreement. *Nichols v. Byrd*, 435 F. Supp. 2d 1101, 1108 (D. Nev. 2006); *Harrington v. CACV of Colo., LLC*, 508 F. Supp. 2d 128, 133-34 (D. Mass. 2007); *Pabon v.*

Recko, No. 3:00cv380, 2001 U.S. Dist. LEXIS 26418, *15-16 (D. Conn. Apr. 25, 2001), *recommended ruling adopted*, ECF No. 110 (D. Conn. May 22, 2001). There are no contrary decisions.

Contrary to Med-1's contention, there is no real difference between the formulations of the Second and Seventh Circuits. Both the Seventh and Second Circuits held that consumers cannot be sued in a limited court unless they live or sign a contract in the geographic area associated with the limited court. There is no "conflict" at all.

The fact that *Hess* stated that its decision was consistent with but factually distinguishable from *Newsom*, and that the Seventh Circuit then relied on *Hess* to overrule *Newsom*, does not establish a conflict. Rather, it demonstrates the type of development of the law that this Court expects lower courts to engage in.

The Second Circuit did ***not*** hold that "judicial district or similar legal entity" should be "the smallest unit into which the state consistently and uniformly divides itself. . . ." (Petition, p. i) The smallest unit into which New York consistently and uniformly divides itself is the county, with a trial court of general jurisdiction – the New York Supreme Court – provided for each. New York also has 1,300 city, village, town, district, county and civil courts (Action Plan for the Justice Courts, *available at* http://www.nycourts.gov/courts/townandvillage/actionplan.shtml) but these are neither consistent nor uniform throughout the

state. For example, there are district courts in Nassau and Suffolk Counties, five Civil Courts for the five boroughs of New York City, County Courts in counties outside New York City, and city, town and village courts outside New York City. (The New York State Courts, An Introductory Guide, *available at* http://www.nycourts.gov/Admin/NYCourts-IntroGuide.pdf at 3-4.)

B. The Seventh Circuit's Decision Is Sound Policy and Respects the Right of State and Local Authorities to Provide Courts Where Needed

Nor is there any logic to Med-1's proposition that if some areas within a state have limited courts and some do not, the existence of the limited courts should be ignored, which is the result of accepting its contention that a "judicial district or similar legal entity" is "the smallest subdivision into which the state has uniformly divided itself." (Petition, p. 12) The very reason that states create limited courts in some areas but not others is because considerations of population, congestion, and distance make it necessary. Limited courts are generally created in major metropolitan areas or populous counties with large geographic areas. For example, Prairie County, Montana, covers an area larger than Cook County, Illinois, but has less than 1,200 people. A vehicle is essential, and the only kind of traffic jam one is likely to encounter driving to the county courthouse is stray animals on the road.

Obviously, there is no reason to have six courthouses in such a county. At the same time, there is no reason why the existence of sparsely-populated counties such as Prairie County, Montana, justifies abusive collection practices in Cook County, Illinois, or Marion County, Indiana, where the population and congestion are such that the local authorities have found it necessary to provide multiple courthouses dispersed throughout the county to hear collection cases.

The point at which courts become "so distant or inconvenient that consumers are unable to appear" (Petition, p. 14, citing S. Rep. 95-382, at 5 (1977), 1977 U.S.C.C.A.N. 1695, 1699), obviously varies depending on population, congestion, the nature of the area, and local conditions, as well as simple distance. Requiring a farmer or rancher in sparsely-populated Prairie County, Montana to travel 50 miles to get to the courthouse is much less onerous than requiring a non-auto-owning resident of Chicago Heights, Illinois (Sixth District) to travel to the Skokie, Illinois courthouse (Second District) during rush hour, even though the mileage is comparable. Rather, the only logical conclusion is that adopted by the Seventh and Second Circuits – if the local authorities have created limited courts, divided a county into geographic districts and provided court facilities for each, debt collectors filing in the limited court system must file in the geographic district where the consumer resides or signed the contract on which the suit is based.

Although Med-1 complains about disregarding the rights of state and local authorities, it is the conclusion of the Seventh and Second Circuits that permits state and local authorities leeway to organize their court systems as appropriate for local conditions. Section 1692i is necessary because, under state venue rules, improper venue is usually waived unless raised within a very brief period, a practice which does not adequately protect unsophisticated *pro se* consumers. Such consumer-unfriendly rules are why Congress found, in 15 U.S.C. §1692(b), that "Existing laws and procedures for redressing these injuries are inadequate to protect consumers." By building upon the existing organization of state and local court systems, the Seventh and Second Circuits allow local authorities to provide courts as appropriate for local conditions, while serving the Congressional purpose of protecting consumers against abuse. Med-1's position that geographic court subdivisions adopted only in populous or congested portions of a state, for the express purpose of dealing with local conditions, should be ignored neither respects local authority nor protects consumers. Under the Seventh and Second Circuit decisions, the one thing that local authorities cannot do is allow debt collectors to contravene the express determination of Congress in §1692i that the protection of consumers mandates that collection actions be filed in the subdivision where the consumer resides or signed a written contract on which the action is based.

C. Med-1's Other Criticisms of the Seventh Circuit Decision Are Unfounded

Med-1's claim that the Seventh Circuit expanded the role of §1692i to cover improper judge-shopping as well as geographic inconvenience is unfounded. There was a substantial element of geographic inconvenience in Cook, Marion, and Onondaga Counties. All are counties with substantial geographic areas and populations, coupled with public transportation systems that did not permit consumers without (or even with) automobiles to cope with the abusive debt collection filings. That is the very reason why the local authorities created multiple limited courts within the counties, each with courthouses conveniently situated for local residents. By abusing a system intended to facilitate geographic convenience, the debt collectors in Marion County also created an outrageous judge-shopping regime that was condemned by the state court system. The problems are intertwined, because the natural effect of venue abuse in a system with nine one-judge courts is that debt collectors can pick courts that are favorably disposed towards debt collectors as well as inconvenient for the consumer. (Judge-shopping was not a serious problem in Cook County, because cases filed in any of the six districts were randomly distributed among three to seven judges, with each party having one change of judge as of right.)

D. The Fifth Circuit Agrees With the Second and Seventh

Med-1 cites a Fifth Circuit case, *Addison v. Braud*, 105 F.3d 223 (5th Cir. 1997), and a Ninth Circuit case, *Fox v. Citicorp Credit Services, Inc.*, 15 F.3d 1507 (9th Cir. 1994), as allegedly contributing to the conflict. They do not.

The Fifth Circuit case is consistent with the Second and Seventh Circuit decisions. Louisiana has trial courts of general jurisdiction, the District Courts, covering one or two parishes (40 districts for 64 parishes). There are also 46 City Courts, including one for the City of Baton Rouge, which are to hear cases involving $25,000 or less arising within the city limits or involving persons residing within the city limits. Braud filed a collection case in Baton Rouge City Court when the defendant consumers resided and signed a contract in a different city, Baker. The Court of Appeals held that this was a §1692i violation, even though both Baton Rouge and Baker are within East Baton Rouge Parish and within the area covered by the District Court for East Baton Rouge Parish. The facts and holding are thus the same as in *Hess*.

The Ninth Circuit decision, *Fox v. Citicorp Credit Services, Inc.*, 15 F.3d 1507 (9th Cir. 1994), did not address the issue of limited courts. It held that even though Arizona had a unitary trial court of statewide jurisdiction, where there was a courthouse in each

county to hear cases arising from that county, a debt collector had to file in the correct county.

There are a few lower court decisions, which are consistent with the Second, Fifth and Seventh Circuits. In *Nichols v. Byrd*, 435 F. Supp. 2d 1101, 1108 (D. Nev. 2006), a debt collector filed suit in a Nevada justice court, the Sparks Justice Court, which encompasses a township. A debtor could have an action transferred if it was filed in the wrong township. The court therefore concluded that under §1692i a collection action must be filed in the justice court for the township in which the debtor lived or signed a contract, which was the Reno Justice Court. It held the debt collector liable for filing in the Sparks Justice Court, even though both justice courts were within Washoe County, Nevada.

In *Harrington v. CACV of Colo., LLC*, 508 F. Supp. 2d 128, 133-34 (D. Mass. 2007), defendants filed a collection lawsuit in Barnstable District Court, a small claims-type court which covered three Massachusetts towns within Barnstable County. The debtor's residence was within the area covered by the Falmouth District Court, also within Barnstable County. Massachusetts has county-wide Superior Courts of general jurisdiction. The court held that defendants had violated §1692i by filing suit in the wrong "judicial district," even though the filing was permissible under state law. The court specifically rejected the argument that §1692i merely incorporates state venue restrictions; rather, it looks to the

"judicial districts" created by state law and imposes federal restrictions based on those geographic units.

Finally, in *Pabon v. Recko*, No. 3:00cv380, 2001 U.S. Dist. LEXIS 26418, *15-16 (D. Conn. Apr. 25, 2001), *recommended ruling adopted*, ECF No. 110 (D. Conn. May 22, 2001), the Connecticut court system had multiple "small claims areas" within a single county. The court held that a debt collector who wished to use the small claims courts had to file in the small claims area where the consumer resided or signed a contract.

Med-1 cites pre-FDCPA Federal Trade Commission decisions, but they do not suggest that local conditions be ignored. Only one, *New Rapids Carpet Center*, 90 F.T.C. 64 (1977), involved a limited court. New Rapids filed lawsuits in the Civil Court of the City of New York against consumers in Newark and Essex County, New Jersey. The distance between the courthouse for the Civil Court and that area of New Jersey is about 11-15 miles, but traveling 11-15 miles in a congested urban area is harder than traveling 50 miles across the Montana prairie, and there is a courthouse in Newark which New Rapids could have used.

In short, three Courts of Appeals (one *en banc*) have concluded that §1692i requires debt collectors who file cases in limited courts to file in the court covering the area in which the consumer resides or signed a written contract giving rise to the action. After *Suesz*, there is no disagreement at all on that

point, and the Courts of Appeals' uniform conclusion is supported by logic and reason and the statutory purpose of protecting consumers against abuse. Given this state of the law, there is no reason for this Court to intervene.

CONCLUSION

For the reasons stated, the petition for a writ of certiorari should be denied.

Respectfully submitted,

DANIEL A. EDELMAN
Counsel of Record
CATHLEEN M. COMBS
JAMES O. LATTURNER
MICHELLE R. TEGGELAAR
EDELMAN, COMBS, LATTURNER
& GOODWIN, LLC
20 S. Clark Street, Suite 1500
Chicago, IL 60603
(312) 739-4200
dedelman@edcombs.com

Attorneys for Respondent Mark Suesz

October 2014