

LITIGATION

>>ALERT

NEW JERSEY SUPREME COURT REJECTS NO-HARM TCCWNA CLAIMS, DEALING BLOW TO CONSUMER CLASS ACTIONS UNDER THE ACT

Last month, New Jersey's highest court ruled that only persons who have suffered actual harm from violations under the state's Truth in Consumer Contract, Warranty and Notice Act (TCCWNA) can state a claim under that law. The ruling is expected to greatly curtail the decade-long spike of class actions previously filed under the Act, namely by plaintiffs who did not even allege any actual harm.

BACKGROUND

As discussed in previous Davis & Gilbert [Alerts](#), the TCCWNA prohibits sellers from offering consumers or prospective consumers any contract, warranty, or notice that includes any provision that violates any of those consumers' clearly established legal rights. For example, contractual clauses that purport to absolve the seller of all liability for money damages have been found to violate the TCCWNA, as have contracts that waive consumers' right to attorneys' fees and require them to split the cost of litigation. The Act imposes a penalty of \$100 per violation, and provides for a private right of action by any "aggrieved consumer." The Act, however, does not define "aggrieved consumer" or specify whether the violation must have caused the consumer actual harm.

With limited guidance from courts regarding whether a consumer must allege actual harm to bring a claim under the Act, plaintiffs have been bringing class action claims for years based on mere technical

THE BOTTOM LINE

The New Jersey Supreme Court's recent holding is expected to eliminate no-harm class actions under the TCCWNA. Violations of the statute, unaccompanied by any injury to the consumer, will no longer be sufficient to support a claim. The need for class action plaintiffs to prove that class members have suffered actual injury presents an individualized issue that should make many TCCWNA claims inappropriate for class-wide resolution.

violations unaccompanied by any real harm, particularly in connection with now-ubiquitous website terms and conditions.

Some federal courts began limiting the scope of TCCWNA claims brought in those courts. The U.S. District Court for the District of New Jersey, for example, has dismissed a number of TCCWNA cases due to the plaintiffs' lack of "standing" under the U.S. Constitution: To demonstrate standing, a plaintiff must show that they suffered an actual injury. No-harm TCCWNA claimants cannot satisfy this requirement. New Jersey courts, however, did not uniformly hold that to state a claim under the TCCWNA,

a plaintiff needs to allege actual harm. In April, the New Jersey Supreme Court finally addressed the issue and held that plaintiffs do need to suffer actual harm to state a claim under the TCCWNA.

NEW JERSEY SUPREME COURT DEFINES AN "AGGRIEVED CONSUMER"

In two consolidated cases pending in New Jersey federal court, the plaintiffs alleged that the defendants, Select Comfort and Bob's Discount Furniture, had provided their customers with purchase agreements that violated aspects of New Jersey regulations concerning the timely delivery of

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furniture. The plaintiffs claimed that by violating these regulations, the agreements ran afoul of the TCCWNA by violating their “clearly established legal rights.” The federal district judge dismissed both claims, finding that despite the alleged violations, the plaintiffs were not “aggrieved consumers” under the TCCWNA because they, in fact, had received their furniture on time. The plaintiffs appealed to the U.S. Court of Appeals for the Third Circuit. The Third Circuit found the “aggrieved consumer” issue to be an “important and unresolved question[] of state law,” and sent the issue to the New Jersey Supreme Court for determination.

To reach its decision, the New Jersey high court analyzed the intent of the state’s legislature and looked to the dictionary definitions of “aggrieved.” The court held that one cannot be “aggrieved” unless they have been harmed by a violation of the Act. The court also clarified that the harm need not always be monetary damage, and that other types of harm, such as the

loss of the opportunity to seek a refund or the absence of furniture needed for an event, can constitute the injury required to give rise to a claim. Mere receipt of the offending contract or notice, however, which was all the plaintiffs in the furniture delivery cases had alleged, is insufficient.

ACTUAL HARM: A SIGNIFICANT HURDLE TO FUTURE TCCWNA CLASS ACTIONS

The New Jersey Supreme Court’s ruling is expected to significantly reduce the filing of TCCWNA class actions. “Predominance” is a key prerequisite for a class action: A class action plaintiff must show that issues of law or fact common to all plaintiffs predominate over questions that are specific to each plaintiff. Because each consumer must show actual harm suffered as a result of an alleged TCCWNA violation, it will be difficult for class action plaintiffs to satisfy this predominance standard, making it more difficult to sustain a class action under the TCCWNA.

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