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New Jersey Supreme Court Ruling May Significantly Limit Class Actions Claims Under Truth-in-Consumer Contract, Warranty and Notice Act

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The Truth-in-Consumer Contract, Warranty and Notice Act (TCCWNA) has been fertile ground for consumer class actions. The New Jersey Supreme Court's April 16, 2018 ruling in *Spade v. Select Comfort*, however, may all but put an end to such claims.

TCCWNA, enacted in 1981, prohibits contracts or notices that violate consumer rights. The statute further provides that an "aggrieved consumer" can recover a civil penalty of not less than \$100 for a violation, together with reasonable attorney's fees and court costs. In recent years, TCCWNA has been the basis for a wave of class action litigation. Plaintiffs have successfully maintained class actions for the statutory \$100 penalty, where there was no actual harm, but solely on the grounds that the named plaintiff and class members had received a contract or notice that contained a provision that allegedly violated a clearly established legal right. The \$100 statutory penalty gave all of the class members identical claims, which is tailor made for class action. In a large class action, the damages under TCCWNA can be significant given the availability of attorneys' fees and costs in addition to the statutory \$100 penalty for each class member.

The *Spade* case is a good example. In *Spade*, furniture buyers brought two class actions for violations under TCCWNA, alleging violations of statutory regulations regarding furniture delivery in New Jersey. The U.S. District Court for the District of New Jersey dismissed both cases. Since there was no actual harm, the District Court ruled that the plaintiffs were not "aggrieved consumers" and could not sue. The plaintiffs appealed to the Third Circuit.

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The Third Circuit, finding that the issues raised on appeal involved novel questions under New Jersey law, certified two questions to the New Jersey Supreme Court:

1. Does a violation of the furniture delivery regulations alone constitute a violation of a clearly established right or responsibility of the seller under TCCWNA and thus provides a basis for relief under the TCCWNA?
2. Is a consumer who receives a contract that does not comply with the furniture delivery regulations, but has not suffered any adverse consequences from the noncompliance, an “aggrieved consumer” under TCCWNA?

While answering “yes” to the first question, the Supreme Court unanimously held that in order to prevail on a TCCWNA claim, a plaintiff must also demonstrate actual harm. The harm need not be monetary to be compensable, but it must be real and there must be proof.

This opinion is certain to put a halt to the flood of class actions under TCCWNA. Class members will no longer have identical statutory penalty claims for \$100. A showing of “actual harm” will require individualized proofs for each plaintiff. If plaintiffs are required to show how they have been actually harmed, it will be difficult, if not impossible, to bring such claims as class actions.

This decision will not affect an individual’s ability to assert a claim or a counterclaim in a suit brought by the seller, provided that the individual has suffered some adverse consequence. While this decision will significantly curtail the use of TCCWNA as a vehicle for class action claims, it is still a viable and useful claim or defense for consumers who can show actual harm.

If you have any questions regarding the issues discussed in this Alert, please contact the authors, **Stephanie G. Reckord** and **Jessica A. Flynn**.