

New Jersey Courts Begin Limiting Broad Consumer Statute

National press and various legal publications have undertaken reporting on rapid developments involving New Jersey's Truth in Consumer Contract, Warranty and Notice Act ("TCCWNA"), a previously overlooked consumer protection statute that has prompted dozens of class action lawsuits in 2016 alone. The statute has become a focal point for plaintiffs' lawyers because the breadth of its language arguably covers the conduct of countless national companies who only tangentially interact with New Jersey consumers, for instance, by offering products for sale online.

These decisions, as well as additional decisions certain to issue from New Jersey state courts, should provide useful guidance and clarification to businesses concerned about the statute's vast breadth.

For background on the topic, please refer to Brownstein's [previous client alert](#).

Lawsuits filed under the TCCWNA frequently seek hundreds of thousands of dollars in damages and legal fees by alleging that boilerplate contract language has harmed myriad actual and prospective customers in vague ways. The statute has been difficult to apply in practice because many of its key terms (e.g., "consumer" and "clearly established legal right") are undefined.

With this dramatic upswing in filings, courts hearing these cases have begun to issue opinions that provide some clarity regarding how the TCCWNA should apply in practice. For instance, a New Jersey appellate court recently reversed a TCCWNA summary judgment motion granted against Harrah's casino¹. In Smerling, an individual attempted to redeem a "\$15 Birthday Cash" coupon at an Atlantic City casino, but was told she could not redeem the coupon until the relevant customer service desk opened at 6:00 a.m. She filed a class action lawsuit alleging TCCWNA claims against the casino. The trial court awarded statutory damages and over \$400,000 in legal fees.

The appellate court rejected the TCCWNA claims, holding that Smerling did not qualify as a "consumer" under the TCCWNA because she did not "buy, lease, borrow, or bail" anything from the casino. While the appellate court's decision is unpublished, this decision marks an important step insofar as New Jersey courts appear to now recognize that the TCCWNA only protects actual consumers and not all potential or prospective consumers, [as others have alleged](#).

¹ Smerling v. Harrah's Entertainment, Inc., No. A-4927-13T3 (N.J. Super., App. Div., Sept. 9, 2016).

At least seven TCCWNA motions to dismiss are currently pending decision in New Jersey federal court. The motions have all been fully briefed; and so opinions could issue at any time. The issues currently pending include whether the TCCWNA's undefined use of "aggrieved consumer" requires that consumer-plaintiffs suffer actual injury, whether non-New Jersey residents may sue under the statute, and whether the TCCWNA applies to website terms and conditions that do not relate to the purchase of property. These decisions will almost certainly provide much needed clarification in this rapidly developing space.

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