New Jersey Supreme Court Redefines Requirements for Consumer Protection Claims Brought Under TCCWNA

A company is required to conspicuously disclose certain terms in its warranties and contracts to avoid a claim under the Truth-in-Consumer Contract, Warranty and Notice Act ("TCCWNA"). The TCCWNA is a consumer protection statute that provides relief to consumers in instances where a consumer contract, warranty, notice, or sign contains legally invalid provisions or fails to include specific language required by a regulation. For example, regulations in certain industries require that a contract include provisions regarding cancellations and refunds. If these types of required terms and disclosures are omitted from a contract or warranty, the TCCWNA allows for class action lawsuits that would expose the company to substantial damages in favor of an entire class of consumers. In addition, since the TCCWNA allows for a range of remedies, civil penalties of not less than $100 or actual damages (or both) can be awarded in favor of all aggrieved consumers, as well as reasonable attorneys' fees and court costs.

The application of the TCCWNA was recently analyzed by the New Jersey Supreme Court. In *Bernice Pisack v. B&C Towing, Inc.*, consumers who had their vehicles towed and were charged fees not permitted by the applicable towing regulations sued the towing companies under the TCCWNA In *Pisack*, the Court stated that a contract or notice that includes fees not permitted by an applicable regulation can lead to a TCCWNA claim.

The Court also limited the reach of the TCCWNA. The Court concluded that "after-the-fact bills" (such as a list of towing charges provided after a vehicle owner pays to recover the vehicle) cannot constitute a contract or notice for purposes of a TCCWNA claim. The TCCWNA only applies to consumer contracts, warranties, notices, or signs entered into or provided prior to the transaction. The TCCWNA also only applies to sellers, lessors, creditors, lenders, or bailees. A "bailment" is a delivery of personal property by one person (the bailor) to another (the bailee) who holds the property for a certain purpose. Examples of bailments include valet services or repair facilities. The Court determined that for a bailment to create a TCCWNA claim, a contract (whether written or oral) is necessary. Companies that engage in bailments must comply with all applicable regulations in their contracts and notices to avoid a TCCWNA claim.

Even with the Court's limitations, the TCCWNA allows for substantial recoveries when a business fails to comply with the laws and regulations that apply to its contracts, warranties, notices, and signs. For example, failing to include specific language regarding refunds in a contract or including fees in a contract that are not permitted by a regulation can lead to a TCCWNA claim. All businesses that interact with the consuming public should seek legal advice when preparing contracts, warranties, notices, and signs to ensure they are legally compliant and to avoid the potential liabilities of a TCCWNA claim.