

Litigation Law Update:

Expansion of the Unfair Trade Practices and Consumer Protection Law: Bad News for Business Owners?

Two recent decisions regarding Pennsylvania's Unfair Trade Practices and Consumer Protection Law ([UTPCPL](#)) could mean bad news for consumer-facing business owners.

The UTPCPL is meant to protect consumers from unfair methods of competition and unfair or deceptive acts or practices. It allows consumers to sue businesses directly, and monetary penalties can include treble damages (three times the actual damages suffered by the consumer), as well as attorneys' fees.

Here's a look at the decisions:

The 'Strict Liability' Standard

On February 17, 2021, the Pennsylvania Supreme Court expanded the breadth of the conduct prohibited by the UTPCPL in *Gregg v. Ameriprise Financial Services, Inc.*, ruling that the catch-all provision of the state's UTPCPL imposed strict liability on vendors. This means that a business might be liable under the UTPCPL if a consumer relies on the business's conduct to his or her financial detriment, regardless of the business's state of mind in making those representations. In *Gregg*, the plaintiffs filed suit against a financial advisor and insurance salesperson for convincing them to buy certain insurance policies and investments in a way that created a likelihood of confusion or misunderstanding.

Several trade groups argued against the strict liability standard, including the Chamber of Commerce, the Pennsylvania Association of Realtors, the Pennsylvania Builders' Association, the Pennsylvania Bankers Association, Pennsylvania Health Care Association, UPMC, American Property Casualty Insurance Association, American Tort Reform Association, and National Federation of Independent Business. These groups urged the Court not to expand the standard, arguing that it would subject millions of consumer transactions to new liability and open the floodgates of litigation.

The Court ignored those pleas, observing that the legislature's goal in passing the UTPCPL was to protect consumers, and the statute's language did not require an evaluation of the business's state of mind in its dealings with consumers.

Economic Loss and Gist of the Action Doctrines

Likewise, the recent Third Circuit Court of Appeals decision in *Earl v. NVR, Inc.*, could also impose broader penalties on businesses. In the case, Ms. Earl, a homebuyer, filed suit against NVR, the builder and seller of her home, claiming that NVR did not provide her with the conditions and amenities she had been promised.

NVR argued that the economic loss and gist of the action doctrine prevented the plaintiff from filing suit under the UTPCPL. The economic loss doctrine prohibits a plaintiff from recovering monetary damages in a tort claim (like one brought under the UTPCPL) when her entitlement to damages is created by contract, like Ms. Earl's contract with NVR to purchase the home. The gist of the action doctrine prohibits a plaintiff from filing a tort claim (like one brought under the UTPCPL) against a party with whom she has a contract, provided the claim is based on the other party's actions in carrying out that contract.

The Third Circuit overruled its prior decision in *Werwinski v. Ford Motor Co.* to rule that the economic loss doctrine no longer bars a claim under UTPCPL, because that statute creates a private cause of action for economic losses.



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The Court also concluded that the gist of the action doctrine did not prohibit Ms. Earl from bringing a claim under the UTPCPL, because Ms. Earl claimed that NVR took certain actions outside of their contractual relationship that violated the UTPCPL - such as statements made in marketing the home and certain representations made after she moved into the home.

Both of these cases expand consumer rights under the UTPCPL and serve as warnings for businesses facing complaints or lawsuits from their customers. If you are dealing with customer complaints and have concerns about UTPCPL claims against your business, please contact Brittany Bloam at bmb@muslaw.com or any other Meyer, Unkovic & Scott attorney with whom you have worked.

Meyer, Unkovic & Scott Litigation & Dispute Resolution Group

The Litigation & Dispute Resolution Group of Meyer, Unkovic & Scott is committed to providing high-quality, efficient, and effective representation and counsel on a variety of disputes to individuals and businesses of all sizes. The Group is composed of attorneys who possess a wide range of legal and business experience, including extensive trial and appellate practice in federal and state courts throughout the United States. Although the Litigation Group is prepared to handle any business or commercial dispute through traditional litigation, this strategy is not always the best way to handle business disputes. As such, we participate, when appropriate, in alternative means of dispute resolution.

Please contact any member of our Litigation & Dispute Resolution Group should you have questions.

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