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New Jersey Appellate Division Expands Consumer Fraud Act Liability to Previously Exempted Licensed Professionals

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On August 15, 2019, the New Jersey Superior Court, Appellate Division issued a published opinion that will likely expand the scope of licensed professionals subject to liability under New Jersey’s Consumer Fraud Act, N.J.S.A. 56:8-1 et seq. (“CFA”). Shaw v. Shand, et al, A-5686-17T1 (August 15, 2019).

The Shaw opinion held that the judicially-created “learned professional” exception to the CFA did not apply to licensed home inspectors, but the Court suggested more broadly that other “semi-professionals” should no longer benefit from this exception. The Court specifically referenced insurance brokers as one professional class that might no longer be exempt from CFA liability. Although CFA damages are generally not covered by insurance, viable CFA claims generally raise the stakes of litigation handled by insurance defense counsel.

This opinion is a retreat from the 2006 opinion in Plemmons v. Blue Chip Insurance Services, Inc., 387 N.J. Super. 55 (App. Div. 2006), which extended the “learned professional” exception to insurance brokers. In fact, one of the judges from the panel that decided Plemmons was also on the panel in Shaw, and he frankly admitted that he changed his mind on this issue.

The Court was persuaded to change position by the advocacy of the New Jersey Attorney General, who argued that the CFA should apply to licensed professionals as long as the CFA did not conflict with the regulations governing the licensed professional. Previously, lawyers defending semi-professionals, like insurance brokers and home inspectors, were able to argue that the mere existence of a regulatory or licensing regime governing semi-professionals was grounds to rule out CFA liability. That will no longer be the case.

In a sign that semi-professionals and their insurers will need to continue watching this issue, the Court specifically requested that the New Jersey legislature clarify its position on where to draw the line between licensed professionals who should still be protected by the “learned professional” exception (lawyers, doctors, architects, and engineers) and the semi-professionals who will no longer be protected.

Please feel free to contact me or any member of Schenck Price’s Professional Liability Practice Group should you have any questions regarding this change in New Jersey law and be sure to pass this development along to your underwriters.

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