

Strict Liability in Pennsylvania's Consumer Fraud Law: It's Not About a State of Mind

Article By:

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In 1999, Gary and Mary Gregg enlisted the services of Robert A. Kovalchik, a financial advisor and insurance salesperson for Ameriprise Financial, Inc. As a result of misrepresentations made by Mr. Kovalchik, the Greggs ultimately filed suit against him and Ameriprise alleging – among other claims – an Unfair Trade Practices and Consumer Protection Law (“UTPCPL”) claim.^[1]

It's important to understand that a UTPCPL claim has teeth because – unlike common law claims – it allows for the recovery of attorney's fees and treble damages. See [Earl v. NVR, Inc., trading as Heartland Homes of PA: Werwinski is Dead](#). The UTPCPL is applicable to most consumer transactions including automobile transactions, home improvement contracts, home purchases, insurance contracts, leases, and service contracts.

The Greggs specifically alleged a violation of the “catch-all” provision of the UTPCPL which prohibits anyone who advertises, sells, or distributes goods or services from “engaging in any...fraudulent or deceptive conduct which creates a likelihood of confusion or misunderstanding.” [73 P.S. § 201-2\(4\)\(xxi\)](#). The Greggs' UTPCPL claim proceeded to a bench trial and the lower court ruled in favor of the Greggs. Ameriprise filed post-trial motions arguing that the Greggs failed to establish that Mr. Kovalchik's misrepresentations were *negligent*. In other words, it argued that the Greggs were required to prove a culpable state of mind in order to establish deceptive conduct under the catch-all provision. The lower court denied relief.

Ameriprise appealed the decision and, in 2018, the Pennsylvania Superior Court affirmed the lower court, holding that the test for deceptive conduct is whether the conduct has the tendency or capacity to deceive, without regard to the actor's state of mind, *i.e.* strict liability.^[2]

Ameriprise petitioned for allowance of appeal to the Supreme Court of Pennsylvania, and the petition was granted. The Supreme Court, in a 4-3 decision, affirmed the Superior Court. The majority stated:

A plain language analysis of the relevant statutory provision leads inexorably to the conclusion that deceptive conduct under the CPL [UTPCPL] is not dependent in any respect upon proof of the actor's state of mind. The Superior Court's holding is consistent not only with the plain language of the CPL [UTPCPL], but also with our precedent holding that the CPL [UTPCPL] is a remedial statute that should be construed broadly in order to comport with the legislative will to eradicate

unscrupulous business practices.

[*Gregg v. Ameriprise Fin., Inc.*, No. 29 WAP 2019, 2021 WL 607486](#), at *1 (Pa. Feb. 17, 2021).

This, like the [*Earl*](#) decision, is a major development in the law and significantly impacts claims brought under the catch-all provision of the UTPCPL.

^[1] [*Gregg v. American Exp. Financial Corp.*, 2014 WL 12854149](#) (Pa. Com. Pl. Civil Div. Dec. 18, 2014).

^[2] [*Gregg v. Ameriprise Fin., Inc.*, 195 A.3d 930](#) (Pa. Super. Ct. 2018), *aff'd*, No. 29 WAP 2019, 2021 WL 607486 (Pa. Feb. 17, 2021).

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