Wheeler Trigg O'Donnell

Colorado Consumer Protection Act: WTO Helps Scuttle Effort to Allow Private Class Actions

News
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Denver: Testifying before Colorado state legislative committees on behalf of the Colorado Civil Justice League, Wheeler Trigg O'Donnell (WTO) attorneys helped defeat efforts to allow private class actions against businesses under the Colorado Consumer Protection Act (CCPA). The proposed expansion of the statute, set out in SB 237, would have opened the door to increased litigation against all businesses operating in Colorado, contrary to the Colorado General Assembly's expressed intent that the CCPA be available to private plaintiffs "except in a class action."

WTO Partner Theresa Wardon Benz provided critical feedback at a stakeholders' meeting with SB 237's sponsors, Robert Rodriguez and Dylan Roberts, and other constituents and community members. Partner Cedric Logan testified against SB 237 before the House Finance Committee, where that bill ultimately died. The bills were introduced just weeks before the end of the legislative session, which required rapid marshaling of resources to sufficiently educate legislators on the bills' negative repercussions.

Proponents of the significant expansion of remedies under the CCPA sought to shift the primary role of regulating

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deceptive trade practices in Colorado away from the state's attorney general and district attorneys and toward private plaintiffs' lawyers by way of class actions. This would have opened the floodgates for "regulation" by piecemeal private litigation, which courts across the country have consistently found Colorado's General Assembly did not intend the CCPA to provide for.

The testimony of Benz and Logan is the latest instance–and first instance in the state legislature–of WTO lawyers successfully demonstrating that the CCPA does not allow for private class actions. In 2010, WTO Partner Drew Unthank developed the first successful legal challenge to class action claims brought under the CCPA in *Hise, et al. v. SSC Submaster Holdings* (Colo. Dist. Ct.). Two years later, Benz and WTO's Scott Barker–in *Martinez v. Nash Finch, Co.* (D. Colo.)–obtained the first published order that the CCPA bars private class actions. In the seven years since, federal courts in New York, California, Michigan, New Jersey, New Mexico and Ohio have cited that order in holding that the CCPA bars private class actions.

"The state legislature, in its wisdom, intended that primary enforcement of the CCPA should rest with the Colorado Attorney General," said Unthank, "not be outsourced to the whims of lawyer-driven litigation, with its economic incentives biased toward personal gains over public benefits."

"The empirical evidence is clear that more class actions mean more money for private attorneys, not necessarily more benefits for consumers. This defeat of the effort to allow private class actions under the CCPA reaffirms the balance the General Assembly envisioned for consumer protections in Colorado, with robust enforcement by elected officials," Unthank added.

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clients. Established in 1998, WTO currently numbers more than 110 lawyers. The firm represents sophisticated clients in high-stakes civil trials, appeals, and related litigation ranging from complex commercial to class actions to multidistrict litigation.

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