

# Ohio Supreme Court Holds Actual Damages for Each Class Member Now Required

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The Ohio Supreme Court has ruled that in order to bring a class action lawsuit under the Ohio Consumer Sales Practices Act (“CSPA”), R.C. Chapter 1345, and in accordance with the requirements of Civ.R. 23, **all** members of the purported class must have suffered injuries as a result of the conduct alleged in the lawsuit. *Felix v. Ganley Chevrolet, Inc.*, Slip Opinion No. 2015-Ohio-3430. Because the opinion is arguably not limited to class claims under this particular statute (as noted by the dissenting opinion), this decision potentially has wide-ranging implications on any class action lawsuits in Ohio and the ability of plaintiffs (and their counsel) to pursue such actions.

In *Felix*, borrowers filed a class action lawsuit against a car dealership claiming that the arbitration clause in their loan agreement was unfair and unconscionable and thus a violation of the CSPA. *Id.* at ¶ 11. The borrowers did not allege or seek actual damages on behalf of each member of the purported class. *Id.* at ¶ 9. Eventually, the trial court certified the class and awarded \$200 to each class member, and the Eighth Appellate District affirmed. *Id.* at ¶ 18.

After reviewing the purpose and construction of the CSPA, along with both state and federal case law interpreting both Fed.R.Civ.P. 23 and Ohio’s Civ.R. 23, the Ohio Supreme Court held that a finding that all class members were damaged by the conduct alleged in the suit is required not only to comply with the predominance requirements under Civ.R. 23(b)(3), but to also bring suit under the CSPA. *Id.* at ¶¶ 35, 37-38.

The Court reversed the lower courts, holding that “the class certified in this case includes plaintiffs whose damages are, at best, inchoate, the class as certified is inconsistent with [the CSPA] and Civ.R. 23.” *Id.* at ¶ 41. It remanded the cause “for proceedings consistent with this opinion’s guidance on the necessity of actual damages in class-action litigation based on the [CSPA.” *Id.* at ¶ 42.

If you have any questions or wish to discuss this matter or its implications in the state of Ohio, please contact **James W. Sandy** or another member of our Commercial Litigation team.

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