

## Consumer Court Wins Spur Surge In NJ Contract Class Actions

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Edward J. Fanning, Jr.

A string of victories for class action plaintiffs accusing businesses of violating a New Jersey consumer contracts law has left companies facing an explosion of similar suits, reigniting criticisms from defense attorneys that the statute is ambiguous and exposes businesses to unfair readings of e-commerce terms and other contract language.

Avis Car Rental, Bed Bath & Beyond, the New Jersey Devils arena, Toys R Us and Intuit, the company behind TurboTax software, were each hit with suits in New Jersey federal court over the past month claiming they have violated the Truth-in-Consumer Contract, Warranty and Notice Act, or TCCWNA. The companies are accused of violating the statute by pressuring customers to sign contracts that strip away their rights to file product liability claims.

The wave of lawsuits filed just this year has prompted McCarter & English LLP to form a TCCWNA task force to battle such cases, which are sometimes preceded by a campaign of threatening letters.

The task force assists in reviewing the terms and conditions of a company's consumer contracts, recommends updates to insurance coverage, and responds to the letters, said McCarter & English partner Edward J. Fanning, chair of the firm's product liability group.

The dozens of TCCWNA lawsuits being handled by McCarter & English have a recurring theme, according to Fanning, in which plaintiffs attorneys "misinterpret or twist" the clients' terms of use and suggest they say "something they don't say." Also, nearly all of the newer TCCWNA lawsuits are targeting the language on company websites.

"So, the plaintiffs are taking a statute that was written before there was the internet and trying to shoehorn it into an e-commerce era," Fanning said. "I don't think the TCCWNA applies to e-commerce use."