

Press Release

Akerman Achieves Landmark Victory in Illinois Supreme Court for Jon Don, LLC

July 8, 2024

Illinois Supreme Court Significantly Limits the Reach of the Consumer Nexus Test, with Broad Implications for Businesses

In a recent win in the Illinois Supreme Court, Akerman obtained a dismissal with prejudice of a lawsuit filed against client Jon Don, LLC, and several co-defendants that had alleged violations of Illinois' unfair trade practice and consumer fraud statutes. The decision not only ended the case against all defendants, it also put an end to a long-standing indirect consumer fraud theory of liability that has been applied in scores of cases in Illinois' lower and federal courts, but that had never been considered by Illinois' highest court.

The Court's decision rejected the so-called "consumer nexus test," created more than 20 years ago by Illinois appellate courts and often used in lower Illinois courts and federal courts in diversity cases, under which a business or other party that was not itself a "consumer" could sue for consumer fraud if the conduct at issue had some impact on actual "consumers." The Supreme Court, which had never considered that theory, rejected it as inconsistent with the statutory requirement that a consumer fraud plaintiff actually be deceived itself by the alleged fraudulent conduct. In so holding, the Court overruled years of lower court cases that had

Related People

Joel D. Bertocchi
Thomas Y. Mandler
Ildefonso 'Dito' P. Mas

Related Work

Litigation
Traditional Labor Law

upheld or applied that theory to businesses of all kinds.

Tri-Plex Technical Services, Ltd., which (like the defendants) makes commercial-grade carpet cleaning products, alleged that Jon Don and its co-defendants, all Tri-Plex's competitors, failed to disclose to their carpet cleaning business customers on product labels that their products contained phosphorous in amounts allegedly exceeding what is allowed by Illinois' environmental statutes and related administrative rules, and were thus "illegal." The case was dismissed in trial court, but it was revived in Illinois' Appellate Court. Akerman then led a team of firms in filing a discretionary petition for review in the Illinois Supreme Court on behalf of all defendants, which that Court granted. Following briefing (again led by Akerman) and oral argument by Litigation Partner Joel Bertocchi, the Illinois Supreme Court unanimously reversed the lower appellate court and ordered the case dismissed.

The success highlights Akerman's ability to succeed at both the trial and appellate level (including in the highest court of a state), to take the lead in a group of aligned law firms, and to achieve victories that significantly change the legal landscape.

The Akerman team was led by Bertocchi and included Litigation Partner Ildefonso Mas in Miami, Traditional Labor Law Practice Co-Chair Tom Mandler in Chicago, and retired Litigation Partner and former Northern District of Illinois Chief Judge Rubén Castillo in Chicago.

About Akerman

Akerman LLP is a top 100 U.S. law firm recognized among the most forward-thinking firms in the industry by *Financial Times*. Its more than 700 lawyers and business professionals collaborate with the world's most successful enterprises and entrepreneurs to navigate change, seize opportunities, and help drive innovation and growth.