

BUSINESS NOTES

LOUISIANA SUPREME COURT HOLDS
UNFAIR TRADE PRACTICES CLAIMSNO LONGER LIMITED TO
BUSINESS COMPETITORS AND CONSUMERS

The Louisiana Unfair Trade Practices and Consumer Protection Law ("LUTPA") generally provides a private right of action to persons claiming a loss of money or property as a result of the use by another person of an unfair or deceptive method, act, or practice in the conduct of any trade or commerce. In addition to actual damages, LUTPA allows a successful claimant to recover court costs, attorneys' fees and potentially treble damages (if the method, act, or practice was knowingly used after being put on notice by the attorney general). Very often, garden-variety commercial disputes include a claim under LUTPA, in an effort to tap into the statutory right to recover attorneys' fees.

Many LUTPA claims have been met with a swift dismissal, however, because the trend among most Louisiana appellate courts has been to limit its application to business competitors and consumers. Unless the party asserting the LUTPA claim fell into one of these two categories, relative to the defending party, most Louisiana courts (state and federal) dismissed the claim for lack of standing under the statute. Through the years, the Louisiana First Circuit Court of Appeals has taken a contrary position, causing some doubt as to who exactly can bring a LUTPA claim.

The Louisiana Supreme Court has recently resolved that conflict – siding with the minority

interpretation by the First Circuit. *Cheramic Services, Inc. v. Shell Deepwater Production, Inc.*, 2009-1633 (La. 4/23/10) 35 So.3d 1053. After studying the wording of the statute and legislative intent (or lack thereof), the Louisiana Supreme Court concluded that words of the statute were clear and unambiguous and did not limit its application to business competitors and consumers. Rather, held the court, LUTPA applies to "any person, natural or juridical, who suffers an ascertainable loss" as a result of an unfair trade practice. "Although business consumers and competitors are included in the group afforded this private right of action, they are not its exclusive members." *Id.*

The Louisiana Supreme Court specifically noted, however, that its opinion should not be construed to lessen a plaintiff's burden of proving an unfair trade practice, noting that the range of prohibited practices under LUTPA is "extremely narrow."



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