Insurance Professionals Beware: NJ Supreme Court Holds Insurance Brokers, Producers, and Agents Are Not Exempt from Consumer Fraud Act

Jul 22, 2026

Categories:

Publications

Authors:

Julia E. Browning
Michael R. McDonald

Earlier this month in *Lowe v. Audet*, the New Jersey (NJ) Supreme Court unanimously held that insurance brokers, producers, and agents can no longer rely on the judicially created "semi-professional" exception to defend against claims brought under the Consumer Fraud Act (CFA), N.J.S.A. 56:8-1 *et seq*. In other words, insurance brokers may now face the same CFA exposure as other commercial actors, such as retailers and manufacturers, for deceptive or unconscionable conduct in connection with the sale of insurance products.

CFA Application and Exceptions

The CFA is intended to have a broad scope across various conduct to prevent consumer fraud. However, over time, courts have carved out narrow exceptions to shield certain groups from liability. To do so, courts have considered, among other things, the nature of the activity involved; whether that activity is regulated; historical prohibitions on advertising by certain professions; and the level of education and erudition required by a particular field. The protected groups have been generically identified as "learned professionals" and "semi-professionals."

The "learned professionals" exception insulates lawyers, physicians, dentists, accountants, and engineers from CFA liability on the theory that: (1) learned professionals' services cannot be considered "consumerism," and (2) at the time the CFA was enacted, members of those professions were generally prohibited from advertising. The "semi-professional" exception, on the other hand, bridges the gap between "learned professionals" and those professions, such as insurance brokers, that are subject to testing, licensing, regulations, and penalties. Courts have inconsistently applied these exceptions over time.

Supreme Court's Reasoning in *Lowe*

In a critical departure from prior jurisprudence, the *Lowe* court held that the CFA's text does not support exempting insurance intermediaries as "semi-professionals" nor recognizing the existence of any judicially created semi-professional exception. This holding potentially subjects insurance brokers and agents to the CFA's substantive and remedial provisions, including treble damages and attorneys' fees. And, as a precursor of potential future litigation, the NJ Supreme Court also questioned the textual basis and general validity of the "learned professional" exception.

In *Lowe*, a neurosurgeon sued insurance brokers for alleged misrepresentations made in connection with the sale of insurance. The surgeon claimed that the brokers represented that he would receive maximum benefits under his policies if he became disabled, but failed to advise him that his unrelated business interests could impact a benefits claim. Following a career-ending diagnosis, the surgeon was denied maximum benefits because of unrelated business interests. The surgeon brought a nine-count complaint against the insurance brokers, including for violations of the CFA. The surgeon claimed that the CFA applies to the brokers' marketing, sale, and procurement of the policies, that the brokers failed to obtain sufficient disability insurance for him, and that the brokers "engaged in fraudulent, deceptive, and unconscionable commercial practices in marketing and selling the disability insurance policies."

Reversing the appellate court's decision, the NJ Supreme Court squarely held that "we are certain that insurance brokers, producers, and agents are not exempt from the CFA," regardless of the "methodology one uses to define those terms," because: (1) insurance brokers have not been historically recognized as learned; (2) insurance brokers were permitted to advertise when the CFA was adopted; (3) licensing and regulation, without more, are an insufficient basis for the CFA "learned professional" exception; and (4) there is no direct, unavoidable conflict between the regulations governing insurance brokers and the CFA. The court concluded: "we must narrowly interpret the learned professional exception while also recognizing the need to broadly interpret the CFA 'to accomplish its remedial purpose.'" The semi-professional exception "leaves more questions than answers" because it has no support in the text of the CFA and because it undermines the remedial purpose of the CFA.

The NJ Supreme Court left no doubt about the lack of viability of the "semi-professional" exception and also left the door wide open for a challenge to the "learned professional exception": "We have serious doubts about the basis for the learned professional exception but await a case that presents a direct challenge to address it." The court also "invite[d] the Legislature to provide clarity about whether certain professionals are exempt from liability under the CFA, and if so, to identify the relevant professionals."

Key Takeaways from *Lowe*

While we will need to wait and see how lower courts interpret this new precedent and apply it across different sectors and factual scenarios, the *Lowe* decision is a major development for New Jersey's insurance industry, with wide-ranging implications including the potential increase in claims against insurance professionals arising out of insurance-related disputes and greater liability for deceptive or wrongful conduct.

In addition to increased exposure, insurance brokers and agents must now be mindful that sales practices, marketing representations, and coverage recommendations that previously may have supported only potentially *insurable* negligence claims could instead give rise to potentially *uninsured* consumer fraud claims carrying treble damages and attorneys' fees.

If you have questions about how the *Lowe* decision may affect your business, potential CFA exposure, or steps you can take to mitigate risk, please contact the authors or any attorney with FBT Gibbons' Class Actions team.

*Eliza M. Schank, a student at Seton Hall University School of Law, contributed to this article while working as a summer associate at FBT Gibbons.