PRESS RELEASES

Benesch Secures Major Victory for Retailers in the Washington Supreme Court

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Featured Industries: Retail & E-Commerce

Benesch secured a significant victory in the Washington Supreme Court for retailers and e-commerce businesses facing class-action litigation under Washington's Consumer Protection Act (CPA).

For over 15 years, plaintiffs have targeted merchants with consumer-fraud claims alleging that advertised markdowns are deceptive if items do not typically sell at the advertised reference price. These class-action lawsuits have exposed retailers to potential liability stretching into the nine-figure range.

Here, the plaintiff alleged she was deceived by a product page listing a sale price alongside a higher reference price, because the reference price was not the regular price. After the district court ruled against her, the Ninth Circuit certified the key question to the Washington Supreme Court: Does a plaintiff satisfy the CPA's injury requirement simply by alleging a false reference price?

Benesch briefed and argued the case before the Washington Supreme Court last year. Last week, the Court issued a 6-3 opinion holding that such allegations do not satisfy the CPA's injury element-the second time in two years Benesch has convinced a state supreme court in a plaintiff-friendly jurisdiction to reject this theory, following a similar victory before the New Jersey Supreme Court.

"This is a major win for retailers in Washington and nationwide," said Litigation Chair J. Erik Connolly. "Dozens, if not hundreds, of lawsuits based on this theory are now subject to dismissal before costly discovery. We're proud to have set this important precedent."

Appellate Chair Michael D. Meuti argued the case to the Washington Supreme Court. Senior Managing Associate Michael Silverstein assisted with briefing.