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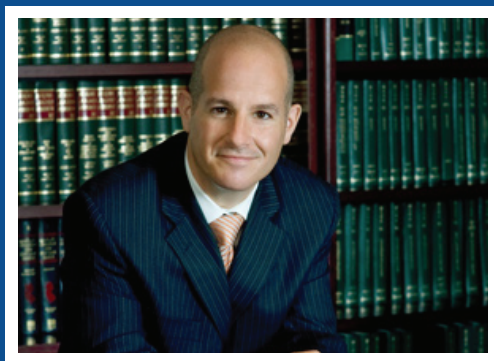
N.J. lawmakers need to address meritless, copycat lawsuits against gyms



Ansell Grimm & Aaron Partner and Litigation Department Co-chair Joshua S. Bauchner discusses curbing meritless class actions in *Legal NewsLine*.

WOODLAND PARK, N.J. *(Legal Newsline)* – Who knew "gym suits" could be so classy?

That's the question Joshua S. Bauchner, partner and Litigation Department co-chair in Ansell Grimm & Aaron's Woodland Park, N.J. office, has been asking for about a half-decade and one he says the state legislature needs to ponder to curb meritless class actions against fitness centers in the state.

"At the macro level, the Health Club Services Act needs to be amended by the legislature as it is anachronistic and levels obligations on gyms that are without value," Bauchner told *Legal Newsline*. "The courts also should continue to limit frivolous class actions where plaintiffs do not actually suffer cognizable - or even known - injury and which are pursued solely to generate attorneys' fees."

As an example, Bauchner cited an allegation common in many of these cases that gyms allegedly fail to disclose that bond has been posted with the New Jersey Department of Consumer Affairs (DCA) to protect against closure when a member already has paid that month's dues.

"In every case, the gym had posted a bond, so the member was protected and had not suffered nor could suffer any injury, reflecting a mere technical violation of the statute," Bauchner said. "What is the point?"

Bauchner has observed firsthand the burgeoning number class actions against fitness centers, at least in New Jersey. Bauchner provided counsel to the fitness chain defendant in the multimillion-dollar putative class action Logan v. Club Metro USA, which Bauchner describes as one of many "copycat" lawsuits without merit brought against fitness centers in New Jersey.

In that case, lead plaintiff Paul Logan claimed Club Metro violated the New Jersey Health Club Services Act, the Retail Installment Sales Act, the Consumer Fraud Act and the Truth in Consumer Contract, Warranty and Notice Act in the way how club membership fees were renewed.

The Logan case was far from the first such lawsuit filed against fitness centers over membership agreements, Bauchner said.

"The first case was *Martina v. LA Fitness International LLC, No. CIV. 12-2063 WHW, 2012 WL 3822093*, which alleged violations of the Consumer Fraud Act (CFA) and supplemental Health Club Services Act (HCSA)," he said. "In sum, the plaintiff asserted that the gym membership agreement violated the statute by failing to include required terms but, more particularly, by including onerous cancellation terms and charging dues after cancellation which required 30 days' notice."

In 2013, U.S. District Judge William A. Walls approved a $3.8 million settlement in the Martina class action that paid class members largely in 45-day club passes or a check equal to a third of a month's dues and gave the lead defendant in the case, Sophia Martina, an "incentive award" of $3,000. Walls, in his opinion about the final settlement agreement in October of that year, commented on the lopsided attorney-to-class award.

"The settlement is worth as much as $3.8 million and benefits as many as 46,000 New Jersey consumers," Walls said. "Counsel, who have substantial class action experience, secured this result quickly and efficiently, after less than two years of litigation.

"Unfortunately, class members have claimed cash and coupons worth only $68,000, creating a distasteful scenario where the fee awarded to counsel ($200,000) exceeds the value of the relief which class members have claimed by a factor of three. But that blame must ultimately lie with the duly notified class members. Counsel's labors have been fruitful and their request is modest, so it is granted."

However, the Martina case launched other "copycat actions" over the last few years, Bauchner said. Those include *McCarthy, et al. v. Equinox Holdings*, *Truglio v. Planet Fitness Inc., et al*., and *Ardino v. RetroFitness*.

While the trend is not exactly unique to New Jersey, it has become a peculiar norm in the Garden State, Bauchner said.

"There have been some cases in other states, but these all relied on the New Jersey statutory scheme which differs from state to state," he said.

However, the "copycats" are no longer working in the shadows, Bauchner said.

"Both the New Jersey Courts and DCA (Department of Consumer Affairs) have lost patience with and are less-tolerant of this type of consumer class action," he said.

The New Jersey Supreme Court decision last spring in *Spade v. Select Comfort Corp.* to dramatically limit application of the Truth in Consumer Contract and Warranty Notice Act (TCCWNA), Bauchner said. In that decision, the state's highest court ruled that a plaintiff suing under the TCCWNA must claim an actual injury, though not necessarily a monetary injury, to successfully plead a case.

"Previously, plaintiffs argued that it was effectively a strict liability paradigm," Bauchner said. "Similarly, the New Jersey Appeals Division rejected the application of the Retail Installment Sales Act (RISA) to gym membership agreements, significantly limiting the scope of plaintiffs' claims and recovery."

Meanwhile, the state's Department of Consumer Affairs appears to be in retreat, Bauchner said.

"The DCA, which previously reviewed and approved membership agreements as being in compliance with the CFA, has since stopped doing so because it became tired of responding to plaintiffs' documentary and testamentary subpoenas," he said. "So, plaintiffs' counsel, who pride themselves on acting as private attorneys general protecting consumer rights, actually did a great disservice to consumers as the government agency actually tasked with consumer protection is retreating from its role."