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## ACTUAL DAMAGES REQUIRED UNDER OHIO CSPA IN CLASS ACTIONS

plaintiffs must have actual damages.

✧ *Elizabeth Anstaett and Darrell Dreher*

The case before the Ohio Supreme Court arose from two related class-action lawsuits brought by Jeffrey and Stacy Felix in which the Felixes sought damages from Ganley Chevrolet, Inc. related to the Felixes attempt to finance the purchase of a motor vehicle. *Felix v. Ganley Chevrolet, Inc.*, 145 Ohio St.3d 329 (2016). The purchase contract between the Felixes and Ganley contained an arbitration clause. Among other claims, the Felixes alleged that the arbitration clause was unconscionable.

The issue before the Ohio Supreme Court was whether the Ohio Consumer Sales Practices Act (CSPA) requires consumers to have sustained actual damages as a result of the challenged conduct in the context of a class action.

Although the CSPA authorizes class actions, the court stated that the CSPA limits the scope of damages that are available in class actions. According to the court, after reviewing the language of the statute and case law, the CSPA limits the damages available in class actions to actual damages. The court stated that plaintiffs bringing CSPA class-action suites must allege and prove that actual damages were proximately caused by the defendant's conduct. If the class plaintiff fails to establish that all of the class members are damaged (notwithstanding questions regarding the individual damages calculations for each class members), there is no showing of predominance under Rule 23(b)(3).

In the case before the Ohio Supreme Court, the court determined that the class, as certified, failed because there was no showing that all class members suffered an injury in fact. The broadly defined class encompassed consumers who purchased a vehicle at the dealership through a purchase contract that contained the arbitration provision. The court concluded that there was no showing that all of the consumers who purchased vehicles through a contract with the arbitration provision were injured by it or suffered any damages.

In an individual action the CSPA provides that the consumer may rescind the transaction or recover three times the amount of the consumer's actual economic damages or \$200, whichever is greater, plus an amount not exceeding \$5,000. The Ohio Supreme Court decision is positive for the industry in confirming that class action

Darrell L. Dreher  
[ddreher@dtlaw.com](mailto:ddreher@dtlaw.com)

Elizabeth L. Anstaett  
[eanstaett@dtlaw.com](mailto:eanstaett@dtlaw.com)

Margaret M. Stolar  
[mstolar@dtlaw.com](mailto:mstolar@dtlaw.com)

Robin R. De Leo  
[robin@dreher-la.com](mailto:robin@dreher-la.com)

Susan M. Seaman  
[sseaman@dtlaw.com](mailto:sseaman@dtlaw.com)

2750 HUNTINGTON CENTER  
41 S. HIGH STREET  
COLUMBUS, OHIO 43215  
TELEPHONE: (614) 628-8000 FACSIMILE: (614) 628-1600  
[WWW.DTLAW.COM](http://WWW.DTLAW.COM)

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Michael C. Tomkies  
[mtomkies@dtlaw.com](mailto:mtomkies@dtlaw.com)

Charles V. Gall  
[cgall@dtlaw.com](mailto:cgall@dtlaw.com)

Judith M. Scheiderer  
[jscheiderer@dtlaw.com](mailto:jscheiderer@dtlaw.com)

Susan L. Ostrander  
[sostrander@dtlaw.com](mailto:sostrander@dtlaw.com)

Emily C. Barlage  
[ebarlage@dtlaw.com](mailto:ebarlage@dtlaw.com)