

MASSACHUSETTS APPEALS COURT

Agnitti v. Philip Morris USA Inc.

No. 24-P-780 · No. 24-P-780 · Decided March 13, 2026

SUMMARY

The Massachusetts Appeals Court held that the trial judge improperly instructed the jury that liability under G. L. c. 93A required a finding of liability on an underlying tort claim. The court vacated the judgment for Philip Morris on the c. 93A claim and remanded for further proceedings, while affirming the remainder of the judgment. The court also held that the plaintiff waived appellate review of the trial court's failure to instruct on actionable half-truths in the fraud and misrepresentation claim.

CASE DETAILS

|                       |                                                                                                                                                                                                                                                                                                                                    |
|-----------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | Massachusetts Appeals Court                                                                                                                                                                                                                                                                                                        |
| WRITING FOR THE COURT | Toone, J.; Blake, C.J.; Hand, J.                                                                                                                                                                                                                                                                                                   |
| JURISDICTION          | Massachusetts Appeals Court                                                                                                                                                                                                                                                                                                        |
| DECIDED               | March 13, 2026                                                                                                                                                                                                                                                                                                                     |
| DOCKET                | 24-P-780                                                                                                                                                                                                                                                                                                                           |
| DISPOSITION           | reversed_and_remanded                                                                                                                                                                                                                                                                                                              |
| PROCEDURAL POSTURE    | Appeal from a judgment entered after a jury verdict for Philip Morris USA Inc. in a civil action involving cigarette-related negligence, warranty, fraud, conspiracy, Consumer Protection Act, and wrongful-death claims.                                                                                                          |
| STANDARD OF REVIEW    | Preserved instructional objections are reviewed for error and whether the error affected the objecting party's substantial rights. Jury instructions are reviewed as a whole, and an instructional error warrants a new trial when the jury may have based its verdict on the erroneous instruction and the error was prejudicial. |
| PRECEDENTIAL VALUE    | published                                                                                                                                                                                                                                                                                                                          |
| PARTIES               | Peter Agnitti, individually and as personal representative of the estate of Lorna Agnitti v. Philip Morris USA Inc.                                                                                                                                                                                                                |

TOPICS

- consumer protection
- deceptive trade practices
- preservation of error
- appellate procedure
- wrongful death

## PRACTICE AREAS

consumer protection

torts

civil procedure

appellate procedure

wrongful death

## QUESTIONS PRESENTED

1. Whether the plaintiff preserved his objections to the challenged jury instructions.
2. Whether the Consumer Protection Act instruction improperly required the jury to find liability on an underlying tort claim before finding a violation of G. L. c. 93A.
3. Whether the plaintiff preserved a challenge based on the trial judge's failure to instruct that half-truths may be actionable in fraud and misrepresentation.
4. Whether the erroneous Consumer Protection Act instruction was prejudicial and required a new trial.

## HOLDINGS

1. The plaintiff preserved his objection to the Consumer Protection Act instruction because the objection and its grounds were presented to the judge, and the judge's acknowledgment that both parties had lodged objections made a renewed postcharge objection unnecessary under the circumstances.
2. The plaintiff did not preserve his challenge to the failure to instruct that half-truths are actionable because he did not specifically request or object to the omission of that instruction at the charge conference or after the charge.
3. A Consumer Protection Act claim under G. L. c. 93A is not categorically dependent on liability for an underlying tort or contract claim. The trial judge therefore erred by instructing the jury that it could find a c. 93A violation only if it found the defendants liable on one of the plaintiff's tort claims.
4. The erroneous c. 93A instruction was prejudicial because it effectively narrowed the jury's inquiry to the more restrictive elements of common-law fraud and misrepresentation, and the evidence provided a plausible basis for a different verdict absent the error.

## KEY QUOTATIONS

*“'[A] cause of action under c. 93A is 'not dependent on traditional tort or contract law concepts for its definition.'” (9-10)*

*“'a claim under c. 93A 'goes far beyond the scope of the common law action for fraud.'” (11-12)*

*“'Causation is not the same as reliance, and 'the latter is not an essential element of a G. L. c. 93A claim.'” (12)*

*“The judge's instruction effectively precluded a finding of liability under c. 93A unless the jury also found liability under the more restrictive standard for fraud and misrepresentation.” (14)*

## FACTUAL BACKGROUND

Lorna Agnitti began smoking at approximately age ten and primarily smoked Philip Morris Marlboro and Marlboro Lights cigarettes for about fifty years. She was diagnosed with lung cancer in 2019 and later died in September 2022. The plaintiff presented evidence that tobacco companies had publicly disputed the health risks

and addictiveness of cigarettes and promoted filtered, light, and low-tar cigarettes as safer despite allegedly knowing they were not. The jury nevertheless found for the defendants on all claims.

## PROCEDURAL HISTORY

The action was commenced in the Superior Court Department on March 27, 2020. After Lorna Agnitti died in September 2022, Peter Agnitti amended the complaint to add a wrongful-death claim. Following a twenty-day jury trial, the jury found for the defendants on all claims. The plaintiff appealed only the judgment for Philip Morris concerning the jury instructions on the Consumer Protection Act claim and fraud and misrepresentation. The Appeals Court held the Consumer Protection Act instructional error prejudicial, vacated that portion of the judgment, remanded for further proceedings, and affirmed the remainder.

## DISPOSITION

reversed\_and\_remanded

## REMAND INSTRUCTIONS

The portion of the judgment entered in favor of Philip Morris USA Inc. on the claim for violation of G. L. c. 93A is vacated and set aside. The matter is remanded to the Superior Court for further proceedings consistent with the opinion, including a new trial on the c. 93A claim. The judgment is otherwise affirmed.

## CASES CITED

- *Governo Law Firm LLC v. Bergeron*, 487 Mass. 188, 193 n.11 (2021)
- *Rotkiewicz v. Sadowsky*, 431 Mass. 748, 750-752 (2000)
- *Flood v. Southland Corp.*, 416 Mass. 62, 66-67 (1993)
- *Commonwealth v. Grenier*, 415 Mass. 680, 686 (1993)
- *Martignetti v. Haigh-Farr Inc.*, 425 Mass. 294, 299 n.10 (1997)
- *Karen Construction Co. v. Lizotte*, 396 Mass. 143, 149 (1985)
- *Kannavos v. Annino*, 356 Mass. 42, 48 (1969)
- *Sullivan v. Five Acres Realty Trust*, 487 Mass. 64, 73-75 (2021)
- *MacCuish v. Volkswagenwerk A.G.*, 22 Mass. App. Ct. 380, 397 (1986), S.C., 400 Mass. 1003 (1987)
- *Luppold v. Hanlon*, 495 Mass. 148, 158 (2025)
- *Dos Santos v. Coleta*, 465 Mass. 148, 153-154 (2013)
- *Grant v. Lewis/Boyle, Inc.*, 408 Mass. 269, 275 (1990)
- *Hopkins v. Medeiros*, 48 Mass. App. Ct. 600, 611 (2000)
- *Doull v. Foster*, 487 Mass. 1, 6 (2021)
- *DaPrato v. Massachusetts Water Resources Authority*, 482 Mass. 375, 383 n.11 (2019)
- *Kattar v. Demoulas*, 433 Mass. 1, 13 (2000)
- *Heller v. Silverbranch Construction Corp.*, 376 Mass. 621, 626 (1978)
- *Slaney v. Westwood Auto, Inc.*, 366 Mass. 688, 703-704 (1975)

- H1 Lincoln, Inc. v. South Washington St., LLC, 489 Mass. 1, 24 (2022)
- Iannacchino v. Ford Motor Co., 451 Mass. 623, 630 n.12, 634-636 (2008)
- Pembroke Country Club, Inc. v. Regency Savings Bank, F.S.B., 62 Mass. App. Ct. 34, 40 (2004)
- Donovan v. Philip Morris USA, Inc., 455 Mass. 215, 227 n.13 (2009)
- Swanson v. Bankers Life Co., 389 Mass. 345, 349 (1983)
- Exxon Mobil Corp. v. Attorney General, 479 Mass. 312, 320 (2018), cert. denied sub nom. Exxon Mobil Corp. v. Healey, 586 U.S. 1069 (2019)
- Casavant v. Norwegian Cruise Line Ltd., 460 Mass. 500, 503 (2011)
- Greene v. Philip Morris USA Inc., 491 Mass. 866, 873, 878-879 (2023)
- Hershenow v. Enterprise Rent-A-Car Co. of Boston, 445 Mass. 790, 800 n.20 (2006)
- Aceto v. Dougherty, 415 Mass. 654, 659 (1993)
- Dalton v. Post Publishing Co., 328 Mass. 595, 598-599 (1952)
- Campbell v. Cape & Islands Healthcare Services, Inc., 81 Mass. App. Ct. 252, 258 (2012)
- FTI, LLC v. Duffy, 104 Mass. App. Ct. 484, 496 (2024)
- Carey v. New England Organ Bank, 446 Mass. 270, 285 (2006)
- Brown v. F.L. Roberts & Co., 452 Mass. 674, 689 (2008)
- T & D Video, Inc. v. Revere, 450 Mass. 107, 115-117 (2007)
- Connor v. Marriott International, Inc., 103 Mass. App. Ct. 828, 837 n.9 (2024)

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