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eNewsletter

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## ***Liability Under Chapter 93A Is Not Dependent on Success of Fraud Claim***

In *Agnitti v. Philip Morris*, the plaintiff, Peter Agnitti (“Agnitti”), appealed a Superior Court jury verdict entered in favor of the defendant, Philip Morris USA Inc. (“Philip Morris”). A Chapter 93A claim had been tried before the jury at the parties’ request, and the Superior Court judge had instructed the jury that, to find for Agnitti on that claim, the jury had to find Philip Morris liable on one of the other tort claims.

The Massachusetts Appeals Court concluded that that instruction was in error and that the jury might have reached a different result if it had heard a correct instruction. The Appeals Court therefore remanded the case for a new trial on the Chapter 93A claim.

In its decision, the Appeals Court explained that a cause of action under Chapter 93A is not dependent on tort or contract law concepts. The Court recognized that, where a Chapter 93A claim and a tort claim are based on the same theory of injury and the same facts, a court may conclude that both claims fall together. However, a Chapter 93A claim that is not wholly derivative of another claim does not necessarily fail just because the other claim fails.

With respect to fraud, the Court stated that the standard for liability under Chapter 93A differs from that for misrepresentation and “goes far beyond the scope” of a common law fraud claim. For example, a Chapter 93A claim does not require proof that the plaintiff relied on a misrepresentation or that the defendant knew the representation was false and intended to deceive the plaintiff. Even a statement that is literally true “can violate [Chapter] 93A if it creates an over-all misleading impression through failure to disclose material information.”

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