

Litigation Alert: SJC Announces New Civil Pleading Standard and Revises G.L. c. 93A, § 9 Injury Requirement

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Defendants in Massachusetts will now be better equipped to fend off speculative lawsuits, as the Massachusetts Supreme Judicial Court (SJC) announced last week that it is adopting the more stringent federal pleading standard promulgated by the United States Supreme Court in *Bell Atl. Corp. v. Twombly*, 127 S. Ct. 1955 (2007), for the courts of the Commonwealth. See *Iannacchino v. Ford Motor Company*, SJC-10059 (June 13, 2008). By adopting the *Twombly* standard, the SJC has made it easier for defendants to obtain dismissal of civil lawsuits at the outset of a case. The *Iannacchino* decision also addresses for the second time in the past two years what constitutes an "injury" under Massachusetts' consumer protection statute, G.L. c. 93A, § 9. While the SJC found for the defendant based on the insufficiency of the plaintiffs' allegations, the court's holding with respect to the injury requirement may potentially make it more difficult to defend products liability claims under G.L. c. 93A. Going forward, defense counsel will be well-served to underscore the continued importance of the injury requirement.

In *Iannacchino*, the SJC affirmed a trial court order granting the defendant's motion for judgment on the pleadings. In so doing, the court took the opportunity to announce a revised civil pleading standard applicable to civil cases filed in the courts of the Commonwealth. The SJC cited with approval the United States Supreme Court's 2007 decision to retire the long-standing motion to dismiss standard that "a complaint should not be dismissed for failure to state a claim unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." *Twombly*, 127 S. Ct. at 1959. Civil complaints in Massachusetts now must set forth factual allegations sufficient "to raise a right to relief above the speculative level ... [based] on the assumption that all the allegations in the complaint are true (even if doubtful in fact)." This new standard will benefit defense counsel by requiring plaintiffs to plead "allegations plausibly suggesting (not merely consistent with) an entitlement to relief." It may also help curb discovery abuses by plaintiffs who have alleged a speculative entitlement to relief, but who are relying on the vain expectation that the discovery process will reveal evidence to support their claims.

Iannacchino is also notable for its further revision of the injury requirement in actions under G.L. c. 93A, § 9, by narrowing of the scope of the court's prior decision concerning the chapter 93A injury requirement, *Hershenow v. Enterprise Rent-A-Car Co. of Boston*, 445 Mass. 790 (2006). In *Iannacchino*, a proposed class of owners of certain Ford vehicles brought suit under G.L. c. 93A, § 9, alleging that Ford committed an unfair or deceptive act by "knowingly manufacturing, offering for sale, and refusing to recall vehicles that do not comply with Federal safety regulations and are defective." Specifically, plaintiffs alleged that the door handles on their vehicles were defective and failed to comply with applicable federal motor vehicle safety standards. Plaintiffs further alleged that Ford knew or should have known about the door handles' noncompliance, but nevertheless continued to manufacture the vehicles and market them as conforming to required federal safety regulations. According to plaintiffs, the failure to comply with the safety standard resulted in an increased likelihood that the door handles on their vehicles might open accidentally in a collision, endangering vehicle occupants. Plaintiffs did not, however, claim that their door handles ever had malfunctioned or resulted in any personal injury or property damage.

The trial court granted the defendant's motion for judgment on the pleadings. That decision relied on the *Hershenow* decision, which involved a proposed class of consumers who had rented vehicles and had paid extra for a "collision damage waiver" provision purporting to waive the rental company's claims against a renter for potential vehicle damage. The *Hershenow* plaintiffs had returned the rented vehicles undamaged and then had sued the rental company, claiming that the waiver provision violated Massachusetts law. While the court in *Hershenow* agreed that the waiver provision contained unlawful terms, it held that plaintiffs had not suffered any injury within the meaning of G.L. c. 93A, § 9 because they never had to make a claim under the provision and, therefore, were not "worse off during the rental period than [they] would have been had the CDW complied in full" with Massachusetts law. *Hershenow*, 445 Mass. at 800-01.

The *Iannacchino* court distinguished *Hershenow*, noting that while the unlawful contract provision at issue in *Hershenow* had caused no harm to plaintiffs who had no opportunity to invoke that provision, here the plaintiffs continued to own vehicles with allegedly defective and noncompliant door handles. Observing that "[m]otor vehicles are inherently dangerous in operation, and safety standards play a highly significant role," the SJC held that

the purchase price paid by the plaintiffs for their vehicles would entitle them to receive vehicles that complied with those safety standards or that would be recalled if they did not comply. If Ford knowingly sold noncompliant (and therefore potentially unsafe) vehicles or if Ford, after learning of noncompliance, failed to initiate a recall and to pay for the condition to be remedied, the plaintiffs would have paid for more (viz., safety regulation-compliant vehicles) than they received. Such an overpayment would represent an economic loss - measurable by the cost to bring the vehicles into compliance - for which the plaintiffs could seek redress under G.L. c. 93A, § 9.

The SJC nonetheless affirmed the trial court's decision below based on a finding that the plaintiffs had not alleged sufficient facts under the *Twombly* standard to establish a failure to comply with federal safety regulations.

Iannacchino signifies a narrow refinement of *Hershenow*'s requirement that the plaintiff demonstrate a "causal connection between a deceptive act and a loss to the consumer." *Hershenow*, 445 Mass. at 791. In the limited universe of cases in which a plaintiff never realizes alleged injury - as when deception leads a consumer to purchase a product with a latent defect rendering it potentially dangerous, but the consumer suffers no injury as a result of that defect - the plaintiff may attempt to invoke *Iannacchino* to fulfill the injury requirement under § 9. Although a plaintiff clearly still must demonstrate an injury, *Iannacchino* suggests that the injury requirement can be satisfied so long as a plaintiff can articulate, consistent with the new civil pleading standard adopted from *Twombly*, that he or she purchased something at an inflated price because of an allegedly unfair or deceptive representation of the features, functions or quality of a product or service. Cf. *Aspinall v. Philip Morris Cos., Inc.*, 442 Mass. 381 (2004) (permitting certification of a class action claiming that the price of "light" cigarettes misleadingly advertised as "safer" than regular cigarettes was higher than it should have been than if they had been marketed truthfully).

The SJC's decision in *Iannacchino* may indicate the Court's willingness to relax c. 93A's injury requirement. It is clear, however, that this evolution in the case law may make the defense of products liability claims under G.L. c. 93A more difficult, particularly if courts embrace a broad application of *Iannacchino*'s analysis of overpayment as economic loss. It will be incumbent upon defense counsel to emphasize that *Iannacchino* does not supplant *Hershenow*, and that outside of *Iannacchino*'s unusual circumstances, plaintiffs still must establish an economic or non-economic loss.

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