

No. SJC-13863

Commonwealth of Massachusetts
Supreme Judicial Court

COMMONWEALTH OF MASSACHUSETTS,
Plaintiff-Appellee / Cross-Appellant,

v.

THE MEGA LIFE AND HEALTH INSURANCE COMPANY, MID-WEST NATIONAL
LIFE INSURANCE COMPANY OF TENNESSEE, AND HEALTHMARKETS, INC.,
Defendants,
HEALTHMARKETS, INC., THE CHESAPEAKE LIFE INSURANCE COMPANY, AND
HEALTHMARKETS INSURANCE AGENCY, INC. F/K/A INSPHERE INSURANCE
SOLUTIONS, INC.,
Defendants-Appellants / Cross-Appellees.

On Direct Appellate Review from
Suffolk Superior Court, No. 0684CV04411-BLS1

BRIEF OF AMICUS CURIAE
MASSACHUSETTS DEFENSE LAWYERS ASSOCIATION
IN SUPPORT OF DEFENDANTS-APPELLANTS
AND FOR REVERSAL

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STATEMENT OF INTEREST OF AMICUS CURIAE

The Massachusetts Defense Lawyers Association, Inc. (“MassDLA”) is a voluntary, non-profit, statewide professional association of lawyers who defend corporations, individuals, and insurance companies in civil lawsuits. Members of MassDLA do not include attorneys who, for the most part, represent claimants in personal injury litigation. The purpose of the MassDLA is to improve the administration of justice, legal education, and professional standards, and to promote collegiality and civility among members of the Bar.

To promote its objectives, MassDLA participates as *amicus curiae* in cases raising issues of importance to its members, their clients, and the judicial system. After reviewing the briefings in this matter, MassDLA believes that this is such a case and that its perspective may assist the Court in resolving the important issues raised by this appeal.

RULE 17(C)(5) DECLARATION

Pursuant to Mass. R. App. P. 17(c)(5), MassDLA states that (A) no party or party's counsel authored this brief in whole or in part; (B) no party, party's counsel, or other person—other than other than the *amicus curiae*, its members, or its counsel—contributed money that was intended to fund the preparation or submission of this brief; and (C) neither the *amicus curiae* nor its counsel represents or has represented one of the parties to the present appeal in another proceeding involving similar issues, or was a party or represented a party in a proceeding or legal transaction that is at issue in the present appeal.

INTRODUCTION AND SUMMARY OF ARGUMENT

This case presents two issues that will significantly impact all civil litigation. First, the Court's ruling on the statute of limitations could upend longstanding precedent that the plaintiff bears the burden of proving that the action was timely commenced. The Superior Court acknowledged that the Commonwealth did not present any evidence to establish the timeliness of claims based on conduct before July 1, 2013. Nevertheless, the court awarded monetary remedies for such claims. If this Court affirms, it will abrogate its precedent on the burden to establish timeliness under statutes of limitations. This Court must reaffirm that the burden is on the plaintiff to establish the timeliness of its claims and reverse the Superior Court judgment as to the Commonwealth's claims based on conduct before July 1, 2013.

Second, this case threatens to disassociate liability and monetary remedies. On summary judgment, the Commonwealth established liability based on specific violations of Chapter 93A. In the remedies phase, however, the Superior Court awarded monetary remedies based on conduct for which liability was never established. This Court must reaffirm that, to recover damages or restitution, the plaintiff must

establish that the harm for which a monetary remedy is awarded was caused by conduct for which the defendant was found liable.

ARGUMENT

I. The Court should reaffirm its longstanding and settled law that the plaintiff bears the burden of proving that the action was timely commenced.

The Commonwealth brought claims that stretched more than four years beyond a tolling agreement with the Defendants. The Defendants raised the statute of limitations in their answer, a motion for summary judgment, and the joint pre-trial memorandum. At trial, the Commonwealth did not submit any evidence to support the application of the discovery rule. Although the trial judge acknowledged the lack of evidence, she nonetheless awarded monetary remedies for conduct beyond the four-year statute of limitations. This Court should reverse and reaffirm its precedent on the burden of proof and related procedures.

A. The plaintiff bears the burden to prove the timeliness of its claims.

“Where a defendant raises the statute of limitations as an affirmative defense, the plaintiff bears the burden of proving the action was timely commenced.” *Davalos v. Bay Watch, Inc.*, 494 Mass. 548,

556 (2024) (quoting *Wolsfelt v. Gloucester Times*, 98 Mass. App. Ct. 321, 324 (2020)). A plaintiff's obligation to establish the timeliness of its claims begins with the complaint and runs through trial. *See Babco Indus., Inc. v. New England Merchs. Nat'l Bank*, 6 Mass. App. Ct. 929, 929 (1978) ("A motion to dismiss under Mass. R. Civ. P. 12(b)(6) . . . lies against a complaint which shows on its face that the statute of limitations has run prior to the date the action was commenced."); *Riley v. Presnell*, 409 Mass. 239, 248 (1991) (noting that Massachusetts cases "show no reluctance to allow a jury to decide factual issues relative to the statute of limitations").

This Court has adopted a common law discovery rule that applies only when a statute of limitations has run "before a plaintiff knew or reasonably should have known that she may have been harmed by the conduct of another." *Davalos*, 494 Mass at 551-52. Under this discovery rule, "a cause of action accrues when the plaintiff discovers or with reasonable diligence should have discovered that (1) [she] has suffered harm; (2) [her] harm was caused by the conduct of another; and (3) the defendant is the person who caused that harm." *Id.* (quoting *Magliacane v. Gardner*, 483 Mass. 842, 851 (2020)). Thus, when a

plaintiff relies on the discovery rule, it “bears the burden of proving both an actual lack of causal knowledge and the objective reasonableness of that lack of knowledge.” *Brauner v. Valley*, 101 Mass. App. Ct. 61, 71 (2022).

“Generally, an issue concerning what the plaintiff knew or should have known is a factual question that is appropriate for the trier of fact.” *Davalos*, 494 Mass at 556. Indeed, Massachusetts “show[s] no reluctance to allow a jury to decide factual issues relative to the statute of limitations.” *Id.* (quoting *Riley v. Presnell*, 409 Mass. 239, 247-48 (1991)).

Massachusetts law, which places the burden to prove the timeliness of claims on the plaintiff and retains the plaintiff’s burden through trial, is consistent with caselaw around the country. *See e.g., Glines v. Bruk*, 140 N.H. 180, 181 (1995) (“[T]he plaintiff has the burden of raising and proving that the discovery rule is applicable to an action otherwise barred by the statute of limitations.”) (collecting cases); *Dalrymple v. Brown*, 549 Pa. 217, 224 (1997) (“The party seeking to invoke the discovery rule bears the burden of establishing the inability to know of the injury despite the exercise of reasonable diligence.”). A

majority of jurisdictions hold “that factual disputes concerning when a plaintiff knew or should have known of his cause of action are to be resolved by the jury.” *Riley*, 409 Mass. at 247 (collecting cases).

B. The trial judge misconstrued *Anawan*.

The only precedent cited by the trial judge to support the finding of timeliness under the discovery rule was *Anawan Insurance Agency, Inc. v. Division of Insurance*, 459 Mass. 592, 596 (2011). RA23/41-44. Despite a lack of analysis of the burden or the factual application of the discovery rule, the trial judge concluded that the discovery rule can save claims on a “sparse record” under *Anawan*. RA23/44. *Anawan* does not stand for this proposition.

Anawan addressed a legal issue: “whether the discovery rule applies to G.L. c. 260, § 5A[.]” *Id.* at 598. The Court concluded that G.L. c. 260, § 5A does permit the application of the discovery rule. *Id.* at 600. That’s it. The Court did not analyze the application of the facts in the case to the discovery rule. *See id.* at 598-600.

The trial judge’s conclusion hinged on *Anawan*’s background statement that “the investigation took a very long time, for reasons not explained in the record.” *Id.* at 594. The lack of reasoning in the record

in *Anawan* did not impact the Court’s analysis of the statute of limitations issue. *See id.* at 598-600. Additionally, there is no suggestion in the opinion that any party raised the sufficiency of the evidence to establish the application of the discovery rule on appeal. The Court would not have implicitly decided an issue not presented by the parties. *See Bongaards v. Millen*, 440 Mass. 10, 28 (2003) (“As a fundamental principle, appellate courts should not reach out to decide issues that have not been briefed by any party (or even any amicus).”).

Further, the *Anawan* opinion does not address the burden to prove the timeliness of claims under the statute of limitations. The word “burden” does not even appear in the opinion. Here, the trial judge’s decision effectively concludes that an opinion that says nothing about burdens abrogated the well-established precedent that the plaintiff bears the burden on the statute of limitations. This is not the meaning of *Anawan*.

Therefore, *Anawan* does not support the Commonwealth’s position or the trial judge’s conclusion about the application of the discovery rule in this case.

C. The denial of a defendant's motion for summary judgment does not relieve the plaintiff of any obligations at trial.

The Commonwealth contends that the Superior Court's denial of the Defendants' Motion for Summary Judgment on the statute of limitations "relieved [the Commonwealth] of the obligation to make a further showing on this issue" at trial. (Comm. Br. 47.) The Commonwealth continues to press this argument on appeal even after the trial judge excoriated it as a "a shocking misunderstanding of the implications of the court's ruling on summary judgment." RA23/42 n.22. This Court should make clear that the denial of a motion for summary judgment does not relieve a plaintiff of any burden it carries at trial.

The Commonwealth's position is inconsistent with the nature of a denial of a summary judgment motion. The denial of summary judgment is not immediately appealable. *Maxwell v. AIG Domestic Claims, Inc.*, 460 Mass. 91, 97 (2011). The denial of summary judgment is not even "appealable as such after a trial on the merits[.]" *Elles v. Zoning Bd. of Appeals*, 450 Mass. 671, 674 (2008); *Deerskin Trading Post, Inc. v. Spencer Press, Inc.*, 398 Mass. 118, 126 (1986) ("[T]he denial

of motions for summary judgment and partial summary judgment will not be reviewed on appeal after a trial on the merits.”). This is because “[t]he merits of a claim are better tested on appeal on the record as it exists after an evidentiary trial than on the record in existence at the time the motion for summary judgment was denied.” *Deerskin Trading Post*, 398 Mass. at 126. There is no exception to this rule based on the arguments made in opposition to the motion for summary judgment or the reasoning of the trial court’s summary judgment decision.

Rule 56 already contemplates what the court may do when the denial of summary judgment should have greater effect. Under Mass. R. Civ. P. 56(c), “[s]ummary judgment, when appropriate, may be rendered against the moving party.” Thus, a trial court can direct summary judgment to a nonmoving party without a cross-motion. *See id.* No such summary judgment entered for the Commonwealth after the denial of the Defendants’ Motion for Summary Judgment on the statute of limitations.

Additionally, under Mass. R. Civ. P. 56(d), when “judgment is not rendered upon the whole case or for all the relief asked and a trial is necessary,” the court “shall if practicable ascertain what material facts

exist without substantial controversy and what material facts are actually and in good faith controverted.” The court may then “make an order specifying the facts that appear without substantial controversy,” and at trial, “the facts so specified shall be deemed established, and the trial shall be conducted accordingly.” Mass. R. Civ. P. 56(d). No such order entered on the statute of limitations issues in this case.

Rules 56(c) and 56(d) establish the circumstances where summary judgment can affect the later conduct of the case. They require a judgment or an order. This serves the inherent purpose of ensuring that all parties and the court are aware of which issues have already been determined. The denial of summary judgment alone has no effect on the facts to be established or burdens to be met at trial.

This Court should make this clear in its opinion that the denial of summary judgment does not affect any party’s obligations or burdens at trial. Perhaps because it is such an unquestioned concept of civil procedure (RA23/42 n.22), few cases say it directly. Express guidance may help the bar, as some parties fail to recognize the impact of summary judgment decisions. Indeed, in this case, the trial judge noted: “This is not the first time that the Commonwealth’s attorneys

have demonstrated a shocking misunderstanding of the implications of the court's ruling on summary judgment." RA23/42 n.22. Apparently, earlier in the case, the Commonwealth also incorrectly argued that the court's "grant of partial summary judgment meant that the court had accepted all the allegations in the Complaint." *Id.* Despite the Superior Court's admonishment, the Commonwealth continues to press for an incorrect application of summary judgment principles on appeal. The Court should put it to bed for this case and for future cases.

D. The Commonwealth failed to present evidence that certain claims were filed within the statute of limitations.

Under the parties' tolling agreement, claims arising from conduct on or after July 1, 2013 were timely. RA23/41. The question is whether claims based on conduct prior July 1, 2013 are timely under the discovery rule. They are not because the Commonwealth failed to meet its burden at trial.

The trial judge concluded that the Commonwealth did not present evidence on the discovery rule during trial:

- "No evidence was admitted, however, further explaining the state of the Commonwealth's knowledge on June 30, 2016, its knowledge about specific violations at that time, or why it filed

the Complaint a little more than four years and six months later.” RA23/43.

- “[T]he record is devoid of information about what the Commonwealth knew or should have known during [its civil] investigation.” RA23/43.

The Commonwealth does not dispute these findings.

In applying the discovery rule, however, the trial judge concluded that “the length of time the Commonwealth spent in this case to investigate and uncover the various and several harms alleged, to a degree sufficient for it to file the Complaint, was reasonable.” RA23/44. Whether the length of an investigation was reasonable is not the discovery rule standard. The application of the discovery rule depends on when a plaintiff discovers, or with reasonable diligence should have discovered, that it was harmed by the defendant’s conduct. *Harrington v. Costello*, 467 Mass. 720, 727 (2014). On that point, there is no evidence, so the Commonwealth failed to carry its burden. *See Davalos*, 494 Mass at 556.

The trial judge’s conclusion that “all conduct alleged from 2011 to the date the Complaint was filed, is timely and will be considered for damages purposes” must be reversed. RA/23/44. The Court should bar all claims for damages based on conduct before July 1, 2013.

E. If the Court affirms the judgment as to the time-barred claims, it will abrogate longstanding precedent and create an unworkable rule.

The Court's decision on the statute of limitations and discovery will apply to all civil cases, not just government enforcement actions. *See Anawan*, 459 Mass. at 600 (noting that "G. L. c. 260, § 5A draws no distinctions" based on the identity of the plaintiff or the nature of the relief sought so the discovery rule applies to government agencies "just as it applies to causes of action brought by private individuals under G. L. c. 93A"). Although this is not the primary issue raised by the parties, it could have a lasting impact on litigants in all civil cases.

Massachusetts law, as it currently stands, is clear – the plaintiff has the burden to prove the timely filing of its claim all the way through trial. The application of the discovery rule to toll the statute of limitations in this case conflicts with existing precedent. If the Court holds that the Commonwealth's pre-July 1, 2013 claims were timely despite the lack of evidence to support the application of the discovery rule, it will abrogate decades of precedent that the burden to establish the timely filing of claims is on the plaintiff.

If the court relieves plaintiffs of their burden at trial, lower courts will lack guidance on how to apply the discovery rule going forward. This void will lead an unworkable rule and inconsistent procedures. Previously, juries could decide factual issues related to the statute of limitations. *Davalos*, 494 Mass at 556. Without a clear rule on the burden, whether and how a jury should be instructed will be an open question. It will also confuse the summary judgment process as to the statute of limitations. If the plaintiff need not present evidence to establish the timeliness of claims, it will be unclear how defendants could obtain summary judgment. And the parties cannot look to other states for developed guidance, as most states place the burden on the plaintiff and permit the question to go to a jury. *See Riley*, 409 Mass. at 247; *Glines*, 140 N.H. at 181. The consistent application of statute of limitations principles going forward requires reversal.

* * *

“[T]he plaintiff bears the burden of proving the action was timely commenced.” *Davalos*, 494 Mass. at 548. To meet this burden, the plaintiff must present evidence. As the trial judge acknowledged, the Commonwealth failed to do so here. This Court should reaffirm its

precedent that the burden to prove the timeliness of its claims is on the plaintiff and reverse as to all claims based upon conduct before July 1, 2013.

II. To award damages or restitution, the conduct for which a defendant is found liable must cause the harm to be remedied.

A. When a court grants partial summary judgment, the only facts or elements established are those specified in the order; all other issues are for trial.

Under Mass. R. Civ. P. 56(c), a court may grant summary judgment “on the issue of liability alone.” Under Mass. R. Civ. P. 56(d), when summary judgment “is not rendered upon the whole case,” a trial is necessary. When granting partial summary judgment, the court “shall . . . make order specifying the facts that appear without substantial controversy[.]” Mass. R. Civ. P. 56(d). “Upon the trial of the action the facts so specified shall be deemed established, and the trial shall be conducted accordingly.” *Id.*

Here, the only facts “so specified” were the “Five Findings.” RA20/199-222. Those were the only issues determined; any other issues required proof at trial. *See Rivera-Flores v. P.R. Tel. Co.*, 64 F.3d 742, 745 (1st Cir. 1995) (“[A] denial of summary judgment normally does not

settle material factual disputes upon which the plaintiff bears the ultimate burden of proof.”).

B. The division of decisions on liability and damages does not eliminate the causation requirement; damages or restitution must connect to the specific liability found.

“The purpose of a partial summary judgment decision is to settle some of the issues without the necessity of trial.” *Smyrna Rebar, Inc. v. Modern Cont’l Constr. Co.*, No. 08-P-59, 2009 Mass. App. Unpub. LEXIS 935, at *10 (Sep. 11, 2009). Partial summary judgment on liability only is not uncommon, and it can make a trial much more efficient. But it only partially determines a claim.

To award damages or restitution, “there must be a causal connection between the [defendant’s] deceptive act and the [plaintiff’s] injury or loss.” *Casavant v. Norwegian Cruise Line, Ltd.*, 460 Mass. 500, 503 (2011). “In the absence of a causal relationship between the alleged unfair acts and the claimed loss, there can be no recovery.” *Massachusetts Farm Bur. Fed’n, Inc. v. Blue Cross of Mass., Inc.*, 403 Mass. 722, 730 (1989).

The motion judge determined only that certain conduct violated the Consent Judgment and Chapter 93A. RA20/210-217. He did not

address issues of causation. *See id.* Thus, proof of causation was required at trial. To the extent that the trial judge awarded monetary remedies for conduct for which the Defendants were not found liable, those remedies must be reversed because the Commonwealth could not have proved causation without a liability.

The connection of the liability found to the damages or restitution awarded is particularly significant in Chapter 93A cases where there are multiple claims and different remedies may be available depending the facts proved. In nearly every case, Chapter 93A claims are brought alongside other statutory causes of action, breach of contract claims, or business torts. The facts and elements often overlap, but only in part.

For example, negligent misrepresentation has its own elements, but it also “may be so extreme or egregious as to constitute a violation of G. L. c. 93A, § 11.” *Marram v. Kobrick Offshore Fund, Ltd.*, 442 Mass. 43, 62 (2004). Thus, a party may prove negligent misrepresentation, but to reach Chapter 93A’s additional remedies, there must be specific findings to establish the extreme or egregious conduct. *See Antokal v. Spring Valley Country Club, Inc.*, No. 24-P-1425, 2026 Mass. App. Unpub. LEXIS 593, at *8 (Aug. 7, 2026)

(vacating judgment as to Chapter 93A claim where trial judge did not make specific finding as to extreme or egregious conduct).

Within Chapter 93A itself, the specific liability proved also affects the remedies available. Multiple damages are only available if the court finds that an “act or practice was a willful or knowing violation of [G.L. c. 93A, § 2] or that the refusal to grant relief upon demand was made in bad faith with knowledge or reason to know that the act or practice complained of violated [G.L. c. 93A, § 2].” G.L. c. 93A, § 9(3). Thus, summary judgment on a statutory violation, but not a willful and knowing violation, would have more limited remedies available. *See* G.L. c. 93A, § 9(3). Accordingly, to grant a specific monetary remedy, the Court must make specific liability findings to support the award. *See Antokal*, 2026 Mass. App. Unpub. LEXIS 593, at *8.

In addition to the substantive problem of awarding monetary relief without liability, the lack of notice creates a procedural problem. As a general matter in civil practice, when a trial addresses damages or restitution only, the fair administration of justice requires that trial counsel know which liability issues have been determined.

As discussed above, Rule 56 governs the effect of partial summary judgment. Seemingly following those principles, the trial judge repeatedly made clear before and during trial that she was not expanding the summary judgment liability findings. *See* Defs.’ Reply Br. 21-22. But then her damages decision ultimately did what she said she would not do. *See id.* at 20-27; Defs.’ Br. 40-48.

“It is one of the basic principles of due process that an adjudication may not enter without the parties each being given notice and an opportunity to be heard.” *Wilkins v. Cooper*, 72 Mass. App. Ct. 271, 276-77 (2008). The motion judge’s summary judgment decision established certain liability, and the trial judge’s statements made clear that no new liability findings would issue as part of the remedies decision. When the monetary remedies went beyond the liability findings on summary judgment, the Defendants never had their opportunity to submit evidence and be heard on those issues. Due process commands that the Defendants at least have such an opportunity.

If the Court affirms the judgment as to monetary remedies beyond the scope of the Five Findings, it would obfuscate trial procedures after

a partial summary judgment. Parties will be incentivized to submit new evidence issues seemingly decided issue with the hope of gaining a belated advantage. The opposing party will then counter with even more evidence to protect its own interest. This uncertainty regarding the scope of trial will nullify the purpose of partial summary judgment: “to settle some of the issues without the necessity of trial.” *Smyrna Rebar, Inc.*, 2009 Mass. App. Unpub. LEXIS 935, at *10. This Court’s existing precedents and Rule 56 already prevent this. Applying those principles requires reversal.

CONCLUSION

The Court should reverse the judgment of the Superior Court, at least to the extent that it awarded monetary remedies for untimely claims and for conduct for which the Defendants were not found liable. An affirmance of the Superior Court judgment would call into question longstanding procedural principles in many forms of trial litigation. Reversal is consistent with this Court’s established precedent.

Respectfully submitted,
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CERTIFICATE OF COMPLIANCE

I, Derek M. Gillis, counsel for *amicus curiae* Massachusetts Defense Lawyers Association, certify that this brief complies with the requirements of Mass. R. A. P. 17 and 20. This brief complies with the length and typeface limitations in Rule 20(a)(3)(E) because it is in proportionally spaced font Century Schoolbook, size 14, and contains non-excluded 4,013 words, as counted by using the word count feature in Microsoft Word.

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CERTIFICATE OF SERVICE

I, Derek M. Gillis, counsel for *amicus curiae* Massachusetts Defense Lawyers Association, Inc., certify that I served this brief by electronic mail on all counsel of record.

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