

Suit Against Insurer

One of the self-help remedies that an auto body shop can pursue to seek compensation for repair work is to file a first party claim against an insured's automobile insurance carrier. This is a claim which would be directly against your customer's insurance company. Before filing a first-party claim directly against your customer's insurance company, the auto body shop will need to obtain an assignment of rights from its customer. This assignment will act to place the auto body shop in the position of the customer. Therefore, the auto body shop, via the assignment, will have a direct relationship with the insurance company as if the auto body shop was the actual insured. With a properly executed assignment, the auto body shop can file a breach of contract claim against the insurer based on the insurer's failure to pay benefits as provided in the policy. However, an auto body shop cannot assert a Chapter 93A claim for unfair and deceptive acts and practices, commonly called a "bad faith insurance claim," without first sending the insurer a Chapter 93A 30-Day Demand Letter. See pages 7-7 thru 7-10 for a description of a Chapter 93A demand letter and how to write one.

A first-party claim, therefore, is one where the auto body shop (the claimant) will file directly against the insurance company which insured the shop's customer. The insurance company is now placed in a position, as a result of the assignment, to be the insurance company of the auto body shop for purposes of this particular claim. The auto body shop, therefore, is entitled to pursue this first party claim in order to receive benefits it is entitled to pursuant to the contract between the insured and the insurance company.

Suit Directly Against a Third Party

Another self-help remedy that an auto body shop has available to it in order to seek compensation for losses due to property damage is to file a suit directly against a “third party.” In this case, the third party would be the person whose negligence caused the accident with the auto body shop’s customer. This remedy will not be used as often as that of a first-party action. As with a first-party action, the auto body shop must first obtain an assignment of rights from its client before it has any right to bring suit. (See page 6-7 for the Assignment of Rights form).

A third-party claim is one in which the auto body shop (the claimant) will step into the shoes of its customer and file a negligence suit against the third party who caused the accident. The at-fault party’s insurance company will come forward to defend the claim and pay any settlement or judgment. Therefore, a third-party claim will only be effective if there has been an accident involving two or more parties, and your customer is not determined to be the negligent party. (As opposed to a situation where only one party is involved. For example, if your client has crashed into a telephone pole by himself). Your ability to recover on a third-party negligence claim is contingent upon the degree of fault of the third party and your insured.

Short of filing its own third-party claim, an auto body shop should obtain information on any potential third-party lawsuit and attempt to place a lien on any settlement or judgment.

Auto Damage Appraisers Licensing Board

Complaint Form

Use to file a complaint against licensed appraiser(s).

Forward copy to AASP, 464 Common Street #263 Belmont MA 02478. Retain a copy for your files.

INSURANCE INFORMATION

Claimant/Insured _____

Date of Loss _____

Claim # _____

Appraiser/License# _____

REPAIR SHOP INFORMATION

Shop Name _____

Address _____

City/State/Zip _____

() -
Area Code & Telephone _____

RS# _____

Contact _____

COMPLAINT.

Be specific. _____

If more space is needed, write on back of form or attach additional sheets.

Send your complaint to:
Division of Insurance
Auto Damage Appraisers Licensing Board
1000 Washington Street Suite 810
Boston, Massachusetts 02118

Auto Damage Appraisers Licensing Board

Incident Form

*Use this form to put the Licensing Board on notice of an incident that may become a formal complaint in the future.
Forward copy to AASP, 464 Common Street #263, Belmont, MA 02478. Retain a copy for your files.*

INSURANCE INFORMATION

Claimant/Insured

Date of Loss

Claim #

Appraiser/License#

Amount Due

Date Sent

- REPAIR SHOP INFORMATION

Shop Name

Address

City/State/Zip

() -

Area Code & Telephone

RS#

Contact

COMPLAINT.

Be specific.

If more space is needed, write on back of form or attach additional sheets.

Send your complaint to:

Division of Insurance

Auto Damage Appraisers Licensing Board

1000 Washington Street Suite 810

Boston, Massachusetts 02118

Insurance Company Complaint Form

Use this form for filing a complaint with the Office of Consumer Affairs.

Insured's Name

Claimant (if different)

Claim #

Date of Loss

Date of Receipt of Vehicle

Insurance Co.

Address

City/State/Zip

Person(s) against whom complaint is being made and for what reason.

If additional space is needed, write on back or attach additional documentation.

Send your complaint to:

Office of Consumer Affairs

One Ashburton Place, Room 1411
Boston, Massachusetts 02108

Forward Copy to:

- (1) Division of Insurance 1000 Washington Street Suite 810, Boston, MA 02118,
- (2) Alliance of Automotive Service Providers, 464 Common Street #263, Belmont, MA 02478
- (3) Your Files.

Overview of Chapter 93A and Chapter 176D

There are numerous statutes and regulations that may form the basis for a lawsuit by an auto body shop against a customer, insurer, or a third party. The most common, however, are Chapters 93A and 176D of the Massachusetts General Laws.

Chapter 93A is the Massachusetts Consumer and Business Protection Act. Chapter 93A bans unfair methods of competition and unfair or deceptive acts or practices. As a result, it encompasses a large variety of commercial activity that you may need to redress. There are two particular sections which are of a concern to auto body shops: Section 9 and Section 11. Section 9 grants private consumers the right to bring suit for violations of 93A. Section 11 authorizes businesses to sue over violations of 93A by other businesses.

Chapter 93A does not directly define what is “unfair” or “deceptive.” Under Section 9, violations of laws and regulations generally provide the threshold basis for sustaining a Chapter 93A claim. Under Section 11, violations of laws and regulations are evidence of unfair and deceptive acts but may or may not establish the minimum factual basis for a Chapter 93A claim.

In a Section 9 consumer claim where a shop has “stepped into the shoes” of the insured (its customer), by executing an assignment of rights, Chapter 176D, which governs unfair and deceptive acts and practices in the context of insurance, often forms the basis for a Chapter 93A claim. Pursuant to Chapter 176D, the following acts and practices are considered to be unfair and deceptive:

- (9) Unfair claim settlement practices: An unfair claim settlement practice shall consist of any of the following acts or omissions:
 - (a) Misrepresenting pertinent facts or insurance policy provisions relating to coverages at issue;
 - (b) Failing to acknowledge and act reasonably promptly upon communications with respect to claims arising under insurance policies;
 - (c) Failing to adopt and implement reasonable standards for the prompt investigation of claims arising under insurance policies;
 - (d) Refusing to pay claims without conducting a reasonable investigation based upon all available information;
 - (e) Failing to affirm or deny coverage of claims within a reasonable time after proof of loss statements have been completed;
 - (f) Failing to effectuate prompt, fair and equitable settlements of claims in which liability has become reasonably clear;
 - (g) Compelling insureds to institute litigation to recover amounts due under an insurance policy by offering substantially less than the amounts ultimately recovered in actions brought by such insureds;
 - (h) Attempting to settle a claim for less than the amount to which a reasonable man would have believed he was entitled by reference to written or printed advertising material accompanying or made part of an application;
 - (i) Attempting to settle claims on the basis of an application which was altered without notice to, or knowledge or consent of the insured;
 - (j) Making claims payments to insured or beneficiaries not accompanied by a statement setting forth the coverage under which payments are being made;
 - (k) Making known to insured or claimants a policy of appealing from arbitration awards in favor of insureds or claimants for the purpose of compelling them to accept settlements of compromises less than the amount awarded in arbitration;
 - (l) Delaying the investigation or payment of claims by requiring that an insured or claimant, or the physician of either, submit a preliminary claim report and then requiring the subsequent submission of formal proof of loss forms, both of which submissions contain substantially the same information;
 - (m) Failing to settle claims promptly, where liability has become reasonably clear, under one portion of the insurance policy, coverage in order to influence settlements under other portions of the insurance policy coverage; or
 - (n) Failing to provide promptly a reasonable explanation of the basis in the insurance policy in relation to the facts or applicable law for denial of a claim or for the offer of a compromise settlement.

Taking Action: How to Write a 93A 30-Day Demand Letter*

In a consumer to business context, Section 9 of Chapter 93A requires that a consumer send a demand letter 30 days prior to initiating a lawsuit. (NOTE: A body shop that takes an “assignment of rights” from its customer will be required to serve a 30-day demand letter prior to initiating suit under Chapter 93A. A demand letter is not required prior to pursuing a breach of contract claim as assignee. Also, no demand letter is required prior to initiating suit under Section 11 (a “business-to-business” lawsuit), but sending a demand letter in a business-to-business case may lead to a settlement prior to suit being filed.)

Within thirty days of receipt of a proper demand letter, the merchant must make a good faith response *in writing* or it could be subject to double or triple damages and attorney's fees. The thirty-day letter serves to encourage the merchant to negotiate and settle claims out of court. It also establishes the amount of money the consumer can recover if the charges are proven in court.

Pursuant to Chapter 93A, Section 9, a demand letter must contain the following:

1. Your full name and address;
2. A description of the unfair or deceptive act or practice, including all the unfair and deceptive practices claimed, the dates involved in the transaction, and any other important facts;
3. A clear explanation of the injury you suffered as a result of the unlawful act;
4. The demanded relief, including the amount of money you are demanding to recover.

Although not required, it is advisable to send the 93A letter by way of “Certified Mail – Return-Receipt Requested” so that you will have proof of delivery. You should save a copy of the postal stub and the returned receipt for your files.

*Chapter 93A is a detailed statute. This overview does not explain the entire statute. Review the entire statute prior to sending any demand letters or consult an attorney regarding your rights under Chapter 93A.

Sample of a 93A 30-Day Demand Letter

ABC Auto Body Repair Shop
Your Road
Yourtown, MA #####

[Date]

XYZ Insurance Co.
Their Road
Theirtown, MA #####

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

REFERENCE: [Insert Name of Insured/Claimant]
VEHICLE: [Insert Description]
DATE OF LOSS: [Insert Applicable Date]

Dear Sir or Madam::

This letter is a demand pursuant to Massachusetts General Laws Chapter 93A, Section 9 on behalf of [AUTO BODY SHOP] as assignee of your insured's property damage claim. The assignment of rights is attached hereto as Exhibit 1.

On [DATE OF REPAIR], [AUTO BODY SHOP] completed the repair of [CUSTOMER'S/INSURED'S NAME] vehicle. The total costs of repair were [\$_____]. \$_____ in repairs remain due and owing, and after timely demand by [AUTO BODY SHOP AND/OR CUSTOMER], [INSURANCE COMPANY] has refused to pay the outstanding repair costs. [INSURANCE COMPANY'S] failure to timely pay the outstanding repair costs is a breach of contract and an unfair and deceptive act and practice in violation of Chapter 93A. [AUTO BODY SHOP] hereby demands that [INSURANCE COMPANY] pay \$_____ in outstanding repair-related costs.

FACTS

[INSERT FACTS HERE. Write in enough detail for the insurer to understand what you are alleging.]

Page Two
[Date]
[Insurance Company]

VIOLATIONS OF LAW

[BREACH OF CONTRACT. If applicable, state what and how parts of the policy were breached.]

[VIOLATIONS OF STATUTES AND REGULATIONS. If applicable, state which statutes and regulations were violated and why. This section should include any Chapter 176D claims-handling violations as well as violations of any statutes or regulations governing the auto body industry.]

The above acts and practices were conducted willfully and knowingly and constitute unfair and deceptive acts and practices in violation of Chapter 93A. As a direct and proximate result of [INSURANCE COMPANY'S] violations of Chapter 93A, [AUTO BODY SHOP] suffered damages and makes the following demand:

- 1) Economic damages of \$_____ (INSERT amount of money owed with a breakdown of individual items.)
- 2) That [INSURANCE COMPANY] ceases from [STATE THE UNFAIR AND DECEPTIVE ACT OR PRACTICE].

Pursuant to Chapter 93A, you have thirty (30) days in which to make a reasonable offer of settlement in writing. Should you not comply with the requirements of Chapter 93A, we will seek multiple damages, costs and attorneys fees as provided by Chapter 93A.

Very truly yours,

SIGNATURE

cc: Alliance of Automotive Service Providers, Inc. 464 Common Street #263 Belmont, MA. 02478

Sample of a 15-Day Demand Letter

(Note: This demand letter can be sent directly by an auto body shop only if an assignment of benefits form has been executed by the consumer. If the shop has an assignment on file, the letter should reference this fact, and a copy of the assignment should be attached to this demand letter when it is sent to the insurer.)

Consumer's Name or Auto Body Shop Name

Address

City or Town, MA #####

[Date]

XYZ Insurance Co.

Insurer's Address

Insurer's Town, ST and ZIP

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Dear Sir or Madam:

This letter is a 15-Day demand letter pursuant to M.G.L. Chapter 90, Section 34O. (If the shop has an assignment, the following sentences should be inserted here: "XYZ Auto Body has obtained an assignment of benefits from [INSERT NAME OF CLAIMANT] and is sending this demand as an assignee of [INSERT NAME OF CLAIMANT]'s property damage claim. Attached hereto is an assignment executed by [INSERT NAME OF CLAIMANT])." As required by section 34O, the information regarding the accident is listed below:

[PROVIDE THE FOLLOWING INFORMATION TO THE INSURER:]

- 1) Name of Insured:
- 2) Name of Claimant:
- 3) Itemized Statement of the Amount of the Claim: [list or attach]
- 4) Time, Place and Description of Circumstances of the Accident:
- 5) Names and Addresses of Operators and Owners of the Vehicles Involved in the Accident: [list]
- 6) Names and Addresses of Witnesses to the Accident: [list]
- 7) Location of the Vehicle Where the Damage May Be Inspected by the Insurer:

Section 34O states in pertinent part:

A person making claim against an insured on account of property damage or under clause (a) of limited collision coverage may submit to the insurer a written demand to such insurer for payment of the property damage or limited collision claim containing the information required in the notice of the accident. The insurer shall, within fifteen working days after receipt of such written demand respond in writing setting forth its decision as to whether it accepts the claim, accepts a part of the claim, rejects the claim, or, if applicable, the amount at which it is willing to compromise the claim and the reasons therefor.

Pursuant to section 34O, please respond in writing with your position on this claim within fifteen (15) working days after receipt of this letter.

Very truly yours,

Consumer's Name or Auto Body Shop Representative (if assignment has been executed)

Filing a Lawsuit

If you are unable to resolve a billing or payment dispute informally, you may wish to file a lawsuit. A lawsuit may be filed in Small Claims Court, District Court, or Superior Court, depending upon the issues and the amount in controversy.

In order for an auto body shop to bring a lawsuit based upon an insurer's failure to pay, **THE AUTO BODY SHOP MUST FIRST OBTAIN AN "ASSIGNMENT OF RIGHTS" FROM ITS CUSTOMER.** The forms that should be used in obtaining an assignment of rights are at pages 6-6 and 6-7 within this manual. By signing this form, the customer gives his or her personal right to sue the insurer to the auto body shop. **WITHOUT AN ASSIGNMENT OF THE CUSTOMER'S RIGHTS, THE AUTO BODY SHOP DOES NOT HAVE THE RIGHT TO SUE THE INSURER DIRECTLY FOR UNPAID AMOUNTS.**

SMALL CLAIMS COURT

The Small Claims Court is popularly known as "the people's court." It is an informal and inexpensive forum that is designed to help you settle disputes of \$2,000.00 or less. You can sue in this Court without the representation of an attorney because the more formal procedures that are characteristic of other Courts are not required. Instead there are easy-to-follow rules, and you are allowed to present your own evidence and speak in layperson's terms.

As a plaintiff in Small Claims Court, you waive all rights to have your case heard before a judge and jury. Often, a clerk magistrate will hear and rule on your case. The plaintiff also waives all rights to appeal a decision rendered in Small Claims Court. The defendant, on the other hand, has the right to appeal to a District Court judge or a jury.

You can file suit in the Small Claims Court where either of the parties lives or has a usual place of business. To file suit, obtain a "Statement of Claim and Notice" form from the Small Claims Court Clerk. Be prepared to provide the precise legal name and address of the party you are suing. The legal name of a business may be on file in the town hall where it is located; the legal name of a corporation is on file with the Secretary of State's Office.

You can only sue for money in Small Claims Court. The amount of your claim should include the actual amounts unpaid; any additional costs, such as postage or photocopying, which you incurred due to the unpaid amounts; and Court costs. At the time of filing, you must pay a small Court entry fee. This fee and any other Court fees will be assessed against the defendant if you win your case.

If you are suing under Chapter 93A, the Consumer Protection Act, you must notify the Clerk of that fact in your claim.

The Clerk will provide you with a copy of your completed form, which will include the date and the time of trial. The Clerk will then send a copy of your completed form to the defendant. Contact the Clerk the week before your case is scheduled to make sure that the defendant received your complaint and filed an answer, and that the case will proceed on the specified date.

For further information, you may contact the Small Claims Advisory Service, Phillips Brooks House, Harvard University, Cambridge, MA 02138, (617) 497-5690.

DISTRICT AND SUPERIOR COURT

In general, cases which are determined to have no reasonable likelihood of recovery in excess of \$25,000 are heard in District Court. Cases which are determined to have a reasonable likelihood of recovery in excess of \$25,000 are heard in Superior Court. The Clerk of the Court in which the case is filed makes these determinations, based upon the information contained in the complaint. Although exceptions exist, these generalizations represent the norm.

District and Superior Court litigation proceedings are much more formal and rule-oriented than proceedings in Small Claims Court. It is recommended, therefore, that you consult an attorney regarding all claims amounting to more than \$2,000 in damages. Although you are allowed to file cases in these Courts without an attorney's representation, the procedures can be very confusing and your case may be dismissed for failure to comply with the appropriate rules.

TAKING ACTION: THE CONSUMER PROTECTION LAW

Massachusetts, like many other states, has a statute that specifically enables the Attorney General and consumers to take legal action against unfair or deceptive conduct in the marketplace. The statute, Massachusetts General Law chapter 93A, is referred to as the Consumer Protection Act. The law provides for actions by the Attorney General, or by individuals.

The Attorney General can investigate and take action against businesses that engage in unfair or deceptive conduct, and prosecute a consumer protection case in the public interest.

Because the Attorney General does not have the resources to prosecute every consumer protection violation, the law also provides for private lawsuits.

Consumers may sue businesses that may have engaged in unfair or deceptive acts or practices against them. For claims of actual damages under \$2,000, a consumer may file a legal action in the Small Claims session of the District Court, Boston Municipal Court, or if the claim involves housing issues, in the housing court Small Claims session. The Small Claims session is somewhat less formal than the procedures in other courts, has a far lower filing fee, and for these and other reasons, a consumer may choose to go forward in Small Claims without the assistance of an attorney.

In order to bring any c. 93A action, however, a consumer must begin by sending the business a c. 93A “demand letter,” to which the business has 30 days to respond. This demand letter is not required if a consumer is making a counterclaim in a lawsuit filed by the business against the consumer, or if the business does not maintain a place of business or keep assets in Massachusetts. The purpose of the demand letter is threefold. First, it puts a business on notice of a consumer’s claim, and provides information about the nature of the claim. Second, it may encourage the business to negotiate, to settle the matter without the necessity of going to court.

Finally, it acts as a control on the amount of money damages that the consumer may ultimately recover if the claim is proven in court. The demand letter must:

- Be sent at least 30 days prior to the filing of any court action. It is a good idea to send two copies of the letter to the party you are claiming against, one by certified or registered mail, so that you have a record it was sent, and one by regular mail, in case the business refuses the certified or registered mail. Remember to keep a copy of the letter you send, and keep the receipts and forms you get from the post office if you send the letter by certified or registered mail. These will be helpful if you do need to file in court.
- Identify you (the claimant). You can do this by including your full name and residential address on the letter.
- Reasonably describe the unfair or deceptive act or practice at issue. You can do this by providing a brief factual account of what happened, including dates upon which events occurred. You may, but need not, refer to particular laws you believe were violated when describing the unfair or deceptive acts or practices.
- Identify the injury suffered. You can do this by describing the money or property lost as a result of the unfair act. You will want to find out what it will cost to remedy the unfair or deceptive act or practice, too, to help the court determine your actual damages.
- For additional assistance please call the Public Inquiry & Assistance Center Hotline @ 617-727-8400 or visit www.mass.gov/ago/.