

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.