

## **First Circuit Hands Policyholder a Significant Win in Lawsuit Seeking Multiple Damages for Alleged Unfair Settlement Practices**

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***Appleton v. National Union Fire Ins. Co. of Pittsburgh P.A. and AIG Claims, Inc.***,  
145 F. 4<sup>th</sup> 177 (2025)

In July 2025, the First Circuit Court of Appeals vacated the entry of summary judgment for the insurer defendants on the plaintiff's unfair settlement practices claim under Mass. Gen. Laws c. 93A and 176D based upon its determination that a reasonable jury could conclude that the plaintiff's damages from life altering injuries sustained in a rear end motor vehicle collision were reasonably clear by early 2018, thereby triggering the insurers' affirmative duty to pursue good faith efforts to effectuate the settlement of her claims, more than a year prior to jury trial that resulted in the entry of a \$7.5 million verdict in the plaintiff's favor.

As grounds for concluding that the trial court erred in holding that the plaintiff's recoverable damages never became reasonably clear before jury's return of a verdict on her claims against the at-fault driver, whose liability was uncontested, the First Circuit relied upon the insurers' receipt of three credible estimates of a potential \$5 - \$8.5 million jury verdict range following two unsuccessful mediations; namely, defense counsel's estimate, mock trial results from the insurers' jury consultant, and senior management's evaluation. Despite its recognition of the projected verdict range from these sources, the insurers did not increase their prior \$2.65 million offer until a third (also unsuccessful) mediation held several months later. In response to the insurers' \$3.25 million offer during the third mediation, the plaintiff reduced her prior demand to \$15.5 million. On the eve of trial, the insurers increased their offer to \$5 million followed by the submission of high-low proposals, all of which were rejected by the plaintiff.

Following the entry of a \$8.65 million judgment on the verdict with pre-trial interest, the plaintiff sent the insurers a supplemental c.93A demand letter. In their motion for summary judgment in the ensuing c.93A/176D lawsuit, the insurers argued that the existence of genuine factual disputes over the plaintiff's recoverable damages prevented her from establishing statutory duty to effectuate the settlement of her claims under c.93A/176D. Rejecting this argument on appeal, the First Circuit emphasized that an insurer does not have to know the "exact amount" of the plaintiff's recoverable damages to have an affirmative settlement duties under c.93A/176D. *Id.* at 186

To determine whether damages are reasonably clear under the objective test applied to c.93A/176D unfair settlement practices claims, the factfinder can consider multiple factors, including (i) the defendant's own evaluation of the plaintiff's claim, (ii) insurance

industry practices in similar circumstances, (iii) expert testimony that the insurer violated sound claims practices, and (iv) whether there was a "legitimate difference of opinion" or "good faith disagreement" between the parties concerning the scope of the plaintiff's damages. *Id.* (citations omitted).

Importantly, First Circuit deferred the unresolved question of whether the "reasonably clear" inquiry under the c.93A/176D framework focuses on "the amount of the plaintiff's recoverable damages -- rather than the existence of at least some damages" to address in the remand proceedings. *Id.* at n.4.

Given its entry of summary judgment for the insurers based upon its determination that damages never became reasonably clear on the plaintiff's claims, the trial court did not evaluate the reasonableness of the insurers' pre-trial settlement offers under c.93A/176D. On remand, the jury will be charged with determining whether the \$2.6 million settlement offer conveyed by the insurers when damages became reasonably clear in 2018 was prompt and reasonable when examined under the relevant circumstances. The burden of proof on the reasonableness determination rests with the insurer under c.93A/176D. While an excessive demand is not a defense to a c.93A unfair settlement practices claim, the amount of the plaintiff's demands is part of the overall circumstances the jury can consider in the reasonableness determination. *Id.* at 188.

While reversing summary judgment for the insurers on the unfair settlement practices claim, the First Circuit sustained the entry of summary judgment in their favor on the plaintiff's inadequate investigation claim under c.93A/176D. *Id.* at 191.

If the plaintiff prevails on her unfair settlement practices claim on remand, she will recover her reasonable attorneys' fees incurred in connection with the pursuit of her c.93A/176D claims. She will also have the opportunity to attempt to establish that the insurers engaged in a willful and knowing c.93A violation to recover an award of double or treble damages calculated on the basis of the \$8.65 million judgment entered in her favor in the underlying action. *See, Rhodes v. AIG Domestic Claims, Inc.*, 461 Mass. 48 (2012) (seminal decision establishing that multiple damages award for knowing and willful c.93A/176D violation must be based upon underlying judgment in tort action against insured rather than loss of use of the insurer's late-tendered settlement offers following the jury trial).