

Further Lessons to the Wise in Unfair Settlement Practice Litigation: Recent Massachusetts Trial Court Decision Highlights Draconian Implications of Chapter 93A/176D Claims

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Every year or so, another case crops up in Massachusetts highlighting the significance and seriousness of Massachusetts General Laws Chapters 93A and 176D relative to unfair claims handling and bad faith settlement practices. This year, that case comes by way of a Findings of Fact, Conclusions of Law, and Order for Judgment rendered in *Peerless Insurance Company et al. v. John Rooney*—a trial court case pending in the Business Litigation Session in Suffolk County where the court entered a judgment it recognized as amounting to a “grossly excessive punitive damages award.”

Underlying Litigation

John Rooney worked as a mason on the Longfellow Bridge Repair project. He was injured in 2014 while working on the site when he tripped on scaffolding and fell five feet before being stopped by his fall suppression device. Rooney reported feeling fine immediately after the accident but then went to the hospital because he was experiencing pain and swelling in his legs. He returned to work three days later, but he ultimately went out on leave and collected workers' compensation while his back injuries continued to worsen. When the case went to trial, the plaintiff, Rooney, had undergone a total of nine surgeries that included cervical discectomies and spinal cord fusions. The general contractor denied they were negligent and claimed the plaintiff and his employer were at fault.

Prior to trial, the plaintiff asserted a demand for \$5 million based on \$1.3 million in lost wages, \$400,000 in medical expenses, and a workers' compensation lien of \$1 million. The plaintiff's decreased quality of life, constant hospitalizations, pain, and suffering were included in his demand. The parties mediated the case unsuccessfully, as the only offer extended was less than the plaintiff's medical expenses.

The case went to trial in 2021 in Middlesex County. During the trial, a high-low offer of \$500,000 to \$2.5 million was rejected by the plaintiff. Two additional offers of \$1 million and \$5 million made later in the trial were also rejected by the plaintiff. A panel of six jurors found the general contractor negligent and 100% at fault for the plaintiff's injuries. It went on to award the plaintiff \$1 million for medical expenses, \$2.1 million in lost earning capacity, and \$23.5 million for pain and suffering, for a verdict totaling \$26.6 million. The court then added statutory interest on the judgment, resulting in a total of \$45 million.

The underlying judgment was eventually resolved post-trial; however, the plaintiff expressly carved out a right to pursue a 93A/176D claim, which proceeded in a separate action.

Findings of Fact on Claims Handling Practices

Following the bench trial in the 93A/176D action, the trial court issued its Findings of Fact. The court found that the carrier failed to make a reasonable settlement offer because it did not conduct a reasonable investigation. The court's order scrutinizes in great detail failures in the claims handling process, particularly the reliance on a theory of the

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case that lacked any admissible evidence. The court wrote that the carrier's claims handling process "typified the three wise monkey[s]. It refused to see, hear, or speak the evidence that established that the [general contractor] breached its duty of care to those who worked on the interior scaffolding." It also found that "[f]or the next six years, [the carrier] never revised its theory of causation despite contradictory evidence and, importantly[,] never grasped that its theory was consisten[t] with [its insured's] liability."

Among other findings, the court emphasized the carrier's failure to review the plaintiff's expert report along with its failure to review contractual documents in finding that its investigation was deficient. The court specifically commented that "the standard of care for claims handlers adjusting a claim involving a construction accident includes that they read and be familiar with the safety portions of the construction contract; the insured's safety manual, if any; applicable OSHA regulations; and the plaintiff's expert reports."

The court found the carrier's shortcomings to be willful under 93A/176D and was, therefore, bound by existing law to impose multiple damages along with attorneys' fees and litigation costs. The court specifically held that "given the remarkably large judgment in the underlying case, a finding of willfulness results in a grossly excessive punitive damages award against [the carrier] far in excess of the goals the statute is designed to achieve. However, the statute and controlling precedent offer no discretion." To that end, the court commented that it was "required by law to issue what [it] find[s] to be an excessive punitive damages award," albeit one.

Conclusion

Peerless takes its position at the front of a long line of prior decisions involving bad faith claims handling practices under G.L. c. 93A/176D. The case underscores the importance of thorough and defensible investigations and objective assessments in reviewing and analyzing personal injury claims. *Peerless* and its progeny—*Chiulli v. Liberty Mutual*, 97 Mass. App. Ct. 248 (2020) (intentionally gainful delay strategy amounted to bad faith settlement practices); *Rhodes v. AIG Domestic Claims, Inc.*, 461 Mass. 486 (2012) (awarding \$22 million in Chapter 93A damages for willful violations of Chapters 93A/176D); and *Capitol Specialty Insurance Co. v. Higgins.*, 953 F.3d 95 (1st Cir. 2020) (affirming trebled damages of \$5.4 million)—highlight the ramifications of failing to comply with G.L. c. 93A/176D along with offering significant guidance in establishing defensible positions in similarly situated claims.