



Legal Dimensions

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SJC Determines c. 176D Inapplicable to Self-Insureds

All Is Fair in Love, War and Settlement Negotiations, at Least for Self-Insured Companies

In *Morrison v. Toys "R" Us*, SJC-09179 (April 15, 2004), the Supreme Judicial Court held that Toys "R" Us, a self-insured corporation, could not be held liable under Mass. Gen. Laws c. 93A and Mass. Gen. Laws c. 176D for alleged bad faith settlement practices. In so ruling, the Supreme Judicial Court emphatically decided that the decision to self-insure does not carry with it a concomitant obligation to handle claims in accordance with the statutory guidelines applicable to insurance companies set forth in c. 176D.

In *Morrison*, the plaintiff was injured while shopping in a Toys "R" Us store

when she was struck on the head by a falling sign. She filed suit against Toys "R" Us and its corporate parent to recover damages for her injuries. At the time of the suit, Toys "R" Us handled claims internally through a risk management department in its national office designed exclusively to administer such claims. In the context of the *Morrison* litigation, claims adjusters in the risk management department conducted settlement negotiations with the plaintiff. The plaintiff initially demanded \$250,000 in settlement, which was countered by several offers that were serially rejected by the plaintiff. On the morning of trial, Toys "R" Us made its

last and highest offer of \$45,000, which was rejected. A superior court jury awarded the plaintiff \$1.2 million dollars in damages. The plaintiff accepted an order of remittitur, and an amended judgment was entered awarding damages in the amount of \$250,000.

Following the jury verdict, the plaintiff filed suit seeking punitive damages and attorneys' fees pursuant to c. 93A, §9 and c. 176D alleging a failure of Toys "R" Us to effectuate a prompt, fair and equitable settlement of her claim after liability had become reasonably clear. The trial judge dismissed the complaint, finding that Toys "R" Us owed no legal duty to the plaintiff to effectuate the settlement because Toys "R" Us was not engaged in the business of insurance and was therefore not subject to the mandates of c. 176D. The Appeals Court acknowledged that Toys "R" Us was not an insurer within the meaning of c. 176D, but decided that a self-insured entity fell within the domain of the general consumer protections of c. 93A irrespective of the applicability of c. 176D. Accordingly, the Appeals Court vacated the dismissal.

The Supreme Judicial Court overruled the decision of the Appeals Court and affirmed the judgment of dismissal entered by the trial court. The Court reviewed the legislative history of c. 176D and noted that the clear language of the statute limits the proscriptions of c. 176D to entities "engaged in the business of insurance." The SJC determined that the employment of claims adjusters to administer and negotiate claims against itself did not make Toys "R" Us

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a member of the insurance industry subject to the provisions of c. 176D. The legislative concern for the enactment of the statute was to prevent entities that profit from selling insurance policies from abusing exclusive rights and duties to control litigation vested through those same policies.

The Court further explained that the provisions of c. 93A apply only to actions taken in the course of "trade or commerce." Reasoning that the stat-

ute has never been read so broadly as to establish a remedy for unfair or deceptive dealings in the context of litigation, the Court declined to extend the requirements of c. 93A and 176D to self-insured entities. Accordingly, Toys "R" Us had no obligation to conduct a reasonable investigation or reach an equitable settlement of any claim even if liability and damages were reasonably clear. In light of this reasoning, the Court held that, as a matter of law, a self-insured entity

cannot be held liable under c. 93A/176D for bad faith settlement practices.

The **Morrison** court distinguished a prior Appeals Court decision relied upon by the plaintiff requiring a third-party administrator to conform its settlement negotiations in compliance with c. 176D. In **Miller v. Risk Mgt.**, 36 Mass. App. Ct. 411 (1994), the Appeals Court determined that a third-party administrator for an insurer should be held to the standards set forth in c. 176D. The failure of the administrator to effectuate an equitable settlement when liability and damages were reasonably clear and justified an award of attorneys' fees. The **Morrison** court explained that an insurer may not avoid the application of c. 176D by interposing a third party administrator to handle and settle claims. On the other hand, because Toys "R" Us had no initial obligation to comport with c. 176D, such a duty was not self-imposed by the decision to employ its own risk management department to resolve claims internally.

The question left unanswered by the **Morrison** court is whether a third-party administrator for a self-insured entity may be held to the standards of c. 176D. The logic of the **Morrison** decision would indicate that such an administrator could not be held liable because they are simply acting as an agent and de facto risk management department, much like the risk management department of Toys "R" Us.

Notwithstanding this logic, third-party administrators for self-insured entities would be wise not to read the decision so broadly. The **Miller** decision suggests that while it was appropriate for the trial judge to apply c. 176D, the general principles of c. 93A would have supported the same result even if the provisions of c. 176D had been disregarded. The **Miller** court suggested that c. 93A would be violated without reference to c. 176D by a claims administrator that simply sought to "wear out" a claimant by unduly delaying settlement when liability is clear. In any event, the **Morrison** decision makes clear that a self-insured corporation may not be held liable under c. 93A/176D for unfair claims settlement practices. ■

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