

## Massachusetts Appeals Court Finds in Favor of PDP Client Overturning \$700,000 Bad Faith Verdict

*Johanna Lief-Socolow v. Plymouth Rock Assurance Corporation No. 17-P-393*

John J. Cloherty successfully represented Plymouth Rock Assurance Corporation (PRAC) in an appeal before the Massachusetts Appeals Court from a Superior Court verdict finding bad faith settlement practices occurred when handling an Underinsured Motorist claim. Attorney Cloherty was retained for the appeal after a different law firm had tried the ch. 93A case in a four-day bench trial before Superior Court Judge Constance Sweeney.

### Background

The plaintiff, Johanna Lief-Socolow, was involved in a car accident with a driver insured by PRAC. There was no dispute over the insureds' liability for the accident. After taking a passenger to the emergency room, the plaintiff (who did not seek medical care), her passenger and their children visited Six Flags Amusement Park for the day. Shortly after the accident, the plaintiff began to experience headaches, insomnia and back pain. Plaintiff later claimed to have suffered brain-shearing injuries resulting in ongoing psychological symptoms. There were contradictions in the medical reports, however, concerning the nature, extent and causation of the plaintiff's symptoms. The plaintiff submitted a claim for the full policy limit of \$250,000, later raised to a demand for \$300,000.

PRAC retained a Board-Certified neurologist to review the medical records, who concluded that Plaintiff's symptoms were not causally related to the accident and/or not supported by objective findings. There were also three Independent Medical Examinations conducted by a neurologist and a neuropsychologist for another insurer which again had contradictory conclusions as to the existence or extent of injuries. In response to Plaintiff's demands, PRAC made a series of offers of \$9,000, then \$16,000, then \$35,000.

Unable to reach a settlement agreement, PRAC and the plaintiff agreed to arbitrate the personal injury claims, pursuant to a high-low agreement of a \$250,000 high and low of \$35,000. The arbitrator, who was not aware of the high-low agreement in the case, awarded the plaintiffs \$905,000. PRAC promptly paid the \$250,000 high amount to the plaintiff. Thereafter Plaintiff pursued the ch. 93A claims in Superior Court.

### Superior Court Judgment

In the bench trial of the unfair claim practice claim under M.G.L. c. 93A and M.G. L. c. 176D, the Superior Court judge found that PRAC had violated Ch. 93A by "willful failure to conduct a reasonable investigation" and because "PRAC's settlement offers were unfair and deceptive acts" with "penuriously low" offers, then ordered treble damages. The Trial Court awarded treble damages based on the \$250,000 limit in the high-low agreement, plus attorneys' fees and costs. Final Judgment entered for \$500,000 (recognizing that PRAC had already paid the \$250,000) in damages, plus attorneys' fees of \$203,775, plus interest. In response to this verdict, PRAC retained Attorney Cloherty of Pierce Davis & Perritano LLP to prosecute the appeal.

## Massachusetts Appeals Court Ruling

The Appeals Court agreed with PRAC's argument that the Superior Court judge erred in finding PRAC liable for unfair claims practices. The Appeals Court noted inconclusive medical evidence and PRAC's hiring of a neurologist to review the records as evidence of PRAC's effort to conduct a reasonable investigation of the claim. It also found that based on the plaintiff's medical bills and contradictory medical records, PRAC's settlement offers had been reasonable when made. This decision is strong precedent that claims officials may rely on experts and insurance defense counsel when assessing settlement values. The Appeals Court did not even reach PRAC's arguments that the trial court improperly used the satisfied arbitration award as a measure of damages rather than a loss of use basis.

The Appeals Court also rejected Plaintiff's cross-appeal asserting that it was error to confirm the arbitrators award in the \$250,000 agreed high amount paid rather than the \$905,000 arbitrator award amount. The Appeals Court held that confirming the \$250,000 arbitration award was error because "A trial court has no jurisdiction to hear an action to confirm an arbitration award if it has been fully satisfied."

The Appeals Court reversed the Superior Court's bad faith verdict and ordered Judgment to enter in favor of PRAC.