

# **Chapter 93A Rights and Remedies**

## **Table of Contents**

### **Chapter 1**

#### **EVOLUTION OF CHAPTER 93A: NATIONAL AND LOCAL AUTHORITY**

DWIGHT GOLANN, ESQ.

*Professor of Law, Suffolk University Law School*

1.1 INTRODUCTION

1.2 STRUCTURE OF THE ACT

1.3 HISTORY OF THE ACT

1.4 FEDERAL CONSUMER LAW DECISIONS

1.5 ATTORNEY GENERAL REGULATIONS UNDER CHAPTER 93A

1.6 LEGISLATIVE AMENDMENTS TO CHAPTER 93A

1.7 RELATED STATUTES

1.8 INTERACTION OF CHAPTER 93A AND OTHER CLAIMS

### **Chapter 2**

#### **BASES FOR CLAIMS UNDER CHAPTER 93A-PRINCIPLES OF UNFAIRNESS AND DECEPTION**

SUSAN PAPANNEK McHUGH, ESQ.

*Mediator for Special Education Appeals, Massachusetts Department of Education*

*Former Assistant Attorney General, Consumer Protection Division, Office of the Attorney General, Commonwealth of Massachusetts*

2.1 INTRODUCTION

2.2 GENERAL PRINCIPLES

2.2.1 Case-by-Case Determination

2.2.2 Not Limited by Traditional Concepts

(a) Beyond Privity

(b) Recovery for Physical Injuries and Harassment

(c) Nontraditional Remedies

2.2.3 Otherwise Lawful Acts Can Be Unfair or Deceptive

## 2.2.4 Illegal Acts Not Necessarily Unfair or Deceptive

(a) Good Faith Disputes

(b) Negligence

## 2.3 DETERMINING UNFAIRNESS

### 2.3.1 The FTC's S&H Test

### 2.3.2 Massachusetts's PMP Assocs., Inc. Test

(a) Liability Based Upon Unfairness to Consumers

(b) Liability Based Upon Unfairness in Business

(c) Insufficient Evidence of Unfairness in Business

### 2.3.3 Unconscionable Acts May Be Unfair

### 2.3.4 Balancing the Equities

### 2.3.5 Attorney General's Regulations

### 2.3.6 The 1980 FTC Unfairness Statement- Unjustified Consumer Injury

### 2.3.7 Massachusetts' Application of the 1980 FTC Unfairness Statement

## 2.4 FINDING DECEPTION

### 2.4.1 Tendency or Capacity to Deceive Does Not Require Reliance

### 2.4.2 Materiality

(a) Attorney General's Regulations on Materiality, Including Breach of Warranty

(b) FTC Cases on Materiality

### 2.4.3 Types of Deceptive Claims

(a) Misrepresentation

(b) Fraud

(c) Failure to Disclose Material Facts

(d) Overall Impression Is Misleading Despite Literal Truth

### 2.4.4 Defendant's Liability; Knowledge of Deception

- (a) When Defendant Is Liable Without Knowing About the Deception
- (b) When Defendant Is Liable Without an Intent to Deceive
- (c) When Defendant's Lack of Knowledge About the Deception Precludes Liability

#### 2.4.5 The 1983 FTC Deception Statement

### 2.5 SECTION 11 DISTINGUISHED FROM SECTION 9

#### 2.5.1 A Similar Standard

#### 2.5.2 Breaching the Covenant of Good Faith

#### 2.5.3 Look to the Terms of the Contract

## **Chapter 3 PUBLIC ENFORCEMENT**

BARBARA B. ANTHONY, ESQ.

*Former Chief, Public Protection Bureau Office of the Attorney General Commonwealth of Massachusetts*

### 3.1 GENERAL SCOPE OF ATTORNEY GENERAL'S ENFORCEMENT AUTHORITY

### 3.2 TRANSACTIONS EXEMPT FROM THE GENERAL SCOPE OF CHAPTER 93A

### 3.3 AFFIRMATIVE LITIGATION DIVISIONS USING CHAPTER 93A

### 3.4 INVESTIGATIONS BY THE ATTORNEY GENERAL

#### 3.4.1 Informal Investigations

#### 3.4.2 Formal Investigations

- (a) CID Authority Under G.L. c. 93A, 6

- (b) Notice and Service of a CID

- (c) Requirements of the Notice

- (d) Limitations on Production

- (e) Confidentiality of CID Information

- (f) Modifications to the CID by the Courts

- (g) Appealing an Order to Enforce a CID

- (h) Penalties for Failure to Comply with a CID

### 3.5 RESPONDING TO INVESTIGATIONS

#### 3.5.1 Initial Contact with the Attorney General's Office

#### 3.5.2 Responding to a CID

(a) Searching for Documents and Preparing Them for Production

(b) CID Negotiations When the Client Is a Target

### 3.6 ENFORCEMENT ACTIONS AVAILABLE TO THE ATTORNEY GENERAL

#### 3.6.1 Civil Enforcement Actions Under Section 4

(a) Penalties for Violating Section 4 Orders

(b) Restitution Under Section 4

(c) Standards for Relief

(d) Willful Violations Under Section 4

(e) Penalties for Violating a Section 4 Injunction

#### 3.6.2 Assurances of Discontinuance

#### 3.6.3 Letter Agreements

EXHIBIT 3A—CID: Marketing and Sale of Insurance Policies to Business Owners

EXHIBIT 3B—CID: Sale and Financing of Home Improvement Repairs

EXHIBIT 3C—CID: Motor Vehicle Leases

## **Chapter 4 PRIVATE REMEDIES**

CHARLES S. COHEN, ESQ.  
DAVID G. COHEN, ESQ.  
CHARLES W. DANIS, ESQ. (1996)  
*Egan, Flanagan & Cohen, PC, Springfield*

### 4.1 INTRODUCTION

#### 4.1.1 Section 9 Remedies

(a) Requirement of "Injury"

#### 4.1.2 Section 11 Remedies

(a) Requirement of Loss of Money or Property

(b) Regulated Business

## 4.2 COMPENSATORY DAMAGES

4.2.1 Insurance—Failure to Pay

4.2.2 Intentional Infliction of Emotional Distress

4.2.3 Personal Injuries

4.2.4 Misrepresentation

4.2.5 Cumulative or Duplicative Damages Under Multiple Theories

(a) Prior to 1989 Amendment

(b) Effect of 1989 Amendment

## 4.3 PUNITIVE DAMAGES

4.3.1 Double to Treble Damages Under Section 9

4.3.2 Double to Treble Damages Under Section 11

4.3.3 "Willful" or "Knowing"

4.3.4 Derivative 93A Claims

4.3.5 Liability of Multiple Defendants-Independent or Several

4.3.6 Multiple Damages in Default Judgment

## 4.4 ATTORNEY FEES AND COSTS

4.4.1 Availability—"In Addition to Other Relief"

4.4.2 Availability—Damages Recoverable Under Another Theory

4.4.3 Availability—Arbitration and Settlement

4.4.4 Amount of Attorney Fees

4.4.5 Expert Witness Fees

4.4.6 Fees on Appeal

4.4.7 Apportionment of Fees to Chapter 93A Claims

4.4.8 Effect of Reasonable Tender of Settlement

## 4.5 EQUITABLE RELIEF

### 4.5.1 Rescission and Money Damages

### 4.5.2 Specific Performance

### 4.5.3 Relationship to Other Statutes and Regulations

### 4.5.4 Prevention of Loss of Money or Property

### 4.5.5 Preliminary Injunctive Relief

## **Chapter 5 INITIATING CHAPTER 93A LITIGATION**

MELINDA MILBERG, ESQ.  
*Glovsky, Tarlow & Milberg, Boston*  
LINDA W. CONRAD, ESQ. (1992)  
*Lexington*

### 5.1 PRELIMINARY CONSIDERATIONS

### 5.2 HYPOTHETICAL CASE

### 5.3 SECTION 9 DEMAND LETTER

#### 5.3.1 When a Demand Letter Is Necessary

#### 5.3.2 Compliance Requirements

### 5.4 RESPONSE TO DEMAND LETTER

#### 5.4.1 Purpose and Effect of Response

#### 5.4.2 Investigation

#### 5.4.3 Response Letter

#### 5.4.4 Section 11

### 5.5 COMPLAINT

#### 5.5.1 Selecting a Forum

#### 5.5.2 Content and Structure of the Complaint

##### (a) Applicable Procedural Rules

##### (b) Identifying the Defendants

##### (c) Unfair or Deceptive Act or Practice, or Unfair Method of Competition

- (d) Trade or Commerce
- (e) Injury or Loss
- (f) Demand Letter Mailed or Delivered
- (g) Relief Demanded
- (h) Jury Demand
- (i) Separate Counts
- (j) Amending the Complaint

## 5.6 RESPONSE TO THE COMPLAINT

### 5.6.1 Motion to Dismiss

### 5.6.2 Rule 9(b) and Rule 12(e) Motions

### 5.6.3 Answer

#### (a) Responding to Each Allegation

#### (b) Affirmative Defenses

### 5.6.4 Counterclaims, Cross-claims and Third-Party Claims

### 5.6.5 Jury Demand

## 5.7 PRETRIAL STRATEGIES

### 5.7.1 Suspension of Proceedings

### 5.7.2 Preemption

### 5.7.3 Arbitration

### 5.7.4 Settlement

## 5.8 CONCLUSION

EXHIBIT 5A—Sample Demand Letter

EXHIBIT 5B—Sample Complaint

## **Chapter 6 DEFENSES AND EXEMPTIONS**

BRUCE A. SINGAL, ESQ.  
WILLIAM C. ATHANAS, ESQ.  
*Donoghue, Barrett & Singal, PC, Boston*

## 6.1 INTRODUCTION

### 6.1.1 Outline of Case

### 6.1.2 Answer Versus Motion to Dismiss

## 6.2 TRADE AND COMMERCE

### 6.2.1 Definition

### 6.2.2 Business Versus Private Transaction Test

## 6.3 PERMITTED PRACTICES

## 6.4 FAILURE TO EXHAUST ADMINISTRATIVE REMEDIES

## 6.5 ARBITRATION

### 6.5.1 Section 9

### 6.5.2 Section 11

## 6.6 FEDERAL PREEMPTION

## 6.7 Acts Occurring Primarily and Substantially Within Massachusetts

## 6.8 MISCELLANEOUS DEFENSES

### 6.8.1 No Injury Under Section 9

### 6.8.2 No Loss of Money or Property Under Section 11

## 6.9 Acts Not "Unfair or Deceptive"

### 6.9.1 Section 9

### 6.9.2 Section 11

### 6.9.3 No Causation

### 6.9.4 Failure to Submit a Proper Demand Letter

### 6.9.5 Rejection of Reasonable Settlement

### 6.9.6 Statute of Limitations

### 6.9.7 Res Judicata



6.9.8 Lack of Standing

6.9.9 Improper Pleadings

6.9.10 Lack of Knowledge

6.9.11 Sophistication of the Parties

**Chapter 7**  
**PROCEDURAL ISSUES**

MARK J. ALBANO, ESQ.  
*Dalsey, Ferrara, Townsend & Albano, Springfield*

7.1 JURISDICTION

7.1.1 Superior Court

7.1.2 Housing Court

7.1.3 District Court

(a) Regular Session

(b) Small Claims Session

7.1.4 Federal Courts

(a) Administrative Agencies (Primary Jurisdiction)

7.2 VENUE

7.3 MIXED COMMON LAW, STATUTORY AND 93A CLAIMS

7.4 JURY TRIALS

7.4.1 Right to a Jury Trial

7.4.2 Requests for a Jury Trial

7.4.3 Availability of a Jury Trial

(a) Trial Alternatives

(b) Issue Preclusion

7.5 CLASS ACTIONS

**Chapter 8**  
**DISCOVERY AND TRIAL PREPARATION**

JOHN O. MIRICK, ESQ.  
*Mirick, O'Connell, DeMallie & Lougee, Worcester*

## 8.1 INTRODUCTION

## 8.2 INFORMAL DISCOVERY

### 8.2.1 Client Interview

### 8.2.2 Family, Friends and Coworkers

### 8.2.3 Third Parties

### 8.2.4 Statements

### 8.2.5 Photographs

### 8.2.6 Networking

### 8.2.7 Surfing the Internet and Other Sources

## 8.3 FILES

### 8.3.1 Correspondence

### 8.3.2 Pleadings

### 8.3.3 Chronological Documents

### 8.3.4 Document Database

### 8.3.5 Depositions

### 8.3.6 Issue Files

## 8.4 TRIAL BOOK

### 8.4.1 Chronology

### 8.4.2 Statutes and Regulations

### 8.4.3 Pleadings

### 8.4.4 Legal Research

### 8.4.5 Fact Memos and Reports

### 8.4.6 Damages

### 8.4.7 Deposition Summaries/Digests

#### 8.4.8 Deposition Exhibits

### 8.5 FORMAL DISCOVERY

#### 8.5.1 Interrogatories

(a) People, Places and Dates

(b) Damages

(c) Events

(d) "Why?"

(e) Contention Interrogatories

(f) Experts

#### 8.5.2 Document Requests

(a) Correspondence Between the Parties

(b) Notes and Records of Conversations

(c) Financial Information

(d) Communications with Others

(e) Photographs

(f) Investigations and Reports

#### 8.5.3 Physical Evidence

#### 8.5.4 Depositions

(a) Parties

(b) Chronological Examination

(c) Depositions of Third Parties

(d) Identify Documents

(e) Cost

(f) Videotape

#### 8.5.5 Admissions

(a) Simple Facts

(b) Proof of Negatives

(c) Documents

## 8.6 FINAL TRIAL PREPARATION

8.6.1 Direct Examination Outlines

8.6.2 Witness Files

8.6.3 Cross-examination Outlines

8.6.4 Trial Exhibits

8.6.5 Trial Notes

EXHIBIT 8A—Sample Discovery Hypothetical

EXHIBIT 8B—Chronology

EXHIBIT 8C—Interrogatories

EXHIBIT 8D—Request for Production of Documents

EXHIBIT 8E—Request for Admissions

## **Chapter 9**

### **TRIAL OF A CHAPTER 93A ACTION: AN OVERVIEW OF COMMON ISSUES**

LAWRENCE G. CETRULO, ESQ.

*Cetrulo & Capone, LLP, Boston*

9.1 INTRODUCTION

9.2 SCOPE OF CHAPTER 93A PRACTICE

9.2.1 Expansion

9.2.2 Limitations

9.2.3 Contractual Limitations of Chapter 93A Claims

(a) Claims Against Employers for Actions of Employees

(b) Preemption

9.3 THE PRIMA FACIE CASE

9.3.1 Standing

(a) Section 9

(b) Section 11

9.3.2 Proof of Proper Demand

9.3.3 Demand Letter Unnecessary

(a) Section 11

(b) Section 9

(c) Proof of Unreasonable Settlement Offer

9.3.4 Proof of Injury: G.L. c. 93A, 9

9.3.5 Proof of Injury: G.L. c. 93A, 11

9.3.6 Causation

9.3.7 Proof of "Unfair and Deceptive"

(a) Different Standards for Section 11 and Section 9 Cases

(b) Defamation

(c) Breach of Contract (General)

(d) Breach of Contract (Purchase and Sale)

(e) Breach of Contract (Services)

(f) Landlord/Tenant

(g) Negligent Misrepresentation of Facts

(h) Failure to Disclose

(i) Misuse of Official Position

(j) Common Law Fraud

(k) Insurance Settlement Practices

(l) Breach of Warranty

(m) Real Estate Transactions

(n) Breach of Fiduciary Duty

(o) Banking and Financial Activities

9.3.8 Proof of "Trade or Commerce"

9.3.9 Proof of Being "in Conduct" of Trade or Commerce

9.3.10 Special Requirements for Section 11

9.4 COMMON LAW DEFENSES TO CHAPTER 93A CLAIMS

9.5 CHOOSING BENCH OR JURY TRIAL

9.5.1 Chapter 93A Claim Only

9.5.2 Chapter 93A Claim and Common Law Claims

9.6 PRESERVING ISSUE ON APPEAL

9.6.1 General (Final Judgment on Chapter 93A Claim)

9.6.2 Jury Cases

9.6.3 Bench Trials

## **Chapter 10**

### **MOTOR VEHICLE COMPLAINTS UNDER CHAPTER 93A**

LINDA W. CONRAD, ESQ.

*Lexington*

EDGAR DWORSKY, ESQ. (1992, 1994, 1996)

*Director of Consumer Education, Executive Office of Consumer Affairs and Business Regulation,  
Commonwealth of Massachusetts*

PAUL W. GROMER, ESQ. (1989)

*Commissioner of Energy Resources, Commonwealth of Massachusetts*

10.1 INTRODUCTION

10.2 NEW CAR LEMON LAW

10.2.1 Scope

10.2.2 Nonconformity

10.2.3 Reasonable Number of Attempts

10.2.4 Manufacturer's Last Chance to Repair

10.2.5 Defenses

10.2.6 Damages

## 10.2.7 Mediation, Arbitration or Court

(a) Mediation

(b) Court

## 10.2.8 Appeals by Manufacturers

## 10.2.9 Further Action by Consumers

## 10.2.10 Late Awards

## 10.3 USED CAR LEMON LAW

### 10.3.1 Scope

### 10.3.2 Dealer

### 10.3.3 Defect

### 10.3.4 Warranty Period

(a) Warranty Extension

(b) Additional 30-Day Warranty for Repairs

(c) Failure to Provide Written Warranty

### 10.3.5 Repair Attempts

(a) Tolling

### 10.3.6 Defenses

### 10.3.7 Mediation, Arbitration or Court

(a) Mediation

(b) Arbitration

(c) Court

### 10.3.8 Appeals by Dealers

### 10.3.9 Appeals by Consumers

### 10.3.10 Private-Party Sales

## 10.4 RELATED STATUTES

10.4.1 Implied Warranty of Merchantability

10.4.2 Option Packaging

10.4.3 Odometer Spinning

10.4.4 Lemon Aid Law

10.5 ATTORNEY GENERAL'S REGULATIONS

10.5.1 Chapter 93A Regulations

(a) Breach of Warranty

(b) Failure to Disclose

(c) Violation of Other Statutes or Regulations

10.5.2 Motor Vehicle Regulations

(a) Advertising—940 C.M.R. 5.00 et seq.

(b) Manufacturers' Responsibilities

(c) Sales Requirements—940 C.M.R. 5.04

(d) Repairs and Services—940 C.M.R. 5.05

EXHIBIT 10A—201 C.M.R. 11.00

## **Chapter 11**

### **CHAPTER 93A LITIGATION INVOLVING DEBTOR-CREDITOR ISSUES**

MICHAEL C. GILLERAN, ESQ. (1992, 1994, 1996)

*Shafner & Gilleran, Boston*

PATRICIA A. BOBBA, ESQ. (1989)

*Attorney at Law, Springfield*

11.1 INTRODUCTION

11.2 FEDERAL AUTHORITY

11.2.1 Consumer Credit Protection Act

(a) Part I—Consumer Credit Cost Disclosure

(b) Part II—Restrictions on Garnishment of Earnings

(c) Part III—Controlling Legislation Regarding Credit Reporting Agencies

(d) Part IV—Equal Credit Opportunity



(e) Part V—Debt Collection Practices

(f) Part VI—Electronic Transfers of Money

11.2.2 Soldiers' and Sailors' Relief Act

11.3 MASSACHUSETTS AUTHORITY

11.3.1 Chapter 93A

(a) Examples of Chapter 93A Violations

(b) Examples of Chapter 93A Nonviolations

11.3.2 Attorney General Regulations

(a) Debt Collection Regulations

(b) Conduct of Collection Agencies

11.3.3 Disciplinary Rules of the Supreme Judicial Court

11.3.4 Additional Statutory Controls

(a) Debt Collection

(b) Unfair Sales Practices

(c) Collection Agencies

(d) Consumer Credit Reporting

(e) Consumer Credit Cost Disclosure

(f) Misleading Advertising

(g) Unordered Goods

(h) Assaults to Collect Loans

(i) Court Proceedings to Enforce Liens, Conditional Sales and Pledges

(j) Retail Installment Sales of Motor Vehicles

(k) Insurance Premium Financing

(l) Retail Installment Sales and Services

11.4 REPRESENTING CREDITORS

11.4.1 Initial Letter to the Debtor

11.4.2 Follow-Up Action

11.4.3 Third-Party Contact

11.4.4 Postdated Checks

11.4.5 Commencement of Suit

11.5 REPRESENTING DEBTORS

11.6 PROCEDURAL SAFEGUARDS

11.6.1 Correct Identification of Parties

11.6.2 Necessity for Demand Letter

11.6.3 Statutes of Limitations

11.6.4 Forum Selection

11.6.5 Prejudgment Remedies

(a) Attachments

(b) Trustee Process

11.6.6 Postjudgment Remedies

(a) Execution

11.6.7 Summary Process

11.7 CONCLUSION

EXHIBIT 11A—209 C.M.R. 18.00: Conduct of the Business of Collection Agencies

**Chapter 12**  
**REAL ESTATE TRANSACTIONS**

ROBERT S. KUTNER, ESQ.  
*Casner & Edwards, Boston*

12.1 INTRODUCTION

12.2 REAL ESTATE SALES

12.2.1 Background for Application of Chapter 93A to Real Estate Sales

(a) Implied Warranty Claims Inapplicable to Real Estate

(b) Common Law Fraud and Misrepresentation Distinguished

(c) No Fiduciary Duty Owed to Buyers

12.2.2 People Subject to Chapter 93A

(a) Private Sellers

(b) Most Professional Sellers

(c) Persons Vicariously Liable

12.2.3 Standards Applicable to Chapter 93A

(a) Statutory Requirements

(b) Regulations of the Attorney General

12.2.4 What "Facts" Require Disclosure: The Objective Buyer Standard

12.2.5 Claims Involving Negotiation Practices

12.2.6 Claims Involving Condition of Property

(a) Affirmative Misrepresentations

(b) Negligent Misrepresentations

(c) "Innocent" Misrepresentations

(d) Failure to Disclose

(e) Particular Conditions/Off-Site Matters

12.2.7 Defenses

(a) Negating Required Elements of the Plaintiff's Case

12.2.8 Measure of Damages/Relief Available

(a) Equitable Relief

(b) Intentional Misconduct

(c) Negligent Misconduct

12.2.9 Multiple Damages

12.3 MORTGAGE-RELATED TRANSACTIONS

### 12.3.1 Applicability of Chapter 93A to Mortgagee and Its Agents

- (a) Mortgagee in Possession
- (b) Title Attorneys
- (c) Federal Savings and Loan Associations

### 12.3.2 Standards Applicable

- (a) Foreclosures and Refinancings

## 12.4 REAL ESTATE LEASES

### 12.4.1 Persons Subject to Chapter 93A

- (a) "Professional" Landlords
- (b) Property Managers
- (c) "Nonprofessional" Landlords
- (d) Commercial Tenants

### 12.4.2 Residential Tenancies

- (a) Key Statutes and Regulations
- (b) Standards Applicable to Chapter 93A
- (c) Damages

### 12.4.3 Commercial Tenancies

- (a) Breach of an Agreement to Lease Property
- (b) Breach of a Lease

## 12.5 JURISDICTION

### 12.5.1 Courts

### 12.5.2 Arbitration

## 12.6 CONCLUSION

EXHIBIT 12A—Sample Chapter 93A Claim Letter

EXHIBIT 12B—Sample Chapter 93A Response Letter

**Chapter 13**  
**BUSINESS DISPUTES UNDER CHAPTER 93A**

L. SETH STADFELD, ESQ.  
*Weston, Patrick, Willard & Redding, Boston*

13.1 INTRODUCTION

13.2 THE STATUTE

13.3 ANTICOMPETITIVE CONDUCT

13.4 BUSINESS DISPUTES INVOLVING OTHER REGULATORY SCHEMES

13.4.1 Insurance Claims Settlement Practices

13.4.2 Alcoholic Beverages

13.4.3 Motor Vehicle Distribution

13.4.4 Banking

13.4.5 Securities

13.4.6 The Professions

13.4.7 Motion Picture Distribution

13.4.8 Common Carriers

13.5 FRANCHISING

13.5.1 Presale Conduct

13.5.2 Postsale Conduct

13.6 SELECTED DECISIONS INVOLVING BUSINESS DISPUTES

13.6.1 Unfairness Cases

13.6.2 Deception Cases

13.6.3 Choice of Law and Choice of Forum

13.6.4 Governmental Activity

13.6.5 Nonprofit and Charitable Organizations

13.7 CONCLUSION

**Chapter 14**  
**CHAPTER 93A AND THE INSURANCE INDUSTRY**

STEPHEN S. YOUNG, ESQ.  
*Holland & Knight LLP, Boston*

14.1 INTRODUCTION

14.2 STANDING TO SUE OR BE SUED

14.2.1 United States Without Standing

14.2.2 Parties Other Than Purchaser of Insurance Have Standing

14.2.3 Insurer May Sue Insured

14.2.4 Not All Insurance-Related Businesses are Subject to Suit Under Chapter 93A

14.3 RELATION OF CHAPTER 93A SUITS TO CHAPTER 176D AND OTHER STATUTES GOVERNING THE INSURANCE INDUSTRY

14.3.1 History of Chapter 176D

14.3.2 Violation of Chapter 176D, 3(9) Automatically Constitutes Violation of Section 9 of Chapter 93A

14.3.3 Violation of Chapter 176D Does Not Automatically Constitute Violation of Section 11 of Chapter 93A

14.3.4 Violations of Other Statutes May Constitute Violation of Chapter 93A

14.4 REQUIRED HARM UNDER G.L. c. 93A, §9, 11

14.4.1 Injury or Loss Required

14.4.2 Courts Have Narrowly Construed the Harm Requirement

14.4.3 Noneconomic Harm

(a) Before the 1979 Amendment

(b) After the 1979 Amendment

14.5 MULTIPLE DAMAGES IN CASES INVOLVING INSURERS

14.5.1 Before March 5, 1990, the Base for Multiple Damages was Limited to Costs Resulting from the Insurer's Misconduct

14.5.2 Underlying Judgment Now Included in Base Damages, and Subject to Multiplication

14.5.3 What Constitutes a "Judgment" for Purposes of Multiplication?

14.5.4 Multiple Damages Can Vary Among Multiple Defendants

14.6 Attorney Fees are Automatic in a Section 9 Case, But Not in a Section 11 Case

14.6.1 Attorney Fees Awarded Only for Chapter 93A Claims

14.6.2 Attorney Fees on Appeal May Also be Awarded

14.6.3 Attorney Fees Are Not Multiplied

14.7 INSURER'S GOOD FAITH DENIAL OF COVERAGE OR REFUSAL TO DEFEND AS A DEFENSE IN CHAPTER 93A CASES

14.7.1 Insurers Placing Conditions on Payment of Benefits May Violate Chapter 93A

14.7.2 Requiring Multiple Violations of G.L. c. 176D, 3(9)

14.8 CONCLUSION

EXHIBIT 14A—Chronological List of Cases Under Chapter 93A Involving Insurers

EXHIBIT 14B—Chronological List by Court of Decision of Suits Under Chapter 93A Involving Insurers

EXHIBIT 14C—G.L. c. 176D, 3: Unfair Methods of Competition and Unfair or Deceptive Acts or Practices

EXHIBIT 14D—Chapter 580: An Act Further Regulating Damages Under the Consumer Protection Act

## **Chapter 15**

### **PRODUCTS LIABILITY CLAIMS PURSUANT TO CHAPTER 93A**

MICHAEL D. WEISMAN, ESQ.  
*Weisman & Associates, PC, Boston*

15.1 INTRODUCTION

15.2 CHAPTER 93 AND PRODUCTS LIABILITY-STATE OF THE LAW

15.2.1 Attorney General Regulations

15.2.2 Brief History of Products Liability/Chapter 93A Nexus

15.3 The Demand Letter

15.3.1 Strategic Considerations Before Sending a Chapter 93A Demand Letter

15.3.2 Required Elements of the Demand Letter

15.3.3 Response to the Demand Letter

## 15.4 RECOVERY OF ATTORNEY FEES AND COSTS

EXHIBIT 15A—Trying Chapter 93A Cases Products Liability: Key Cases (Listed Alphabetically)

EXHIBIT 15B—Trying Chapter 93A Cases Products Liability: Key Cases (Listed by Topic)