

## **Insurer Found in Violation of State Consumer Protection Statute for Refusing to Pay Reasonable Defense Fees and Expenses**

**February 25, 2011**

A recent decision of the Appeals Court of Massachusetts provides clear guidance as to the remedy afforded policyholders under the Massachusetts' Consumer Protection Statute, G.L. c. 93A, for an insurer's unwarranted refusal to pay reasonable attorneys fees incurred defending the policyholder against potential liability. In *Northern Security Insurance Co., Inc. v. R.H. Realty Trust*, 78 Mass. App. Ct. 691 (2011), the Appeals Court of Massachusetts affirmed a verdict in favor of a policyholder and its attorneys against its insurer, finding that the insurer's refusal to pay reasonable attorneys' fees to a private attorney hired by the insured, who refused the insurer's representation conditioned upon a reservation of rights, constituted a violation of G.L. c. 93A.

### **Background**

This dispute originally arose out of a claim brought against the policyholder, a real estate trust and owner of a residential property, by the lessees of the property alleging damages from their alleged exposure to mold. The trust timely notified its insurer, Northern Security, and sought a defense of the claim. Northern Security responded with a reservation of rights noting that the trust was covered for only one of several counts of the complaint. The trust rejected the insurer's representation and retained its own attorney to defend the case. The trust and the attorney agreed on a rate of \$225 per hour.

During the course of the defense of the case, the attorney submitted bills to the insurer for payment. The insurer delayed payment of the bills, and when it did pay, it paid the bills at the reduced rate of \$150 per hour, which was the insurer's panel rate. The attorney then sent the insurer a G.L. c. 93A demand letter seeking payment of the balance between \$225 per hour and \$150 per hour. The insurer denied this request and disputed the claimed Chapter 93A violation.

### **Trial Proceedings**

After the underlying case had settled, the insurer brought suit against the insured and the attorney seeking a declaratory judgment that its decision to pay \$150 per hour was reasonable. The insured and attorney counterclaimed, alleging breach of contract and a violation of G.L. c. 93A.

After hearing a motion on the pleadings, the motion judge ruled that \$225 per hour was a "per se reasonable attorney fee" in the Boston-area legal market. In response to this ruling, the lawyer sent a



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