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UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

MARTIN STEIN, Plaintiff, v. TARGET CORPORATION, Defendant	)	CIVIL NO. 13-10034-PBS

MEMORANDUM AND ORDER

April 26, 2013

Saris, U.S.D.J.

In this diversity case, plaintiff Martin Stein alleges that he slipped and fell on a wet floor in a restroom within defendant Target Corporation's store and that the defendant's employees' negligence caused him $360,000 in damages for personal injuries. At issue is the second claim that defendant's claim administrator engaged in bad faith settlement practices in violation of Mass. Gen. L. Ch. 93A, § 9 and Mass. Gen. L. Ch. 176D when it was allegedly dilatory in making a settlement offer over the course of two years after the accident. Defendant moves to dismiss on the ground that it is a self-insurer not subject to liability under Morrison v. Toys "R" Us, Inc., 441 Mass. 451 (2004), which concluded that retailers which are not insuring entities subject to Mass. Gen. L. Ch. 176D, § 3(9) cannot as a matter of law be

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held liable under Chapter 93A for bad faith settlement practices. Although Morrison seems to be on target, plaintiff tries to dodge the bullet by arguing that Target's self-insured retention of $500,000 in an excess insurance police with ACE American Insurance Company makes Morrison distinguishable. However, Morrison itself involved a retail store that handled claims of $1 million or less internally, and still, the Supreme Judicial Court held that it was a self insurer not subject to Chapter 93A liability. 441 Mass. at 452, 458. Here the claimed damages are within the self-insured retention of $500,000. As such, Count II is dismissed because Target is not in the business of insurance.

/s/ PATTI B. SARIS
Patti B. Saris
Chief United States District Judge