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CHAPTER 93A'S INCREASING ROLE IN IP LITIGATION IN MASSACHUSETTS

Chapter 93A, with its low and vague standards of liability and powerful remedies of multiple damages and attorneys, is playing an increasingly central role in intellectual property disputes in Massachusetts.

On February 16, 2016 a Judge of the United States District Court for the District of Massachusetts decided to let proceed the Chapter 93A claim of a former Harvard chemistry graduate student, Mark Charest, for a fair share of the patent royalties from a novel and valuable method for creating tetracycline antibiotics. Mr. Charest, who went on to earn his chemistry doctorate, brought numerous claims against Harvard and Harvard professor Dr. Andrew Myers. These claims included breach of contract, fraud in allocation of royalties, tortious interference with contract, breach of fiduciary duty, promissory estoppel, and violation of Massachusetts General Law Chapter 93A. However, the only two claims the court let proceed were the breach of contract and violation of Chapter 93A claims. All other claims were dismissed.

Dr. Charest alleged as part of the case that before he enrolled at Harvard, Dr. Myers had been unable to work out a solution for creating new synthetic tetracyclines. Dr. Myers told Dr. Charest that if they could succeed in doing so, "they could make a billion dollars."

Dr. Charest's claim under Chapter 93A was that Harvard refused to pay him royalties for his role in developing the patented method unless he agreed to certain conditions. These conditions included him signing a release accepting Harvard's allocation decision and absolving the university and Dr. Myers from any liability for their conduct. The court held that if such conduct were ultimately proven, it could give rise to a judgment against Harvard and Dr. Myers under Chapter 93A.

On January 22, 2016, Massachusetts Attorney General Maura Healy invoked Chapter 93A in possibly seeking to bring a claim against pharmaceutical company Gilead Sciences. In a letter to Gilead she alleged the company was charging excessive prices for its highly-efficacious antiretroviral drugs, namely Sovaldi and Harvoni, which are used to treat Hepatitis C virus. Gilead charges \$84,000 and \$94,500, respectively, for a course of treatment for these drugs. The Attorney General did not invoke authority to regulate the price of the drugs other than Massachusetts Chapter 93A.

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He has written articles on patent, trade secret and trademark litigation which have appeared in such publications as *IP Law 360*, *Intellectual Property Today*, and *Today's General Counsel*.

Michael has also given presentations on the "Federal Circuit Test for Patent Non-Obviousness" before the Boston Patent Law Association and many other intellectual property groups.

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There have been other intellectual property cases, aside from *Charest v. Harvard, et al*, decided over the last six months in Massachusetts U.S. District Court in which 93A claims were brought. Chapter 93A played an important or even decisive role in many of these cases as its remedies are more powerful than those under federal IP law.

At Burns & Levinson, we track all court decisions in Massachusetts on IP matters, including those involving 93A claims. One of our attorneys authored *The Law of Chapter 93A*, published by the largest legal publisher. Our attorneys have made presentations on whether drug prices can violate Massachusetts Chapter 93A before leading pharma and biotech investors, and their opinions have also been reported in articles in the *Boston Globe* and *Modern Healthcare*.

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