

## Mass. District Court Finds Conduct Fails ‘Center of Gravity’ Test in 2 Ch. 93A Cases

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The District of Massachusetts recently issued two decisions addressing the “primarily and substantially” within Massachusetts requirement for Mass. Gen. Laws c. 93A, Section 11 claims. In each case, the court followed the fact-intensive “center of gravity” test to determine where the core of the transaction took place.

In *HC&D, LLC v. Precision NDT & Consulting LLC*, the court considered a motion to dismiss a claim brought under c. 93A for a knowing and willful disbursement of false information in order to induce plaintiff to purchase a barge. In *Insulet Corp. v. EOFlow Co., LTD*, the court considered a motion for partial summary judgment related to trade secret misappropriation. In both circumstances, defendants challenged whether the conduct occurred “primarily and substantially” within Massachusetts. Both courts found that they did not and dismissed the claims.

In *HC&D*, plaintiffs entered into a purchase and sale agreement for a barge and relied on an industry standard report the defendants generated that purported to test the barge’s condition. Based on the report’s representations, HC&D purchased the barge and had it towed from Louisiana to California. Once the barge arrived, it underwent an inspection in California, which revealed material misrepresentation about its condition. The court dismissed the c. 93A action because the amended complaint did not tie the case to Massachusetts, even though defendant was incorporated in the Commonwealth and the purchase and sale agreement was to be governed by Commonwealth laws. The amended complaint did not allege where the misstatements were made, where the report was drafted, or where the defendants’ agents were located when they made the relevant oral misrepresentation. Therefore, the court dismissed the c. 93A claim.

In *Insulet Corp.*, plaintiff was founded in Massachusetts, where it designed and manufactured disposable insulin patch pumps. Defendants were a Korean corporation with a subsidiary in the United States. Various former employees of the plaintiff resided across the United States and Korea. Plaintiff based the c. 93A claim on misappropriation of its intellectual property. The court determined that in this action, the center of gravity test would need to focus on the transfer of confidential information from plaintiff’s former employees to defendants and the subsequent use of that information. The summary judgment record showed that defendants received the trade secrets in Korea and allegedly used them there to develop and manufacture a competing product. Although plaintiff maintained headquarters in the Commonwealth and employed “thousands” of workers there,

it never sold the product in Massachusetts. Therefore, the Commonwealth did not represent the center of gravity, even if plaintiff felt the injury there. The court dismissed the c. 93A claim.

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