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## ***Former Law Firm Partners Did Not Violate Chapter 93A Despite Secretly Taking Materials to New Firm***

The Massachusetts Superior Court, Business Litigation Session, recently issued another decision in the *Governo Law Firm v. CMGB3 Law* dispute that has generated several significant judicial opinions in the past several years. In the *Governo* case, the Governo Law Firm LLC (“Governo”) sued six of its former non-equity partners and their new law firm, CMGB3 LLC (“CMGB3”), alleging that defendants secretly and unfairly copied and used electronic files and databases belonging to Governo. Following a jury trial and verdict, the Supreme Judicial Court remanded the case for a retrial of Governo’s claim under Chapter 93A, § 11, and the Superior Court retried that claim without a jury.

The Superior Court first concluded that it was unfair and deceptive for defendants to secretly take Governo’s materials. The Court stated that, even if defendants suspected that Governo would not abide by its ethical obligation to provide transferring clients with their

client files, defendants were not entitled to engage in self-help by taking copies of the client files when they left.

However, the Court went on to hold that such conduct did not violate Chapter 93A because Governo did not suffer any injury as a result and defendants did not profit from any use of the copied material. The court explained that proof of injury is a necessary element of any Chapter 93A claim. In the *Governo* case, defendants did not use the vast majority of the materials they took to their new firm. With respect to client files belonging to transferring clients, the Court found that Governo did not suffer a loss from defendants' use of client materials that Governo had an obligation to transfer. With respect to Governo's contact list, defendants used that list only to send letters informing clients that defendants had left Governo and the client could decide which lawyer to use going forward. The court stated that Governo suffered no loss from that conduct because defendants were entitled to send that type of letter.

This case is an important reminder for anyone asserting or defending against a Chapter 93A claim that the element of proof of injury is important and should not be overlooked, even in a case where a party believes that it can establish unfair or deceptive conduct.

## About OCM

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