

Massachusetts Cases To Watch In 2018

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Law360, New York (January 1, 2018, 3:04 PM EST) -- The year ahead promises to bring several high-profile cases to Massachusetts as the office of newly appointed U.S. Attorney Andrew Lelling gets ready to try consequential matters involving public corruption and the opioid crisis, while the [U.S. Supreme Court](#) considers petitions over a Native American tribe's bid to bring casino gambling to Martha's Vineyard.

'Top Chef,' Part Deux?

In March, prosecutors are expected to kick off a criminal trial against two Boston city officials charged with extortion.

The case against Boston tourism director Kenneth Brissette and his co-defendant Timothy Sullivan, a senior adviser to Mayor Marty Walsh, has captured local attention because of its proximity to City Hall. Both officials have been accused of trying to strong-arm a concert promoter into hiring union labor.

But the trial also will be of special interest to government enforcement and white collar attorneys because it follows on the heels of another high-profile extortion case that ended in a bruising loss for prosecutors. In that case, a jury acquitted a group of [Teamsters](#) accused of trying to intimidate a "Top Chef" production crew, including its celebrity talent, into hiring unionized labor.

Also hanging over prosecutors' heads is the 2016 U.S. Supreme Court decision in *McDonnell v. U.S.*, which has raised the bar on proving public corruption.

Already, the *McDonnell* decision has foiled federal prosecutors in Boston. In late 2016, the First Circuit cited the landmark case when it tossed the corruption convictions of three Massachusetts probation department officials accused of handing out jobs to politically-connected people in hopes of currying favor with elected officials.

"You layer that on top of the Teamsters acquittal and on top of *McDonnell*, and the overall takeaway is that it is now much more difficult to obtain and keep convictions on public corruption charges," said Aaron Katz, a partner at [Ropes & Gray LLP](#) in Boston.

The case is *U.S. v. Brissette et al.*, case number [1:16-cr-10137](#), in the U.S. District Court for the District of Massachusetts.

Charges Over Hidden Fees

In June, a rare criminal trial against a financial executive is expected to kick off when

prosecutors try to prove that Ross McLellan, formerly of State Street Global Markets LLC, duped institutional investors into paying hidden fees for the services they received from his firm.

The [U.S. Securities and Exchange Commission](#), in a parallel civil case, said that McLellan's alleged scheme ended up defrauding pension funds, endowments and other large clients out of about \$20 million. These investors had used State Street to help them transition their investments from one asset manager to another and to liquidate large holdings, but authorities say they were hit with secret markups.

State Street last year paid over \$64 million in combined civil and criminal penalties to resolve related charges. For McLellan, a former executive vice president of the firm, the consequences could be even steeper if he's convicted at trial and sentenced to prison.

Lawyers noted that McLellan has a renowned defender in his corner, the Boston-based white collar lawyer Martin Weinberg. But the government could have cooperating witnesses on its side, as two other former State Street executives, Edward Pennings and Richard Boomgaardt, have pled guilty to related charges.

The outcome of the case will be closely watched by many on Wall Street, notes Ian Roffman, chair of the litigation department at [Nutter McClennen & Fish LLP](#).

"Hidden fees have been an enforcement priority for a while, but this will be one of the first, and certainly one of the most high-profile, hidden fee cases to go to trial," he said.

The case is U.S. v. McLellan et al., case number [1:16-cr-10094](#), in the U.S. District Court for the District of Massachusetts.

Opioid Epidemic on Trial

The year's biggest criminal trial, however, could be the one against former executives at Insys Therapeutics Inc., including its founder and majority owner John Kapoor.

Former officials at the Arizona-based company are scheduled to go on trial this fall over charges that they conspired to bribe and pay kickbacks to doctors in exchange for overprescribing the company's powerful pain medication to patients who didn't need it. The trial could be delayed, as Kapoor in late December asked the court for a status conference to discuss pushing back the start date to April 2019.

The racketeering case will be closely watched, as it represents one of the biggest actions the federal government has taken to date to hold pharmaceutical executives responsible for the spiraling opioid epidemic that is costing tens of thousands of lives each year in the U.S. The drug at issue in the case is Subsys, a fentanyl-based product intended to treat cancer patients, but federal authorities say the executives tried to get it in the hands of people far beyond that subset of patients.

However, despite the headlines the opioid crisis generates daily, the government faces a steep challenge prosecuting individuals like Kapoor, whom Forbes estimates is worth around \$1.75 billion, attorneys note. While the U.S. attorney's office in Boston is well known for its health care fraud prosecutions, it has faced tough times in the past trying to prove charges like the ones against the Insys executives. For example, in 2004, a federal jury acquitted employees of TAP Pharmaceutical Products Inc. of charges that they paid doctors bribes and kickbacks to prescribe its prostate cancer treatment.

The case is U.S. v. Babich et al., case number [1:16-cr-10343](#), in the U.S. District Court for the District of Massachusetts.