Colo. homeowners lose case vs. pot business neighbor

Plaintiffs used federal anti-racketeering law to target marijuana business; jury not sold

By The Associated Press

DENVER — A federal jury has ruled against a Colorado couple who claimed that a marijuana-growing operation hurt the value of their property with sweeping mountain views in a case that was closely watched by the U.S. cannabis industry.

Jurors reached their verdict in Denver after deliberating for about half a day, The Colorado Sun reported Wednesday.

It was the first time a jury considered a lawsuit using federal anti-racketeering law to target a marijuana company.

"A loss in this case would have meant the loss of his business," Matthew Buck, the lawyer for grow owner Parker Walton, told the Sun.

The marijuana industry has followed the case since 2015, when attorneys with a Washington, D.C.-based firm first filed their complaint on behalf of Hope and Michael Reilly over Walton's operation in the rural southern Colorado town of Rye.

Vulnerability to similar lawsuits is among the many risks facing marijuana businesses licensed by states but still violating federal law. Lawsuits using the same strategy have been filed in California, Massachusetts and Oregon.

One of the Reillys' lawyers, Brian Barnes, said the couple bought their land for its views of Pikes Peak, built a house there and hike and ride horses on the property.

But they claimed "pungent, foul odors" from a neighboring indoor marijuana growing business have hurt the property's value and the couple's ability to use and enjoy it.

Congress created the Racketeer Influenced and Corrupt Organizations Act — better known as RICO — to target the Mafia in the 1970s, allowing prosecutors to argue leaders of a criminal enterprise should pay a price along with lower-level defendants.

Hope and Mike Reilly of Pueblo, Colo., attend a 2015 news conference announcing their lawsuit to shut down the state's $800-million-a-year marijuana industry. A federal jury in Denver ruled against the couple, finding a neighboring marijuana grower did not hurt their property values. It was the first time a jury considered a lawsuit using federal anti-racketeering law to target a marijuana company. *AP Photo/David Zalubowski*

The anti-racketeering law also allows private parties to file lawsuits claiming their business or property has been damaged by a criminal enterprise. Those who prove it can be financially compensated for damages plus attorneys' expenses.

Vulnerability to similar lawsuits is among the many risks facing marijuana businesses licensed by states but still violating federal law. Lawsuits using the same strategy have been filed in California, Massachusetts and Oregon.

While growing recreational marijuana has been legal in Colorado since 2014, it remains illegal under federal laws that are not enforced in the state against growers who follow state laws.

Starting in 2015, opponents of the marijuana industry decided to use the anti-racketeering law against companies producing or selling marijuana products, along with investors, insurers, state regulators and other players. Cannabis companies immediately saw the danger of high legal fees or court-ordered payouts.

Their concern grew when a Denver-based federal appeals court ruled in 2017 that the Reillys could use anti-racketeering law to sue their neighbor, the licensed cannabis grower neighboring.

Insurance companies and other entities originally named in the Reillys' suit have gradually been removed, some after reaching financial settlements out of court.

IN-HOUSE COUNSEL

New Benesch program aims to prepare women for success as in-house counsel

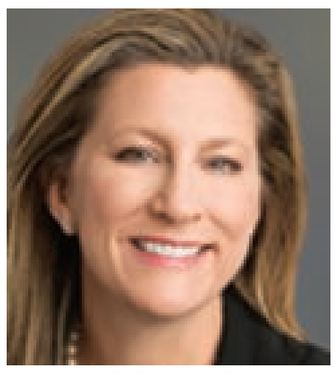
BY SARAH MANSUR
Law Bulletin staff writer

After nearly 25 years practicing law, Margo Wolf O'Donnell still sometimes feels like one of only a few women in the courtroom.

"It is disappointing to me that that's still happening," O'Donnell, a partner at Benesch Friedlander Coplan & Aronoff LLC, said. "If women in-house lawyers and outside counsel learn better how to support one another, I think our numbers would grow at the top levels."

Increasing the number of female general counsel generally and in leadership roles is one of the goals of B-Sharp, a new initiative launched by Benesch. The initiative seeks to provide support to women in-house counsel through educational training, networking and personalized guidance.

Tara Goff Kamradt



Margo Wolf O'Donnell

O'Donnell and her colleague Tara Goff Kamradt, also a partner at Benesch, decided to form B-Sharp when they realized there wasn't any similar program serving in-house counsel.

O'Donnell and Kamradt co-founded a similar initiative, along with Nicole Nehama Auerbach, for women in private practice in 2008, called the Coalition on Women's Initiatives in Law. The coalition expanded to include a section for in-house counsel, Kamradt said, but B-Sharp is separate from the coalition.

"What Margo and I are seeking

B-SHARP, *Page 5*

Synagogue suspect pleads not guilty

BY MARYCLAIRE DALE
Associated Press writer

PITTSBURGH — With two more funerals set for today, the anti-Semitic truck driver accused of gunning down 11 people at a Pittsburgh synagogue pleaded not guilty to federal charges that could put him on death row.

Robert Bowers, 46, was arraigned one day after a grand jury issued a 44-count indictment that charges him with murder, hate crimes, obstructing the practice of religion and other crimes. It was his second brief appearance in a federal courtroom since the weekend massacre at Tree of Life synagogue in Pittsburgh's Squirrel Hill neighborhood.

"Yes!" Bowers said in a loud voice when asked if he understood the charges.

Authorities say Bowers raged against Jews during and after the deadliest anti-Semitic attack in American history. He remains jailed without bail.

Bowers, who was shot and wounded during a gun battle that injured four police officers, walked into court under his own power, his left arm heavily bandaged. He was in a wheelchair at his first court appearance on Monday.

Geri Melnick of Pittsburgh places a stone on a memorial to Irv Younger during a Wednesday visit to a makeshift memorial outside the Tree of Life Synagogue where 11 people were killed during services Saturday. *AP Photo/Gene J. Puskar*

Bowers, who is stocky and

SYNAGOGUE, *Page 5*

Google employees walk out to protest treatment of women

BY MICHAEL LIEDTKE
Associated Press technology writer

SAN FRANCISCO — Carrying signs with messages such as "Don't be evil," Google employees around the world walked off the job today in a protest against what they said is the tech company's mishandling of sexual misconduct allegations against executives.

Employees staged walkouts at offices from Tokyo to Singapore to London. Hundreds protested outside Google's office in New York, and others were expected to do so in California later in the day.

In Dublin, organizers used megaphones to address the crowd of men and women to express their support for victims of sexual harassment. Other workers shied away from the media spotlight, with people gathering instead indoors, in packed conference rooms or lobbies, to show their solidarity with abuse victims.

Protesters in New York carried signs with such messages as "Not OK Google" and the company's one-time motto, "Don't Be Evil." Many employees outside Google's New York offices cited job security in refusing to talk.

In an unsigned statement from organizers, sent from a company account, protesters called for an end to forced arbitration in cases of harassment and discrimination. They also want Google to commit to ending pay inequity and to create a publicly disclosed sexual harassment report and a clearer process for reporting complaints.

The organizers said Google has publicly championed diversity and inclusion but hasn't take enough action.

The protests are the latest backlash against men's exploitation of female subordinates in business, entertainment, technology and politics. In Silicon Valley, women also are becoming fed up with the male-dominated composition of the technology industry's workforce — an imbalance that critics say fosters frat-house behavior by men.

The Google protest unfolded a week after a New York Times story detailed allegations of sexual misconduct about the creator of Google's Android software, Andy Rubin. The report said Rubin received a $90 million severance package in 2014 after Google concluded the sexual misconduct allegations against him were credible.

Rubin denied the allegations in a tweet.

The same story also disclosed allegations of sexual misconduct against other executives, including Richard DeVaul, a director at the Google-affiliated lab that created such projects as self-driving cars and internet-beaming balloons. DeVaul had remained at the "X" lab after allegations of sexual misconduct surfaced about him a few years ago, but he resigned Tuesday without severance, Google said.

Google CEO Sundar Pichai apologized for the company's "past actions" in an email sent to employees Tuesday.

"I understand the anger and disappointment that many of you feel," Pichai wrote. "I feel it as well, and I am fully committed to making progress on an issue that has persisted for far too long in our society ... and, yes, here at Google, too."

The e-mail didn't mention the reported incidents involving Rubin, DeVaul or anyone else at Google, but Pichai didn't dispute anything in the Times story.

In an email last week, Pichai and Eileen Naughton, Google's executive in charge of personnel issues, sought to reassure workers that the company had cracked down on sexual misconduct since Rubin's departure four years ago.

Among other things, Pichai and Naughton said Google had fired 48 employees , including 13 senior managers, for sexual harassment in recent years without giving any of them severance packages.

But Thursday's walkout could signal that a significant number of the 94,000 employees working for Google and its corporate parent Alphabet Inc. remained unconvinced that the company is doing enough to adhere to Alphabet's own advice to employees in its corporate code of conduct: "Do the right thing."

The latest complaints from employees are part of a wider discontent at Google and other Silicon Valley companies, though much of the complaints so far have been aired not at public protests but at company town halls, internal message boards and petitions that got leaked.

In August, more than 1,000 Google employees signed a letter protesting the company's plan to build a search engine that would comply with Chinese censorship rules.

Earlier, thousands signed a petition asking Pichai to cancel Project Maven, which provides the Pentagon with the company's artificially intelligent algorithms to interpret video images and improve the targeting of drone strikes. Google later said it won't renew the contract, according to published reports.

A Silicon Valley congresswoman tweeted her support of the Google walkout using the #MeToo hashtag that has become a battle cry for women fighting sexual misconduct.

"Why do they think it's OK to reward perpetrators & further violate victims?" asked Democratic Rep. Jackie Speier, who represents a well-to-do district where many of Google's employees live.

Associated Press technology writer Mae Anderson in New York and Matt O'Brien in Providence, R.I., contributed to this report.

Plaintiff Shakman sees decree lifted, calls it a 'historical moment'

SHAKMAN, *FROM PAGE 1*

That amount includes about $3 million paid to resolve 108 claims filed by individuals who maintained their careers were affected by patronage demands.

After Wednesday's hearing, Robinson said the money was well spent.

The county could have paid a consultant $8 million and not achieved the results seen under the settlement agreement, she said.

At the hearing, Robinson said there has been "a dramatic shift in attitude" among both managers and rank-and-file members of the county's workforce.

The policies and principles in the settlement agreement are embedded in the county's practices, Robinson said.

And she said employees who had been demoralized came to believe they would be treated fairly and their work would be judged on its merits.

Shakman's attorney, Brian I. Hays of Locke Lord LLP, noted no objections were raised to the request that the county be found in substantial compliance.

"This is not an ending, but a new beginning to county employment practices," Hays said.

The case is *Michael L. Shakman, et al. v. County of Cook, et al.,* No. 69 C 2145.

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B-Sharp founders wanted to create program suiting in-counsel needs

B-SHARP, *FROM PAGE 3*

to do with B-Sharp is make it more personalized and more specific and in a smaller, intimate group setting," Kamradt said. "[B-Sharp] is aimed predominately at women who are not general counsel yet but maybe they want to be there. Or if they are on the cusp or maybe they are a general counsel of a smaller company, they may have different needs."

O'Donnell said B-Sharp has a customized approach to professional success in law.

"The first thing we did was we went to the in-house lawyers and asked, 'What do you want to be, what are your goals?' And we found some of them have very different goals," she said.

Through B-Sharp, O'Donnell and Kamradt created different tracks that in-house attorneys can join to meet their specific goals.

"Rather than just a general 'How to succeed' event, we want to make something different, more pointed as to how to enable these women to reach their goals and rise in the profession," O'Donnell said.

Some of the women may already be general counsel and want to move to next level, she said.

"They might want to be on a corporate board or move to the C-suite," she said. "We wanted it to cater to all levels of the profession, not just attorneys who are more junior."

But, Kamradt said, the tracks are not set in stone and may evolve over time.

At the first official event for B-Sharp on Oct. 17, about 50 women from 30 companies attended.

"My view and how I would measure success of this whole initiative would be that women who were a part of it at any point in their career say it was valuable, and that it gave them a different perspective or insight into what they were trying to accomplish, and it helped them build a network of other women and other men in a way that could move them more rapidly towards their personal career objective," Kamradt said.

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Grand jury issued 44-count indictment including murder, hate crimes

SYNAGOGUE, *FROM PAGE 3*

square-faced with salt-and-pepper, closely cropped hair, frowned as the charges were read but did not appear to have a reaction as a federal prosecutor announced he could face a death sentence. He told a prosecutor he had read the indictment.

One of his federal public defenders, Michael Novara, said Bowers pleaded not guilty, "as is typical at this stage of the proceedings."

Bowers had been set for a preliminary hearing on the evidence, but federal prosecutors instead took the case to a grand jury.

The panel issued the indictment as funerals continued for the victims.

Jared Younger of Los Angeles told mourners that he waited for hours Saturday for his father to pick up his phone or let them know he was all right. The dread built all day until his sister learned their father, Irving Younger, had indeed been shot and killed.

"That waiting stage was just unbearable," Jared Younger said at his father's funeral Wednesday. "Saturday was the most lonely day of my life."

Funerals were being held today for Bernice and Sylvan Simon, husband and wife, and Dr. Richard Gottfried, a dentist who worked part-time at a clinic treating refugees and immigrants.

The oldest victim, 97-year-old Rose Mallinger, will be honored at the last service Friday. Her daughter was injured in the attack.

Friends recalled Irving Younger, 69, as a "kibbitzing, people-loving" man. He was one of the first people Rabbi Jeffrey Myers met when he came to town last year from New Jersey to lead Tree of Life.

Myers, who survived the massacre, is presiding over five funerals for seven congregants this week. He ran a few minutes late to Younger's service because he was still at the burial for another victim, Joyce Fienberg.

"I can't imagine the stress he's under," said his predecessor, Rabbi Charles "Chuck" Diamond.

As Younger's service was wrapping up, Myers momentarily forgot to read a letter to the family that another rabbi had sent.

"After preparing for five funerals, you get a little verklempt," Myers said.

Tree of Life remains a crime scene. Rabbis and other volunteers have been cleaning the temple to remove all bodily traces from the 11 victims, following Jewish law regarding death and burial.

Ballot initiatives may boost some Democrats in tight Senate races

INITIATIVES, *FROM PAGE 4*

Daniel Smith, a University of Florida political science professor, said public support for the amendment appears to be strong, possibly providing a modest boost to Gillum and Nelson.

"It's not going to help the Republicans at all," Smith said. "Will it help the Democrats? It could, at the margins."

The partisan pattern is reversed in two Democratic-leaning states, Oregon and Massachusetts, where conservatives are using the initiative process in a bid to overturn existing state policy.

The target in Massachusetts is a 2016 law extending nondiscrimination protections to transgender people in their use of public accommodations.

Conservatives in Oregon are targeting two policies — one that allows use of state funds to pay for low-income women's abortions, the other forbidding law enforcement agencies from using state resources or personnel to arrest people whose only crime is being in the U.S. illegally.

Craig Burnett, a political science professor at Hofstra University, views the initiative process as a valuable tool for citizens disenchanted with their legislature.

"If it's legislating much too far from where the people are in any direction — conservative or liberal — the initiative is one way to move it back to where the people are," he said.

In all, there will be 157 measures on the Nov. 6 ballot in 37 states. As usual, most of the measures were placed on the ballot by state legislatures; there are 65 measures resulting from citizen campaigns.

In some states, initiatives have met with strong resistance, either from the legislature or powerful interest groups.

In Arizona, after a six-day strike by tens of thousands of teachers, they and their allies gathered enough signatures to place a measure on the ballot that would boost school funding by raising taxes on the wealthy.

The Arizona Supreme Court blocked the initiative after the state's chamber of commerce and others said the tax hike would harm the economy.

In South Dakota, voters decided in 2016 to create an independent government ethics commission. Lawmakers repealed the measure just months later, but supporters have come back this year with an even stronger measure on the ballot.

CASE SUMMARIES

Biometric Information Privacy Act — standing to sue

Where the plaintiff has filed suit under the Biometric Information Privacy Act, she is not required to demonstrate pecuniary damages to have standing to sue, it is sufficient that they can demonstrate that the defendant violated her privacy rights under the act.

Klaudia Sekura, Individually and on Behalf of All Others Similarly Situated v. Krishna Schaumburg Tan Inc.

2018 IL App (1st) 180175

Writing for the court: Justice Robert E. Gordon

Concurring: Justice Margaret Stanton McBride and Eileen O'Neill Burke

Released: Sept. 28, 2018

The 1st District Appellate Court reversed and remanded a decision from Cook County Associate Judge David B. Atkins.

In April 2015, Klaudia Sekura purchased a membership with Krishna Schaumburg Tan Inc, a franchisee of L.A. Tan Enterprises Inc. When Sekura did this, she was enrolled in L.A. Tan's corporate membership database and was required to have her fingerprints scanned. By having her fingerprints on file, Sekura could visit any of L.A. Tan's locations around the country.

Each time she visited the Schaumburg location, she was required to scan her fingerprint before using the salon's services. In addition, Krishna disclosed its customer's fingerprint data to a third-party vendor, SunLync.

Sekura alleges that she was never informed of the purpose or length of time for which her fingerprints were collected and stored, never been informed of any biometric data retention policy or whether her fingerprints will ever be deleted from their database, never signed a written release allowing Krishna to collect and store her fingerprint or to disclose them to any third party, all in violation of the Biometric Information Privacy Act.

Sekura filed suit as a class action, for the class of customers who suffered violations of the act by Krishna, for violations of the act, unjust enrichment and negligence.

On July 1, 2016, Krishna moved to dismiss, claiming that Sekura failed to allege sufficient facts to state a cause of action under the act.

The trial court granted dismissal for the unjust enrichment count, but not the violations of the act. Krishna argued that Sekura was not "aggrieved" by violations of the act, and a cause of action is only provided for "any person aggrieved by [the act's] violation."

The trial court initially disagreed, but following the 2nd District's finding in *Rosenbach v. Six Flags Entertainment Corp.* that the trial court standing under the act required both a violation of the act and also an "injury or adverse effect" from the violation, the trial court "felt compelled to reverse its prior ruling and dismiss [Sekura's] claim."

The trial court held that there was no just reason for delaying enforcement or appeal. Sekura appealed.

On appeal, Krishna argued that Sekura had no injury and so had no standing to file suit under the act, citing *Rosenbach.* The appellate court acknowledged the decision in *Rosenbach*, but found the court's reasoning "unpersuasive."

Nonetheless, the appellate court emphasized that the *Rosenbach* court specifically stated that "the injury or adverse effect need not be pecuniary." In the instant case, Sekura's complaint specifically alleges the disclosure of her biometric information to an out-of-state third-party vendor and mental anguish.

The appellate court found both of these would be sufficient to grant her standing, even if the court had been persuaded by the reasoning of *Rosenbach.*

However, the appellate court was not persuaded and concluded that the legislature could have easily imposed the requirement that a plaintiff demonstrate injury in order to sue under the act but chose not to. The act provides for both "liquidated" and "actual" damages, establishing that actual damages are not necessary for standing.

In addition, the appellate court found that "aggrieved" meant that one's legal rights, such as the privacy rights established in the act, had been violated, not that one had been injured by the violation.

The appellate court held that *Rosenbach* had been wrongly decided and that, even if *Rosenbach* had been correctly decided, the instant case alleged injuries from mental anguish and disclosure of biometric information to third-party vendors, distinguishing it.

The appellate court, therefore, reversed the trial court's dismissal of the charge of violations of the act and remanded the case for further proceedings.

Equal Access to Justice Act — offset of federal debt

Where the U.S. District Court properly allowed an Equal Access to Justice Act award to be applied to a plaintiffs' outstanding federal debts under the Treasury Department's offset program, despite the contract between plaintiff and attorney.

Staci Harrington v. Nancy A. Berryhill, Acting Commissioner of Social Security and Andrew Banks v. Nancy A. Berryhill, Acting Commissioner of Social Security

No. 17-3179

and

No. 17-3194

Writing for the court: Judge Michael S. Kanne

Concurring: Judges Diane S. Sykes and Amy J. St. Eve

Released: Oct. 10, 2018

The 7th U.S. Circuit Court of Appeals affirmed decisions by Chief U.S. District Judge Jane Magnus-Stinson and U.S. Magistrate Judge Susan L. Collins, Southern and Northern Districts of Indiana.

The Social Security commissioner separately denied benefits to Staci Harrington and Andrew Banks. Both individuals sought judicial review of those decisions. Each separately engaged the services of The de la Torre Law Office LLC in Indianapolis, which agreed to represent them in federal court.

In exchange, the plaintiffs assigned to counsel any legal fees which they might be entitled to under the Equal Justice Act. After successfully prosecuting their cases, the plaintiffs obtained the statutory fee awards.

The Treasury Department, which had the responsibility of processing the payments, determined that both litigants had outstanding debts to various government entities.

Rather than paying out the fees directly, it reduced the litigants' debts by equal amounts under the Treasury Offset Program. The attorneys received nothing. In response, the parties brought appeals, which were consolidated in the federal appeals court.

The appellate panel began by finding that the district courts properly awarded attorney fees. The plaintiffs argued that the district courts erred by failing to direct the government to render payment directly to the attorneys, as both parties requested in their Equal Justice Under the Law petitions and Harrington reiterated in a subsequent Rule 69 motion.

The panel stated that there was no question that the district courts and Social Security Administration complied with the requirements set forth in the statute. The panel stated that the courts awarded fees to the prevailing party as the statute directs, and *Astrue v. Ratliff* requires that such payment go directly to the litigant rather than to their attorney.

The panel then determined that a reduction of a litigant's prior debts to the government by administrative offset constitutes a payment to the prevailing party under equal justice act.

The panel then determined that the plaintiffs' arguments that were not brought under the equal justice act should have been brought as a separate suit under the Administrative Procedures Act. The panel noted that the procedures act provides the legal framework for challenging agency actions the plaintiff believes to be unlawful because they were contrary to constitutional right, power, privilege or immunity or in excess of statutory jurisdiction, authority or limitations.

The panel then stressed that its decision indicated no opinion on the merits of the various legal theories the plaintiffs had proposed. The panel found that they were important questions that deserve their day in court.

The panel stated that, in particular, it sympathized with the practical effects that administrative offsets have on the ability of indigent petitioners to bring meritorious lawsuits before federal courts.

As a result, the panel affirmed the district court's decision.