

Colorado lawsuit could ripple through US cannabis industry

By Kathleen Foody
The Associated Press

DENVER — A federal trial in Colorado could have far-reaching effects on the United States' budding marijuana industry if a jury sides with a couple who say having a cannabis business as a neighbor hurts their property's value.

The trial set to begin Monday in Denver is the first time a jury will consider a lawsuit using federal anti-racketeering law to target cannabis companies. But the marijuana industry has closely watched the case since 2015, when attorneys with a Washington, D.C.-based firm first filed their sweeping complaint on behalf of Hope and Michael Reilly.

One of the couple's lawyers, Brian Barnes, said they bought the southern Colorado land for its views of Pikes Peak and have since built a house on the rural property. They also hike and ride horses there.

But they claim "pungent, foul odors" from a neighboring indoor marijuana grow have hurt the property's value and their ability to use and enjoy it.

"That's just not right,"

Barnes said. "It's not right to have people in violation of federal law injuring others."

An attorney for the business targeted by the suit plans to argue the couple's property has not been damaged, relying in part on the county's tax valuations of the Reillys' land ticking up over time.

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

Mirroring the Reilly complaint, several claim the smell of marijuana damages neighboring owners' ability to enjoy their land or harms their property value.

The question now is whether jurors accept the argument.

"They can claim a \$1 million drop in property value, but if a jury does not agree and says \$5,000, that's not that big of a deal," said Rob Mikos, a Vanderbilt University law professor who specializes in drug law. "That's why there are a lot of eyes on the case."

Congress created the Rack-

eteer 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.

But 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 times three, plus attorneys' expenses.

Starting in 2015, opponents of the marijuana industry decided to use the strategy 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.

That concern only grew when a Denver-based federal appeals court ruled in 2017 that the Reillys could use anti-racketeering law to sue the licensed cannabis grower neighboring their property. Insurance companies and other entities originally

named in the Reillys' suit have gradually been removed, some after reaching financial settlements out of court.

The case focuses on property in Pueblo County, where local officials saw marijuana as an opportunity to boost an area left behind by the steel industry. Most Colorado counties ban outdoor grows, forcing pot cultivators to find expensive warehouse space.

Pueblo officials positioned their sunny, flat plains as the alternative. They created financial incentives in hopes of drawing growers to outdoor fields or cavernous buildings left vacant by other industries.

Parker Walton was among the early comers, buying 40 acres in the rural town of Rye in 2014.

Barnes said the Reillys made three separate land purchases between 2011 and 2014, gradually reaching more than 100 acres. They learned about plans for the marijuana business bordering their final purchase four months after completing the sale, he said.

Walton put up a 5,000-square-foot (465-square-meter) building

to grow and harvest marijuana plants indoors. The Reillys filed their lawsuit in early 2015. A year later, Walton announced the company's first harvest via Instagram, snapping a photo of a strain dubbed "Purple Trainwreck" hanging to cure in a dim room.

Fewer than five people including Walton work for the company, which sells its products to retail stores, his attorney, Matthew Buck, said.

Buck said he's confident jurors will decide the Reillys' property has not been harmed. Buck warned, though, that defending against a similar lawsuit comes at a high cost for marijuana businesses while plaintiffs with support from a large law firm have little to lose.

Cooper & Kirk, the firm handling the couple's suit, has a conservative reputation, including a founding partner who worked for the U.S. Justice Department during the Reagan administration. Barnes said members of the firm were "troubled" as states began legalizing the adult use of marijuana because of the inherent conflict with federal law, and they

brainstormed legal strategies.

Walton created a website this month to raise money for his defense. He wrote that a loss could jeopardize "all legal cannabis operations in all states."

But some lawyers who have defended companies in similar lawsuits said those fears are overhyped.

Adam Wolf, a California attorney, said he believes the suits are primarily intended to scare third-party companies into cutting ties with marijuana firms or persuading cannabis companies to shut down. But long-term, Wolf said the U.S. Supreme Court has curtailed lawsuits making civil racketeering claims against other industries.

Courts could apply the same logic to cannabis, he argued.

"What the plaintiffs seemed to be saying is anybody who touched, in any matter, any marijuana business is potentially liable," Wolf said. "And that is a soundly rejected argument by the courts."

Barnes, though, said the number of racketeering lawsuits awaiting action suggests attorneys with no ties to his firm believe in the strategy.

MINING

Continued from Page 1B

his son, and the trips they took through the desert when he was a kid. Sometimes they'd come across an old mine shaft and toss a rock down, trying to imagine how far it fell. He doesn't do that anymore, not since his son's body was found in one of those pits.

Though the teenager never got to explore a mine like the one his father was in, Bill Powell thought he'd like seeing it. "He'd probably wish he was with me, hanging out."

But the dangers of abandoned mines weigh on Utah officials' minds. There have been 11 deaths since 1982 and more than 40 injuries, including people who entered mines to explore and others who fell in by accident, according to state data. Some abandoned mines become filled with tainted water, as in the toxic 2015 spill from Colorado's Gold King mine, but most in Utah are dry.

Legally, entering a mine can be considered trespassing in Utah if it has been closed or there are signs posted outside, but prosecutions are rare. Explorers argue it's no more dangerous than outdoor sports ranging from hiking to skiing, which also claim lives in the

West.

But there are hazards specific to mines that can be especially dangerous to the unprepared, from abandoned explosives to the potentially fatal low-oxygen air known to miners as "black damp," reclamation specialist Chris Rohrer said. And while some explorers like MacLee go in prepared, many do not.

"It's just a wide open, Wild West thing," he said. "It's a completely uncontrolled situation."

In Arizona, prospector John Waddell fell to the rocky bottom of a mine shaft after the rigging he used to lower himself broke Oct. 15. He survived by sucking moisture out of his shirt before a friend who he'd told about his plans came to check on him.

There are also cases like Riley Powell and his girlfriend, Breylnne "Breezy" Otteson. Prosecutors say an enraged man killed the teenage couple after they visited his girlfriend despite his warning her not to have male visitors. He dumped their bodies in the mine shaft, where they remained for nearly three months before being discovered in March.

Similar cases have occurred in states like Wyoming, Colorado and



Contributed photo

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California. Investigators also searched old mines in Utah and neighboring Nevada after the high-profile 2009 disappearance of Susan Cox Powell, though the 28-year-old Salt Lake City-area woman was never found.

"Unfortunately, an abandoned mine is probably a good place to dispose of something like that — a person or something you want to hide forever," said Hollie Brown, spokeswoman for the Utah Division of Oil, Gas and Mining.

For the state, the message is as clear as its skull-and-crossbones signs: Stay out and stay alive. The program has been around more than 30 years, and the division has already sealed some 6,000 abandoned mines.

One of the next projects on its list is a onetime stable near an early-1900s mine that used to house mining mules said to be so accustomed to the dim light underground that they had to be blindfolded when they were brought outside,

Rohrer said.

In that case, it plans to seal the opening with a metal gate. At other mines, crews build cinderblock walls, back-fill with dirt and rocks, or weld rebar over the openings so bats and other wildlife can still get in and out.

"For 150 years, people have dug holes in the ground and brought wealth out of the ground," Rohrer said. "Unfortunately, after they brought that wealth out of the ground, they left that hole behind."

MOMIJI

Continued from Page 1B

Outlet to get produce three times a week to make it fresh and we have our own warehouse, too, that delivers once a week," he said.

Located in the strip mall adjacent to Walmart, Momiji operates out of one third of the space formerly occupied by Primo's Pizza. The process of getting the business up and running in the Island City area took about a year, according to Zhen. Customers can sit at a number of tables or opt to sit at the sushi bar and watch their sushi being made in real time.

Though Zhen recognizes many are hesitant to eat sushi because of the nature of its ingredients, he encourages people to maintain an open mind and give the dish a chance.

"The community thinks the word 'sushi' means raw fish — they totally misunderstand it," Zhen said. "Sushi (encompasses) a big category. We have a lot of cooked (and) tempura sushi, so don't let the word 'sushi' scare you. If you've never tried (it), then let us know. We'll take care of you."

BRIEFLY

Continued from Page 1B

his craft, followed by a five-course meal featuring one Copper Belt wine with each course. Copper Belt Winery was established in Keating in 2010. Tickets are \$85. More information can be found at www.GeiserGrand.com or www.Facebook.com/GeiserGrand, or by emailing events@geisergrand.com.

Barry Bushue appointed state executive director

TUALATIN — The Trump administration recently appointed Barry Bushue as the new state executive director of the USDA Oregon Farm Service Agency. Bushue, who joined the Oregon FSA team on Oct. 9, is a proven leader and advocate for agriculture and natural resources in Oregon with more than 25 years of experience in the industry. He is the owner and operator of Bushue Farming in Boring and previously served as president and chief executive officer of the Oregon Farm Bureau Federation and as vice president of the American Farm Bureau

Federation 2008-15. Bushue will use his leadership experience to oversee FSA programs in a customer-focused manner to ensure a safe, affordable, abundant and nutritious food supply for consumers.

American Angus Association end shows growth

DENVER — The American Angus Association announced its 2018 fiscal year-end report showed another outstanding year.

As improvements in herd quality and performance continued and record amounts of beef were produced, the Angus breed continued to spread influence in the beef industry. The 2018 fiscal year, which spanned from Oct. 1, 2017, to Sept. 30, 2018, recorded 327,067 total registrations for Angus cattle — the 18th largest year in the Association's 135-year history.

The Association, headquartered in Denver, Colorado, experienced exceptional growth across nearly all business metrics, and total assets for the organization reached more

than \$66.9 million.

The organization offers members services such as Angus LinkSM and Angus-Source, which enables producers to effectively communicate their calf crop's genetic performance potential to prospective buyers and help them capture value on sale day. Also, the new MaternalPlus rebate program resulted in a 21.9 percent increase in the number of cows enrolled in the program. MaternalPlus is a voluntary, inventory-based reporting system designed to capture additional reproductive trait data and, ultimately, expand reproductive and lifetime productivity tools.

Bank of Eastern Oregon reports third-quarter earnings

HEPPNER — BEO Bancorp and its subsidiary, Bank of Eastern Oregon, announced third-quarter 2018 consolidated net income of \$1,196,000 (\$1.01 per share) compared to \$817,000 (\$0.69 per share) for third quarter 2017. Year-to-date earnings were \$2,825,000, up 19.8 percent

year over year. Total assets were down 0.6 percent year over year at \$401.5 million. Net loans of \$323.8 million were down 1 percent from the same period in 2017, while deposits were at \$355.8 million, also down 1 percent year over year.

According to President and CEO Jeff Bailey, "It was an interesting summer. Harvest results were mixed, mostly favorable, depending on the region. Commodity prices were also a mixed bag. Wheat prices have been locked in a range, but cattle prices and hay have shown some strength over last year. We are heading into renewal season with a little more optimism than in the past few years and we have seen good rains across the region this past week. I would be remiss if I didn't mention the devastating wildfires that affected some of our counties this summer. The damage was immense, but the resiliency of the communities impacted by the fires is what makes living and working in Eastern Oregon and Washington so rewarding. Hats off to the

professional firefighters, volunteers and neighbors that worked and sacrificed to protect all."

BTI breaks ground for new agriculture center

BAKER CITY — Baker Technical Institute (BTI) began construction of a new controlled environment agriculture center.

The new facility will replace older greenhouses that were lost to storm damage two years ago. Funding for the expansion comes from donations, insurance proceeds and Measure 98 fund-

ing. The new center will give students a state-of-the-art facility for hands-on learning in the field of controlled environment agriculture (CEA), a technology based approach toward the production of plants and their products, such as vegetables and flowers.

The aim of CEA is to provide protection and maintain optimal growing conditions throughout the development of the crop, through the use of horticultural, technological and engineering techniques, that optimize crop production, crop quality and production efficiency.

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