

WATCH THE BENCH OUTSIDE
YOUR COURT CLERK'S OFFICE:
*WHY IT MATTERS TO THE
CANNABIS SELLERS*

PROF. JAMES O'REILLY
COLLEGE OF MEDICINE
UNIVERSITY OF CINCINNATI

WINNING AT FDA IS NOT ENOUGH

- THE CANNABINOID (CBD) PRODUCER SHOULD NEVER OVERLOOK THE TORT SYSTEM'S **SHOCK WAVE EFFECT** OF JURORS' DISLIKES
- INVESTORS WILL RESPOND TO NEWS OF LARGE ADVERSE VERDICTS
- COME & SIT FOR AN HOUR OUTSIDE THE COUNTY CLERK'S WAITING AREA FOR THE CIVIL JURY SELECTION AREA
- WATCH THE FACES, MANNERISMS, & AMBIENCE OF RANDOM JURORS
- IN TRIAL: YOUR C.B.D. PRODUCT HAS AFFECTED KIDS IN THEIR COUNTY
- THE FATE OF YOUR COMPANY MAY DEPEND ON 12 RANDOM PEOPLE WHO ARE UNAWARE THAT FDA HAS ANY REGULATORY ROLE IN CANNABIS

IT'S EASY TO MISTAKE REGULATORY AGENCY AS ULTIMATE DECISION MAKERS; IT'S A JURY

- DO YOU FOCUS ONLY WHAT ON BELTWAY LOBBYISTS CAN ACHIEVE?
- DO NOT OVERLOOK JURY-FOCUSED TORT LIABILITY OF YOUR CLIENT
- 1970 CONTROLLED SUBSTANCES ACT
- 1972 SCHEDULE 1 FINAL RULE
- FARM BILL HEMP EXEMPTIONS IN RECENT YEARS
- PAID MILLIONS IN EFFORTS TO MOVE FDA ATTITUDES ON CBD
- HOW MUCH HAVE YOU PAID WASHINGTON INTERMEDIARIES TO “WIN” MARKETABILITY OF CBD’S SUCH AS GUMMY BEARS?

TEACH TORT LAW 101 TO CBD MAKERS: OBEYING LAW IS NO DEFENSE TO LIABILITY

- YES, YOUR CBD PRODUCTS MIGHT BE EXTRACTED FROM HEMP
- YES, YOU MIGHT REJOICE THAT CPSC DOES NOT COMMAND YOU TO USE CHILD RESISTANT PACKAGING...AT LEAST NOT YET...
- YES, YOU MAY DO THE MINIMUM THAT FDA GUIDANCE URGES FOR THE MARKETING OF CBD PRODUCTS, SEE MAY 2022 DOCUMENT
- YES, YOUR VAPE PRODUCTS MIGHT STAY WITHIN FDA'S LABELING NORMS
- BUT OBEYING LAW & FDA GUIDANCE IS NO DEFENSE TO TORT SUIT

CIVIL JURY MAY DECIDE CBD SELLER DID NOT DO ENOUGH TO PROTECT LOCAL CHILDREN

- THE BIG MONEY YOU MADE IN CBD SALES IS REPORTED OFTEN
- THE CANNABIS INDUSTRY IS AGGRESSIVELY SELF-PROMOTIONAL
- SO JUST PICTURE THE WHITE-BOARD SCREEN IN THE COURTROOM
- SHOW JURY THE CHILD VICTIM'S MRI, CT SCAN OR X-RAY
- ABOVE IT IS HEADLINE BLOW-UP BRAGGING YOUR CBD SALE GROWTH
- WATCH JURORS WHO ARE OLDER, LOWER INCOME, TRADITIONALIST
- JURORS CAN PICTURE THEIR GRANDKIDS BEING HARMED BY CBD
- SIT & WATCH YOUR CIVIL TRIAL IN YOUR LOCAL COURTHOUSE
- HIGHWAY BILLBOARD LAW FIRMS WILL USE YOU AS THEIR "BIG FISH"

OBEYING FDA IS NO DEFENSE TO REVULSION ABOUT YOUR PRODUCT

- WHAT CAN YOUR DEFENSE EXPERT SAY RE GROWING WAVE OF PEDIATRIC MEDICAL REPORTS PUBLISHED ON BRAIN EFFECT OF THE CBD PRODUCT ON THE CHILD? LOOK AT MANY DOZENS
- “YES, BUT THAT’S MUCH MORE POTENT CBD PRODUCT THAN MINE”
- SLAM: WATCH SOCIALMEDIA INFLUENCER “BUZZ” WORDS ON YOU
- JURORS HEAR DR. JONES FROM LOCAL EMERGENCY ROOM
- JURORS HEAR DR. SMITH FROM THEIR STATE U. PEDIATRICS FACULTY
- OUT OF 12 SELECTED FOR YOUR CIVIL JURY, HOW MANY “TOKERS”?
- HEAR MOM & FAMILY REGRET CHILD GOT ACCESS & WAS HARMED

SOME RX DRUGS BALANCE RISK OF BAD SIDE EFFECTS TO GAIN GREAT MEDICAL PROGRESS

- RECO: HAVE SUMMER CLERKS SEARCH CASES & MED JOURNALS
- PERHAPS 100 APPELLATE CASES ENDORSE TRADE-OFFS IN RX TORTS
- CANCER PATIENT LIFE SAVED BUT OK IF RX HAS ADVERSE EFFECT
- NOW, LOOK AT WHO HOLDS APPELLATE JUDGESHIPS & JURY POOLS
- WOULD THESE INDIVIDUALS EQUATE BENEFITS OF USING YOUR CBD WITH THE VALUE TO SOCIETY OF RX DRUG COMBATING CANCER?
- YOU “FALL FLAT” IN FRONT OF JURY IF YOU TRY TO MAKE THAT BENEFIT CLAIM FOR YOUR CLIENT’S JAR OF “GETTING A BUZZ ON” GUMMY BEARS SOLD TO RELIEVE TENSIONS OR BOREDOM

JURY VERDICTS IN TORTS USUALLY UPHELD

- PLAINTIFF ATTY USES JURY DISLIKE FOR THE DEFENDANT'S PRODUCT TO PRESS A CLAIM FOR PUNITIVE DAMAGES FOR THE INJURY
- WAS THE PRODUCT HIGH RISK, IN VIEW OF THESE JURORS?
- WAS THE PACKAGING TOUGH ENOUGH TO AVOID TODDLER ACCESS?
- DID THE AD OR SOCIAL MEDIA CLAIM OVER-SELL CBD'S VALUE?
- HIGHER RISK: CBD HARM > ATTY FOR CHILD OR PARENT > SWAYS OLDER JURY > CBD CO. LOSES VERDICT & LOSES PUNITIVE DAMAGES > THEN BIGGEST LOSS: PUBLICITY ABOUT "BIG HIT" SCARES INVESTORS AWAY FROM THIS CBD MARKETING FIRM
- APPEALS ON FACTS ABOUT HARM RARELY SUCCEED