

Swiss verein — the cassoulet pot for global law practice

By Edwin B. Reeser

The Swiss verein structure appears to be the current legal organizational vehicle of choice in major global law firms, particularly in connection with recent mergers and combinations between U.S. and U.K. law firms. The association (or verein) is simply a structure that facilitates a centralized management over an assembly of entities that maintain their individual local legal identities and financial independence.

Originally intended for small domestic social organizations (church choirs, sports and social clubs, unions), the verein structure has become increasingly used in firm cross-border combinations to address the thorny issues of professional regulation and supervision under local law societies that prohibit many "one firm" combinations, and to avoid undue complexity and cost associated with competing rules on taxation to individual partners on worldwide operations. Not to mention, the accommodation of widely disparate cultural, economic and political issues at the local operational level where participation by other verein members would be an unacceptable intrusion. What must be noted at the outset is that the verein does not actually solve any of these issues; it simply facilitates not dealing with them at a global management level.

The association (or verein) is simply a structure that facilitates a centralized management over an assembly of entities that maintain their individual local legal identities and financial independence.

The verein has actually been in use for decades by major global accounting firms (though notably in 2010, Deloitte abandoned the Swiss verein structure and returned to a U.K.-based corporation). There has been discussion over whether the pursuit of an economic, rather than social, enterprise within the Swiss verein structure was really in the contemplated scope of endeavor. Legal challenges have also arisen in an effort to pierce the limited liability veil of the verein, but it presently is accepted as a legitimate application of the vehicle.

The verein structure can help to present a coordinated globalized branding, marketing and business development effort that benefits its association members. The verein may also suggest to participant member partners that they may expect to receive exclusive case and client referrals, though that can be difficult to deliver as it is the client that holds the ultimate decision on engagement of counsel. But the liabilities of each constituent member remains their own, as does their profit; at least that is the intent. And so does the local operational management and control, subject to the bylaws and other governing agreements of the verein to which each local member

subscribes. This makes it considerably easier to solicit and subscribe additional members, as partners of a prospective member may be pitched to vote for participation on the grounds that there is no need to be involved with or concerned over management control or profit. Therefore, the arrangement is little more than a joint marketing and administrative cost sharing exercise, which will be more cost effective when shared among members. It may also make it easier for verein members to leave the association should they conclude that the benefits of participating in the verein are outweighed by costs or other considerations.

Accordingly, it is critical to understand the governing bylaws of the verein and the operating policy which the members are required to follow. No critical or practical aspect of the business of the association should be left unaddressed, or left to a discretionary vote of the other members or the verein leadership. It isn't necessarily going to be in one document, and quite possibly not exclusively in the verein bylaws.

This inquiry is critical because the verein will typically call for a centralized management structure to which all of the members are to some degree financially bound. This is more than just chipping in for a few salaries of leadership partners (which may be robust). There can be substantial support of managerial and administrative staff worldwide — to the point of including entire departments. These could include significant parts of accounting, marketing, advertising, computers and software, insurance, and even business referral and bonus compensation. Thus, the "tithe" to the verein can be considerable, certainly to the scope of many tens of millions of dollars of operating costs, perhaps over \$100 million dollars in a firm of over 1,500 lawyers.

How is the contribution to the central verein calculated? Should it be by headcount, profit, gross revenue or some other formula? What happens when a member firm withdraws? Are there member firm capital requirements? Are there penalties on withdrawal? Is the verein used as a conduit lending source to pay for a complete technology integration when a new member arrives? Is it paid back or amortized? Where is the power and final say with respect to client intake and conflict issues that can impact the firm? This is critical, as the prospect of frequent conflicts is guaranteed in a large, global verein structure.

And finally, how far can you push the integration of branding and sharing operational economies as well as shared objectives, before the limits of association are tested and perhaps the liability segregation is jeopardized?

In addition, what is the amount of money each partner, attorney and office required to contribute to the centralized management and operations? What is the savings compared to current operations, and what is the difference? If there is a net savings, is it enough? Are there true economies of scale being realized? If there is a net increase in costs, what new benefits are you receiving, and how can they be measured to determine if the returns justify the cost? There are many more components to look at, but this type of analysis of the impact on local operations of participation in the verein can be crucial to understanding the cost and benefit relationship.

The hard truth is that having what is effectively an exclusive referral network, with some shared costs, is only worth so much. If the cost per attorney is not overcome by superior returns, then partners may not stay when the additional cost of practicing within a verein structure becomes too large for some member firms, and individual partners, within member firms. This has been a major factor in the demise of former global law firms characterized by great lawyers, great clients and a strong culture, but brought down by operational inefficiency. The firm was not a verein, but remember, the verein is not a secret ingredient in a cassoulet recipe — it is just an administrative vehicle. All of the practical considerations and costs of dealing with the management of a global professional enterprise are the same, they are just addressed in a series of strategic alliances by memoranda, which allows for the sharing of names and branding etc. while maintaining individual autonomy and separate legal entity identity and liability of the constituent parties.

Business people, including lawyers, can become enamored of structure when the real issue is operational efficiency and stability, quality of service and "value" delivered to the client. Indeed, sometimes structures that are advertised as making for economic strength, ultimately generate greater weakness when not handled properly. In the case of the verein, one significant risk is that substantial costs for maintaining the global business model may not be justified or supportable to a group of partners with large books of business, who conclude that their proportionate share of contribution to the structure is far greater than any benefit received. The member firm with departures of partners or practice groups that receive little to no benefit of being in a global verein structure can weaken the association. The burden will have to be born by other members, who may not be able to withstand that additional cost.

Like the cassoulet, the verein is conceptually the embodiment of simplicity, yet with infinite variability. While certain aspects can be uniformly expected, it is the little details, which cannot be found without voluntary disclosure, that determine the difference between success and failure.



Edwin B. Reeser is a business lawyer in Pasadena specializing in structuring, negotiating and documenting complex real estate and business transactions for international and domestic corporations and individuals. He has served on the executive committees and as an office managing partner of firms ranging from 25 to over 800 lawyers in size.

Ex-gold mine chief on EPA most-wanted list

By Fiona Smith
Daily Journal Staff Writer

The federal Environmental Protection Agency added a man allegedly involved in mine waste dumping in California to its most wanted fugitive list Wednesday.

Peter Martin Kuhn went on the lam this summer after a federal grand jury indicted him on charges of illegally discarding the toxic leftovers of a gold mine operation on land in Shasta County.

Kuhn was the president and CEO of the now-defunct Bullion River Gold Corp., which went bankrupt several years ago. The company operated several gold mines in California, including the Washington Mine, which sits 15 miles north of Redding.

The EPA alleges Kuhn failed to safely dispose of a toxic soup containing dangerous amounts of lead and arsenic and instead dumped it on nearby land owned by the federal Bureau of Land Management, on a county road and in a stream near the mine site. Exposure to arsenic can cause paralysis and blindness, while lead can harm kidneys and cause reproductive and developmental damage.

The indictment, handed down in

July in California's Eastern District, charges Kuhn with one count of conspiracy and aiding and abetting, one count of depredation against United States property, two counts of false statements and one count of negligent discharge of a pollutant into a water of the United States. The charges could result in a 20-year prison sentence, according to the EPA.

"EPA is serious about enforcing the nation's environmental laws to protect public health. Those who are charged with violating the law must have their guilt or innocence determined in a court of law," said Cynthia Giles, assistant administrator for the EPA's Office of Enforcement and Compliance Assurance, in a statement.

The fugitive list, created by the EPA in 2008, currently has 18 people on it. Including Kuhn, the government is seeking six people charged with environmental crimes in California.

fiona_smith@dailyjournal.com



KUHN

Tower Car Wash accused of forcing workers to sit hours unpaid in dingy office

Case could lead to the largest wage theft recovery in San Francisco's history.

By Amy Yarbrough
Daily Journal Staff Writer

SAN FRANCISCO — In what could lead to the largest wage theft recovery in city history, the city attorney's office has sued the owners of a well-known car wash, accusing them of forcing employees to wait for hours unpaid during scheduled shifts.

According to City Attorney Dennis Herrera, whose office filed the suit Wednesday, seeking \$3 million, Tower Car Wash had a long-standing practice of making employees report to work and sit in a small, dingy, windowless room. They would remain there, sometimes for hours, until the business got busy enough and they were allowed to clock in.

Herrera said the suit resulted from an audit conducted by San Francisco's Office of Labor Standards Enforcement but would not have been possible were it not for the "courageous" workers,

many of them Spanish-speaking immigrants.

"Wage theft is one of the biggest scourges to the economy we have here in the U.S.," Herrera said at a press conference announcing the suit. "Unfortunately, there are those who seek to take advantage of our most vulnerable."

'I am here to stand up for my rights. We, the workers at Tower Car Wash, have been exploited.'

— Rosa Ochoa

A message left for the manager of Tower Car Wash was not returned Wednesday.

The suit, filed in San Francisco County Superior Court, accuses the Beverly Hills-based owners of the business, Igor Pakshover and Vladimir and Lisa Syelsky, and corporate executive Steve Matjovich of violating state and local wage-and-hour laws, as well as California's Unfair Competition Law. *City and County of San Fran-*

cisco v. Vladigor Investments, Inc. dba Tower Car Wash et al., 513419 (filed Aug. 17, 2011).

Kate F. Hegé, an attorney with La Raza Centro Legal, which is working with the city, said the company has been breaking the law for years, despite repeated worker complaints and attempts

by employees to organize.

Hegé translated for one of the employees, Rosa Ochoa, who told her story to reporters.

"I am here to stand up for my rights. We, the workers at Tower Car Wash, have been exploited," Ochoa said in Spanish, adding that many of her co-workers have families.

"If we, the workers, couldn't do this heaviest of work, who would do this?" Ochoa added. "Our time

and our work is just as valuable as their money."

The hand car wash business, located in San Francisco's Mission District, is hardly the first targeted for labor violations. In 2009, the state Attorney General's Office filed a suit against a Los Angeles business, Sunset Car Wash, accusing it of violating minimum-wage and overtime laws. In June, according to news reports, a former car wash worker making allegations similar to those in the San Francisco suit won \$80,000 from his one-time employer, the Handy J Carwash in Los Angeles.

Donna Levitt, who manages the Office of Labor Standards Enforcement, said that while the suit is the first like it for San Francisco, her office had taken action against Tower Car Wash in the past for not immediately raising workers' pay when a new minimum wage was enacted.

amy_yarbrough@dailyjournal.com

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Data confirm health care fraud prosecutions way up

By Mandy Jackson
Daily Journal Staff Writer

New data showing that the first eight months of fiscal 2011 have produced 903 health care fraud prosecutions by the U.S. Department of Justice — compared to 731 prosecutions recorded for all of 2010 — doesn't come as a surprise to defense attorneys.

The information reported Wednesday by the Transactional Records Access Clearinghouse at Syracuse University reflects what lawyers say they see in their own practices: the federal government is making good on its threat to crack down on health care fraud in all its forms.

If prosecutions continue at their current pace, the fiscal year total at the end of September will reach 1,355 — 85.4 percent higher than the previous year and 157 percent more than five years ago, according to the TRAC analysis.

"It's no surprise, because when you devote so many resources and staff to a specific problem, you have to start showing results," said Terree A. Bowers, a partner at Arent Fox LLP in Los Angeles and a former U.S. Attorney for the Central District who now defends white-collar clients.

The government has added both investigators and prosecutors to its health care fraud enforcement efforts. Agencies such as the FBI and U.S. Department of Health and Human Services are coordinating their

investigations to increase prosecutions.

The TRAC data shows that the FBI investigated 75.7 percent of prosecutions and HHS was responsible for 18.2 percent.

Both Bowers and Carolyn F. McNiven, a partner at DLA Piper LLP in San Francisco, said health care fraud prosecutions are increasing across the board. The government is targeting insurance and Medicare billing practices, kickbacks paid to doctors, and regulatory violations by pharmaceutical and medical device companies, among other fraud.

McNiven, who as a deputy chief in the U.S. attorney's office in Chicago set up that district's health care fraud task force, said strike force initiatives in Detroit and Florida have been particularly fruitful and that once defendants are prosecuted, they are likely to turn in others.

McNiven said investigators also are pumping up prosecutions by analyzing data to identify fraud hot spots, such as home health care, and stepping up their efforts in those areas.

"We're advising clients that you have to be incredibly diligent these days with a vibrant compliance program and making sure you keep all the records you're required to keep," Bowers said. "It's not a time to push the envelope."

m.jackson@dailyjournal.com

ACLU sues U.S. over immigrant detainees

By Paul Elias
Associated Press

Yuba County jailers awaken the alleged illegal aliens in the wee hours of the morning, shackle them at the feet, waist and wrists and load them on vans for the trip to San Francisco for court hearings in immigration court.

Except for a brief unshackling before appearing before the judge, they remained chained for up to 12 hours a day when they are due in court.

Similar scenes play out in jails every day across the country as the Department of Homeland Security shackles many of its prisoners traveling to and from their appearances in immigration court. The prisoners often remain chained to one another when before the judge.

On Wednesday, the American Civil Liberties Union and others filed a lawsuit in San Francisco federal court seeking a halt a practice the lawyers and prisoners describe as a "cruel and degrading."

The ACLU alleges that the blanket policy violates constitutional bans against cruel and unusual punishment. The lawsuit seeks class action status to represent the thousands of prisoners transported and appearing in immigration court in shackles.

The department declined comment. According to the lawsuit, the overwhelming majority of prisoners appearing in immigration courts have no violent criminal histories and aren't flight risks. The lawsuit seeks to compel DHS to make individual determinations about shackling rather than carrying out a blanket policy.

The lawsuit also alleges that prisoners suffer "physical pain and discomfort, embarrassment and humiliation, mental and emotional stress and a sense the detainee is being misjudged to be exceptionally dangerous person."