OA 530

1. Congressional Testimony – CHSMs – update

Alliance of Health Care Sharing Ministries 990

<https://apps.irs.gov/pub/epostcard/cor/260886401_201906_990O_2020081817238686.pdf>

National Coalition of Health Care Sharing Ministries 990

<https://apps.irs.gov/pub/epostcard/cor/341939326_201812_990PF_2020012817079183.pdf>

Gospel Light Mennonite Church Medical Aid Plan Inc. 990

<https://apps.irs.gov/pub/epostcard/cor/472042581_201812_990_2020011717044213.pdf>

Christian Healthcare Ministries 990

<https://apps.irs.gov/pub/epostcard/cor/341964742_202012_990_2021052118169625.pdf>

This story begins as I was looking for any information on the two largest lobbying organizations, the Alliance of Health Care Sharing Ministries, and the National Coalition of Healthcare Sharing Ministries. Now, the Alliance is the bigger one – they have a webpage, they lobby Congress and the 50 states for exemptions to insurance regulations on behalf of CHSMs. And sure enough, I found their IRS form 990, the most recent one is for 2018.

And it is perfectly normal. They took in $1.1 million in donations, paid 3 people a little over $400 grand, maybe that’s a little extravagant. Spent $80 grand on travel, $80 grand in legal fees, and over half a million lobbying. That’s not a great ratio for a nonprofit, but there’s nothing fishy here.

And remember, this is the big one. The Alliance, the one that actually *has* a webpage, and actually does lobby Congress.

Now this is what happened when I pulled up the small one, the National Coalition of Healthcare Sharing Ministries. $61.6 million in yearly donations, $11 million in salaries, and $47 million in other expenses… how is this possible? How can the organization *without a website* possibly be 60 times larger than the other one? And that’s when I scrolled down to the detailed breakout information. All of the expenses were being characterized as tax-deductible for… administering Health Care Sharing Services for something called Gospel Light Mennonite Church Medical Aid Plan, Inc.

Now $61 million seemed like an awful lot of money for Mennonites, what with their whole ‘life of austerity’ as a key tenet of their faith, so I set out to figure out who this organization really was. As it turns out, that wasn’t hard.

Dun & Bradstreet reports that Gospel Light Mennonite Church Medical Aid Plan, Inc. has a d/b/a. And look, it’s a name we recognize: Liberty HealthShare, one of the five largest CHSMs. Remember I told you how these ministries went out and bought up those pre-existing Amish and Mennonite churches to grandfather themselves under the Obamacare exception? Looks like Liberty did the same thing – but they don’t brag about that in their public materials.

So let’s try untangle this shell game. Liberty Health Share operates as Gospel Light Mennonite Church Medical Aid Plan, Inc., and the supposed lobbying organization National Coalition of Health Sharing Ministries, Inc. **isn’t a lobbying organization at all**, but a wholly-owned slush fund that administers $61.6 million in “donations” for… Gospel Light Mennonite Church Medial Aid Plan, Inc.

So, I checked to see if Gospel Light Mennonite Church Medical Aid Plan, Inc. filed a 990… and lo and behold, they did. And at first, this seems to match up. We’ve got just about $62 million in total revenue, and they show $57 million in expenses, and that’s all to just one independent contractor: The National Coalition of Health Care Sharing. So now we’ve figured it out: the National Coalition of Health Care Sharing is basically the slush fund for Liberty.

But now we have a much bigger problem: while $61 million was way too *much* revenue for a lobbying group without a website, it’s way too *little* revenue for one of the five largest health sharing ministries. So what are they hiding?

And that’s when I found this, buried on page 33 of the return, “Supplemental Information” for Part VI, Line 19, “Other Organization Documents Publicly available,” and it says the following:

During 2018, Gospel Light Mennonite Church Medical Aid Plan, Inc. d/b/a Liberty HealthShare provided health care and end of life assistance to over 110,000 families. These funds belong to the members **and are not shown on the balance sheet**. They are kept in “Member Sharing Accounts” and **are not included as income or expenses** in Gospel Light. Funds contributed by members in 2018 amounted to $322,814,532. Funds paid out in 2018 to Health Care Providers and other assistance shared among members amounted to $321,829,869. Organizational documents and policies are available upon request.

So let’s do some math. $323 million off books revenue plus $62 million in reported income means that Liberty pulled in almost $385 million in total revenues in 2018.

Remember the secret contract, paragraph 11, in which you acknowledge a “minimal administrative expense”? I leave it to you whether $62 million – 17% -- is “minimal.” But that’s what we appear to have.

Now we know that $322 million reimbursing medical expenses. So… what happened to all the rest of that money?

And the answer is… I don’t really know. No one knows. They own a $6 million building, but in terms of the day-to-day disbursements, you’re only required to list the five largest independent contractors on your IRS form 990. And this is what the National Coalition of Health Care Sharing lists as its five largest independent contractors in 2018. You can see that there are 19 others they *didn’t* have to list.

So what are these things? Well, Cost Sharing Solutions is a call center – that’s marketing.

Your guess is as good as mine on Health Share Pro. Bow Tie Medical? HealthSmart Care Management, that links to a PO box in Dallas, Texas?

We just don’t know what any of this is. What we do know is that this is $62 million in disbursements that was collected tax-free, spent on for-profit companies, and not a dime of it went for medical expenses. And that was only one of these Christian Health Sharing Ministries.

Christian Healthcare Ministries took in $633 million just last year. That’s over a billion dollars split between two players. And nobody is tracking where any of this is going. CHM has $135 million in investment assets. What are they doing with it? I don’t know, and neither do you.

So, if billions of dollars are being diverted by these shady outfits, why haven’t you heard of this? Why aren’t you swamped with complaints?

**SEND THOSE IN**

1. Activision Blizzard Settlement

1 - Initial lawsuit (CA State) – 7/20/21

<https://aboutblaw.com/YJw>

OA 513

<https://openargs.com/oa513-california-v-activision-blizzard-inc/>

2 – shareholder lawsuit (state?) – August

<https://www.npr.org/2021/09/21/1039391662/activision-blizzard-sec-discrimination-allegations>

Activision Blizzard, one of the world's most high-profile video game companies, confirmed a regulatory probe and said it is working to address complaints of workplace discrimination.

The Santa Monica, California, company said Tuesday that it is complying with a recent Securities and Exchange Commission subpoena sent to current and former employees and executives and the company itself on "employment matters and related issues."

The Wall Street Journal had reported Monday that the SEC was investigating how the company had treated complaints of sexual misconduct and workplace discrimination and had subpoenaed senior executives including CEO Bobby Kotick. An SEC spokesman declined to comment.

Activision Blizzard also said Tuesday that it has cooperated with an Equal Employment Opportunity Commission investigation into employment practices and that it is working with multiple regulators "on addressing and resolving workplace complaints it has received" and that it is committed to making the company "one of the best, most inclusive places to work." It has hired a new "Chief People Officer" from Disney.

The company's shares have dropped 20% in two months as legal woes build over an alleged culture of discrimination against women and minorities at the maker of Candy Crush, Call of Duty, Overwatch and World of Warcraft. The stock dropped 3.4% to $73.60 in Tuesday afternoon trading.

In late July, California's civil rights agency sued the company, alleging gender discrimination and sexual harassment. Employees staged a walkout to protest what they said was Activision's culture of sexism and discrimination.

**A shareholder lawsuit in August said the company failed to disclose to investors that it was being investigated in California and that it had workplace culture issues that could result in legal problems. The shareholder suit noted unhappiness within the company, saying more than 2,000 current and former Activision employees signed a petition criticizing the company's response to the California suit as "insulting" and saying they did not trust leadership to "place employee safety above their own interests."**

3 - SEC subpoena – 9/21/21

<https://www.npr.org/2021/09/21/1039391662/activision-blizzard-sec-discrimination-allegations>

4 – EEOC (federal) – lawsuit filed Monday 9/27 – settled THE SAME DAY

<https://storage.courtlistener.com/recap/gov.uscourts.cacd.832570/gov.uscourts.cacd.832570.1.0.pdf>

**SETTLEMENT THE SAME DAY**

1. What it means

-cy pres?

1. How it overlaps
2. Wildcard - Sidney Powell Strikes Back

-Dominion sued on 1/8

<https://storage.courtlistener.com/recap/gov.uscourts.dcd.225699/gov.uscourts.dcd.225699.1.0_2.pdf>

-Sidney Powell moved to dismiss rather than answer

<https://cdn.factcheck.org/UploadedFiles/PowellDismiss.pdf>

We told you that was super fucking dumb

-she lost

-now she has to answer the complaint

-she’s done that & asserted counterclaims

<https://storage.courtlistener.com/recap/gov.uscourts.dcd.225699/gov.uscourts.dcd.225699.49.0.pdf>

-who are her fucking lawyers?

Kleinhendler

Jesse Binnall

This guy, Lawrence Joseph, who’s also a pro-Trump asshole seditionist

<https://www.nytimes.com/2021/01/31/us/trump-election-lie.html>

-Paragraph 181 (49 pages in original) – just blanket denial

-that’s okay in a responsive pleading

-eventually it stops being OK though

Is there such a thing as “abuse of process”? THERE IS!

Is it what Sidney Powell thinks it is? ABSOLUTELY NOT

In Houlahan v. World wide Association of Specialty Programs and Schools, 677 F.Supp. 2d 195 (D.D.C. Jan. 5, 2010)

<https://scholar.google.com/scholar_case?case=7040941655881239347>

In this suit, plaintiff Thomas Houlahan, a journalist, brings various causes of action against several defendants, including World Wide Association of Specialty Programs and Schools ("WWASPS") and its President, Kenneth Kay (collectively "defendants") asserting claims arising from defendants' actions allegedly in response to Houlahan's investigation of the teen behavior modification industry.

Before the Court is defendants' second renewed motion for partial summary judgment as to Houlahan's claim of abuse of process [# 103], a claim that is grounded on a lawsuit defendants filed against Houlahan in Utah. Houlahan asserts that the lawsuit was baseless and was instituted to deter him from further investigating WWASPS and his publisher from publishing his work. Upon consideration of the motion, the opposition thereto, and the record of this case, the Court concludes that the motion should be granted.[1]

I. BACKGROUND

A. Factual Background

WWASPS is an association of teen behavior modification facilities located around the world. Houlahan, a journalist writing principally for United Press International ("UPI"), began to investigate the teen behavior modification industry in the spring of 2003. His investigation focused on alleged improprieties within facilities operated by WWASPS and led him to draft a series of articles focused on WWASPS and its member schools. During the investigation, Houlahan's work came to the attention of WWASPS and its president Kenneth Kay.

Houlahan's investigation of WWASPS led WWASPS to file a lawsuit against Houlahan in Utah, alleging claims of intentional interference with prospective economic advantage, injurious falsehood, and defamation. The Utah suit was ultimately dismissed for lack of personal jurisdiction, a decision that was affirmed on appeal. See World Wide Assoc. of Specialty Programs & Sch. v. Houlahan, 138 Fed.Appx. 50, 50-52 (10th Cir.2005). Houlahan claims that the Utah lawsuit was an abuse of process for which defendants should be held liable.

Under District of Columbia law, abuse of process occurs when "process has been used to accomplish some end which is without the regular purview of the process, or which compels the party against whom it is used to do some collateral thing which he could not legally and regularly be required to do." [*Morowitz v. Marvel,* 423 A.2d 196, 198 (D.C.1980)](https://scholar.google.com/scholar_case?case=14207084862528717493&q=houlahan+v+world+wide+ass%27n+of+specialty+programs&hl=en&as_sdt=2006) (quoting [*Jacobson v. Thrifty Paper Boxes, Inc.,* 230 A.2d 710, 711 (D.C.1967)](https://scholar.google.com/scholar_case?case=9594999223465514287&q=houlahan+v+world+wide+ass%27n+of+specialty+programs&hl=en&as_sdt=2006)). There are two essential elements to an abuse of process claim: "(1) the existence of an ulterior motive; and (2) an *act* in the use of process other than such as would be proper in the regular prosecution of the charge." [*Hall v. Hollywood Credit Clothing Co.,* 147 A.2d 866, 868 (D.C.1959)](https://scholar.google.com/scholar_case?case=16172549505453891898&q=houlahan+v+world+wide+ass%27n+of+specialty+programs&hl=en&as_sdt=2006) (emphasis in original).[[3]](https://scholar.google.com/scholar_case?case=7040941655881239347&q=houlahan+v+world+wide+ass%27n+of+specialty+programs&hl=en&as_sdt=2006" \l "[3]) Utah law is similar: "to establish a claim for abuse of process, a claimant must demonstrate `[f]irst, an ulterior purpose; [and] second, an act in the use of the process not proper in the regular prosecution of the proceedings.'" [*Anderson Dev. Co. v. Tobias,* 116 P.3d 323, 341 (Utah 2005)](https://scholar.google.com/scholar_case?case=12286656063945233643&q=houlahan+v+world+wide+ass%27n+of+specialty+programs&hl=en&as_sdt=2006) (alterations in original) (quoting [*Hatch v. Davis,* 102 P.3d 774, 782 (Utah Ct.App.2004)](https://scholar.google.com/scholar_case?case=6186256200713000507&q=houlahan+v+world+wide+ass%27n+of+specialty+programs&hl=en&as_sdt=2006)). Regardless of which jurisdiction's law is applied, Houlahan fails to establish the elements of a cause of action for abuse of process.

Houlahan alleges that there is "ample evidence of Defendants' attempts to achieve ten related but distinct improper purposes." Pl.'s Opp'n to Def.'s Second Renewed Mot. for Partial Summ. J. ("Pl.'s Opp'n") at 5. Houlahan's allegations fall under two general alleged improper purposes: (1) "Defendants filed their suit in order to prevent publication of [Houlahan]'s work"[[4]](https://scholar.google.com/scholar_case?case=7040941655881239347&q=houlahan+v+world+wide+ass%27n+of+specialty+programs&hl=en&as_sdt=2006" \l "[4]) and (2) Defendants filed suit "in order to obtain public relations advantages."[[5]](https://scholar.google.com/scholar_case?case=7040941655881239347&q=houlahan+v+world+wide+ass%27n+of+specialty+programs&hl=en&as_sdt=2006" \l "[5]) *Id.* at 5, 8.

[200\*200](https://scholar.google.com/scholar_case?case=7040941655881239347&q=houlahan+v+world+wide+ass%27n+of+specialty+programs&hl=en&as_sdt=2006#p200) Defendants rejoin that Houlahan's evidence regarding the ulterior purpose of the lawsuit is irrelevant because the alleged ulterior purpose of the lawsuit and the stated purpose of the lawsuit are the same. Defendants argue that "[Houlahan]'s claim that the filing of the lawsuit was successful in such things as causing bad publicity, causing [Houlahan] the expense of defending the lawsuit or stopping the publication of the articles, is no different than stating the express purpose of the lawsuit," since "the regular prosecution of the libel case against Houlahan would have achieved these ends" Def.'s Reply to Pl.'s Opp'n to Second Renewed Mot. For Summ. J. at 2-3. In addition to claiming that there was no ulterior motive to the Utah lawsuit, defendants further argue that Houlahan offers no evidence of any action taken by defendants following the filing of the Utah lawsuit that could constitute an abuse of process.

The Court awarded summary judgment to the defendants on the plaintiff's claim of abuse of process. The abuse of process claim was grounded on a defamation lawsuit that the defendants had filed against the plaintiff in Utah, allegedly to deter the plaintiff, a journalist, from further investigation of the defendants and from publishing his work.

The Court defined abuse of process under D.C. law:

Under District of Columbia law, abuse of process occurs when "process has been used to accomplish some end which is without the regular purview of the process, or which compels the party against whom it is used to do some collateral thing which he could not legally and regularly be required to do." Morowitz v. Marvel, 423 A.2d 196, 198 (D.C.1980) (quoting Jacobson v. Thrifty Paper Boxes, Inc., 230 A.2d 710, 711 (D.C.1967)). There are two essential elements to an abuse of process claim: "(1) the existence of an ulterior motive; and (2) an act in the use of process other than such as would be proper in the regular prosecution of the charge." Hall v. Hollywood Credit Clothing Co., 147 A.2d 866, 868 (D.C.1959) (emphasis in original).

The Court agreed with the defendants' arguments, reasoning that there is no action for abuse of process when the process is used for the purpose for which it is intended, even though there is an incidental motive of spite or an ulterior purpose of benefit to the defendant.

By design, however, defamation claims, one of the claims in the Utah suit, are meant to silence individuals from making defamatory or otherwise harmful statements. Therefore, the Utah suit was used "for the purpose for which it is intended." See Rusakiewicz v. Lowe, 556 F.3d 1095, 1104 (10th Cir.2009)

1. Listener Qs

**LISTENER Q’s**

[General Contact Unit Problem Child](https://www.patreon.com/user?u=10832552)

There's a pizza place in Gibraltar called "Papa Luigi's" and there's cartoon Italian guy on the sign with a mustache and a green outfit. Could Nintendo sue them if they cared to?

Gibraltar, Kentucky. US law.

Plaintiff Dan Tana is a self-described former Yugoslav soccer star, prominent restaurateur, film producer, and actor. He opened his Italian-themed restaurant, Dan Tana's, in West Hollywood, California, in 1964. Since that time, the restaurant has enjoyed a storied history, attracting Hollywood celebrities and insiders to the restaurant's intimate and romantic setting. Dan Tana's serves traditional Italian fare, and it resembles an old-world Italian trattoria with red-and-white checkered table cloths and straw-colored wine flasks hanging from the ceiling. Plaintiff, who has been the sole owner of the restaurant since its inception, figures prominently into its ambiance, personally greeting and welcoming his patrons. The Press has referred to Dan Tana's as a "legendary Hollywood hotspot" and the ultimate "LA hangout," and the restaurant has been featured in numerous newspapers, magazines, and books. The name "Dan Tanna" received significant publicity in the 1970s when producer Aaron Spelling asked Plaintiff for the use of his name for the lead character in his television series "Vega$."

Despite the notoriety of Plaintiff's restaurant, Plaintiff did not attempt to register the name "Dan Tana's" with the Patent and Trademark Office ("PTO") until June 2005, forty-one years after his restaurant's opening. The PTO denied his application in December 2005 on the basis of the existing registration of the trademark "Dantanna's" in the same category of restaurant services sought by Plaintiff. Defendants had opened the first of two Dantanna's locations in Atlanta in 2003, applied for a federal registration in June 2003, and obtained federal registration of the name "Dantanna's" in March 2005, claiming a date of first use of September 30, 2003.

In June 2006, Plaintiff filed a Petition for Cancellation of Defendants' mark with the PTO's Trademark Trial and Appeal Board, alleging that Defendants sought to mislead the public into believing their restaurant was associated with Dan Tana's Hollywood. Subsequently, Plaintiff filed a federal trademark infringement suit in United States District Court for the Central District of California, which was ultimately dismissed for lack of personal jurisdiction over one of the Defendants. After Plaintiff filed his federal lawsuit, he moved to suspend the trademark cancellation proceeding pending before the PTO. The PTO stayed the proceeding in September 2007.

Plaintiff then filed this lawsuit in the Northern District of Georgia in March 2008, pleading the federal and Georgia trademark infringement, fraud, and tort claims at issue in this appeal. Plaintiff's complaint seeks a permanent injunction enjoining Defendants from all future use of the "Dantanna's" mark and the cancellation of Defendants' federal trademark registration, among other relief. Defendants moved for summary judgment arguing [772\*772](https://scholar.google.com/scholar_case?case=17507161384715626363&q=tana+v+dantanna&hl=en&as_sdt=20000006#p772) that, as a matter of law, Plaintiff could not establish the likelihood of confusion necessary to subject them to liability under § 43(a) of the Lanham Act, Georgia's Uniform Deceptive Trade Practices Act, or fraud under Georgia law, nor could Plaintiff establish the intentional appropriation of likeness required to impose liability under Georgia tort law. The district court agreed, granting summary judgment in favor of Defendants as to all counts. This appeal ensued.

In evaluating whether there is a likelihood of confusion between two marks, our court applies a multifactor test, evaluating the following seven factors: (1) [775\*775](https://scholar.google.com/scholar_case?case=17507161384715626363&q=tana+v+dantanna&hl=en&as_sdt=20000006#p775) strength of the mark alleged to have been infringed; (2) similarity of the infringed and infringing marks; (3) similarity between the goods and services offered under the two marks; (4) similarity of the actual sales methods used by the holders of the marks, such as their sales outlets and customer base; (5) similarity of advertising methods; (6) intent of the alleged infringer to misappropriate the proprietor's good will; and (7) the existence and extent of actual confusion in the consuming public.

-copyright vs trademark

-Dan Tana v. Dantanna’s, 611 F.3d 767 (11th Cir. 2010)

<https://scholar.google.com/scholar_case?case=17507161384715626363>

Geographic considerations are also particularly relevant where a plaintiff holds only common-law trademark rights in a mark because it is well-established that the scope of protection accorded his mark is coextensive only with the territory throughout which it is known and from which it has drawn its trade. [*Hanover Star Milling Co. v. Metcalf,* 240 U.S. 403, 416, 36 S.Ct. 357, 361, 60 L.Ed. 713 (1916),](https://scholar.google.com/scholar_case?case=13765938203567667171&q=tana+v+dantanna&hl=en&as_sdt=20000006) *superseded by statute in irrelevant part as stated in*[*Park `N Fly, Inc. v. Dollar Park & Fly, Inc.,* 469 U.S. 189, 105 S.Ct. 658, 83 L.Ed.2d 582 (1985)](https://scholar.google.com/scholar_case?case=16323007241887299048&q=tana+v+dantanna&hl=en&as_sdt=20000006). The owner of a registered mark, in contrast, enjoys the unlimited right to use the mark nationwide, and federal registration affords the registrant priority over all future users of confusingly similar marks. 15 U.S.C. § 1057(c); [*Coach House Rest.,* 934 F.2d at 1564](https://scholar.google.com/scholar_case?case=11502092004579711102&q=tana+v+dantanna&hl=en&as_sdt=20000006). Therefore, a Lanham Act plaintiff asserting common-law trademark rights under § 43(a) against the owner of a registered mark, as here, bears the burden of establishing the right to use its mark by actual use in a given territory. [*Emergency One, Inc. v. Am. Fire Eagle Engine Co.,* 332 F.3d 264, 269 (4th Cir.2003)](https://scholar.google.com/scholar_case?case=7909842704798989368&q=tana+v+dantanna&hl=en&as_sdt=20000006). And because registration constitutes constructive nationwide notice of the registrant's priority of use of a mark, 15 U.S.C. § 1072, only actual use occurring *prior to* such registration gives rise to enforceable common-law trademark rights, 15 U.S.C. § 1065. Thus, federal registration has the practical effect of freezing a prior user's enforceable [781\*781](https://scholar.google.com/scholar_case?case=17507161384715626363&q=tana+v+dantanna&hl=en&as_sdt=20000006#p781) trademark rights thereby terminating any right to future expansion beyond the user's existing territory. [*Allard Enters., Inc. v. Advanced Programming Res., Inc.,* 249 F.3d 564, 572 (6th Cir.2001)](https://scholar.google.com/scholar_case?case=6772378233712797047&q=tana+v+dantanna&hl=en&as_sdt=20000006) ("In the case in which a junior user applies for registration,... the extent of the senior user/nonregistrant's territory is frozen as of the date of actual registration to the junior user.").[[10]](https://scholar.google.com/scholar_case?case=17507161384715626363&q=tana+v+dantanna&hl=en&as_sdt=20000006" \l "[10])

Accordingly, because Plaintiff continued to operate only a single location of Dan Tana's at the time Defendants registered their mark, his trademark rights in the "Dan Tana's" name are limited to the Los Angeles market. Furthermore, the record also establishes that Defendants currently operate restaurants only in the Atlanta area and that the mark of neither party is known by the customers in the other's market. Thus, at present, the parties' restaurants coexist in remote markets, geographically and otherwise.