

# ASSOCIATION LEGAL UPDATE

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### Trade Show Operator Not Liable for Defective Products of Exhibitor

#### No legal duty to assess products being exhibited

Flares purchased by John Schmarr from an exhibitor at the Indy 1500 Gun & Knife Show operated by World Class Gun Shows Inc. malfunctioned, causing serious physical injuries. Mr. Schmarr sued World Class Gun Shows, alleging the company owed Mr. Schmarr, and all attendees, a duty to ensure that products being exhibited are not unsafe.

The court disagreed, finding that the lack of control by a show owner/operator over exhibitors and their product makes “it difficult to see how World Class could have foreseen that [this exhibitor] would sell allegedly unsafe [products].”

The court also said the “important economic purpose” served by trade shows would be harmed if show owners were responsible for products being exhibited.

*Schmarr v. World Class Gun Shows (Ind. 2019).*

#### Assn Can Be Sued For Doomed Member Benefit Program

The National Association of Home Builders joined forces with North Star Finance to offer favorable debt financing to its members. NAHB aggressively promoted the program and gave assurances regarding North Star. North Star Finance officials however turned out to be dishonest, and members lost thousands of dollars in fees.

NAHB, say the plaintiffs, did not actually vet North Star or North Star’s officers, despite NAHB’s positive assurances to its members.

NAHB tried to have the suit dismissed, but a court is allowing it to proceed to trial.

*Boomer v. NAHB (DC 2019).*

#### Assn Warned by DOJ on Award Criteria

The US Dept. of Justice has sent a letter to the Academy of Motion Picture Arts and Sciences warning against preventing Netflix movies from being eligible for an Oscar. The letter states in part:

*“If the Academy—an association that includes multiple competitors in its membership—adopts a new rule to exclude certain types of films, such as films distributed via online streaming services, from eligibility for the Oscars, and that exclusion tends to diminish the excluded films’ sales, that rule could therefore violate [the antitrust laws].”*

Comment: An unsolicited DOJ warning about possible future antitrust violations is odd. And surely the Academy can require movies to be shown in a theater in order to receive an Oscar.



“The evidence discovered thus far indicates that Bumble Bee, StarKist, and COSI employees had little to no antitrust training. The dearth of antitrust training at all levels left Bumble Bee, StarKist, and COSI employees to develop their own understandings of the rules. The varying perspectives on whether conduct was legal, questionable, or illegal helps explain the anticompetitive tactics that resulted.”

- *From an attorney affidavit in a class action price fixing lawsuit in the canned tuna industry. To date, defendant firms have paid millions of dollars in criminal fines, and several executives have pled guilty to, or are facing, criminal charges.*

## US Dept. of Labor Proposes to Raise Minimum Salary for Overtime Exemption

The U.S. Department of Labor has issued a proposed overtime regulation that would raise the white collar overtime exemption minimum threshold to \$35,308 per year. The current threshold is \$23,660 annually. Employers would be allowed to use nondiscretionary bonuses and incentive payments that are paid annually or more frequently to satisfy up to 10 percent of the standard salary level.

In 2015, the Department of Labor tried to raise the overtime threshold to \$47,476 annually, but that was blocked by a court and later withdrawn.

The opportunity for public comment on the proposed regulation will close on May 21, 2019.

## Whistleblowing About Misuse of Restricted Funds Protected

A museum employee was fired after he objected to using \$30K from a restricted gift, originally intended for education, instead to cover payroll. When the employee raised concerns, he was told that since all employees support educational activity to some extent, it is acceptable to use restricted funds to pay staff salaries.

The employee alleged that his conduct was protected whistleblower activity. The court upheld the validity of the complaint:

“Plaintiff adequately alleges that his discharge in retaliation for reporting the misuse of donated funds violated a clear mandate of public policy. Plaintiff’s allegations do not merely concern issues of company policy or internal governance—they concern what Plaintiff allegedly believed to be criminal violations.”

*Gerba v. National Hellenic Museum (Ill. 2019).*

## Association Sued For “Systematic Discrimination”

A lawsuit alleges women and minorities employed by the American Bankers Association “are subjected to systemic discrimination and a culture of fear designed to deter them from reporting discrimination or otherwise advocating for equal opportunity.”

The lawsuit also alleges that over the years the “American Bankers Association has received reports involving sexual harassment and discrimination,” yet allowed wrongdoers to remain in power.

Throughout its history, according to the lawsuit, the ABA “has excluded women from leadership and promotion opportunities.”

The ABA has denied the allegations.

*Walika v. American Bankers Association (DC 2018).*