

## Commercial Cannabis

# Federal Court Refuses to Allow Lost Profits Claim from Alleged Breach of Cannabis-Related Contract

By: [Andrew W. Vail](#) and [Andrew D. Hoeg](#)

As a follow-up to our recent white paper discussing current issues in the commercial cannabis legal landscape (available for [download](#)), we write about a recent decision regarding the enforceability of contracts in federal courts as discussed in Section I(A) of the white paper.

On April 13, 2020, a federal court sitting in Oregon dismissed a cannabis grower's lost profits claim arising out of a breach of construction contract. The court found that ordering defendants to pay lost profits would require defendants to violate the Controlled Substances Act (CSA).<sup>[1]</sup> The plaintiff, J Lilly LLC, who has a license from the State of Oregon to grow commercial cannabis, entered into agreements with defendants for the purchase, construction and installation of a commercial greenhouse. J Lilly, a first-time grower, alleged that defects in the defendants' construction of the greenhouse prevented plaintiff from growing its initial cannabis crop resulting in \$5.4 million in lost profits.

One of the defendants moved for summary judgment on the grounds that the construction contract included a waiver of lost profits and that there was insufficient evidence to determine the amount of plaintiff's lost profits. The court agreed and dismissed the lost profits claim on both of those grounds.

Significantly, at oral arguments the court raised another ground for potential dismissal—whether a federal court sitting in diversity can award damages derived from the cultivation and sale of cannabis. The parties submitted supplemental briefing on that issue following oral arguments. In considering this question, the court noted that cannabis remains illegal under the CSA and that “[a] federal district court may not enforce a contract if enforcing the contract would require a party to engage in conduct that is unlawful under federal statutes.”

The court, relying on decisions by other courts in the Ninth Circuit refusing to enforce cannabis-related contracts,<sup>[2]</sup> found that awarding J Lilly damages for lost profits would require the court to compel defendants to violate the CSA. Accordingly, the court dismissed the lost profits claim on that additional basis.

This decision is another example of a federal court refusing to enforce a cannabis-related contract. This decision also demonstrates the risk that certain courts may rule that cannabis contracts are unenforceable even where the litigants do not raise the issue. And, here, even where the court had other grounds for dismissal.

This decision underscores the importance of considering arbitration clauses or other provisions to ensure enforceability of cannabis-related contracts and consulting with sophisticated counsel in doing so. Jenner & Block lawyers are thought-leaders with significant experience in this area. Please reach out to us if we can help you or your business.

---

[1] *J. Lilly, LLC v. Clearspan Fabric Structures Int'l, Inc., et al.*, No. 3:18-cv-01104-HZ, at \*27 (D. Or. Apr. 13, 2020).

[2] *See Hemphill v. Liberty Mut. Ins. Co.*, No. 10-861 LH/RHS, 2013 WL 12123984, at \*2 (D.N.M. Mar. 28, 2013) (finding that federal court could not require insurance company to pay plaintiff's future

medical expenses for medical cannabis because to do so would violate federal law and policy); *Tracy v. USAA Cas. Ins. Co.*, No. 11-00487 LEK-KSC, 2012 WL 928186, at \*13 (D. Haw. Mar. 16, 2012) (finding that an insurance contract that would have covered cannabis plants stolen from the plaintiff was not enforceable because “Plaintiff’s possession and cultivation of marijuana, even for State-authorized medical use, clearly violates federal law”).



---

## Contact Us



**Andrew W. Vail**

[avail@jenner.com](mailto:avail@jenner.com) | [Download V-Card](#)



**Andrew D. Hoeg**

[ahoeg@jenner.com](mailto:ahoeg@jenner.com) | [Download V-Card](#)

**Meet Our Team**

---

© 2020 Jenner & Block LLP. **Attorney Advertising.** Jenner & Block is an Illinois Limited Liability Partnership including professional corporations. This publication is not intended to provide legal advice but to provide information on legal matters and firm news of interest to our clients and colleagues. Readers should seek specific legal advice before taking any action with respect to matters mentioned in this publication. The attorney responsible for this publication is Brent E. Kidwell, Jenner & Block LLP, 353 N. Clark Street, Chicago, IL 60654-3456. Prior results do not guarantee a similar outcome.