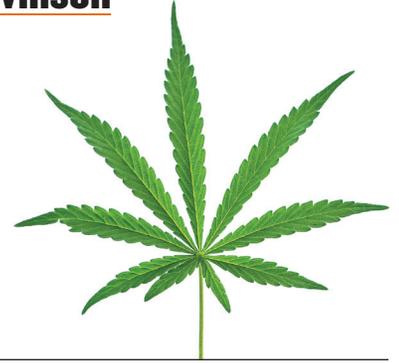


MCC INTERVIEW: Frank A. Segall & Scott H. Moskol / Burns & Levinson

Growing Their Own

How one firm did some checking to help a client and ended up with a cannabis business practice



Frank A. Segall and Scott H. Moskol co-chair the cannabis business advisory group at Burns & Levinson, where they have built an unusual practice helping individuals and companies involved in the marijuana industry navigate the complex and rapidly changing legal and business environment. MCC talked to them about the growth and opportunities in this new area of the law. The interview was edited for style and length.

MCC: Burns & Levinson was one of the first major corporate law firms in the country to develop a cannabis business group three years ago. Tell us about the origins of your medical marijuana practice and how it has developed and grown since then.

Segall: Burns & Levinson first became involved in the industry in 2013, after one of our clients told us he was getting involved with one of the three groups in Rhode Island that was applying for a medical marijuana license. Scott and I did a deep dive into this industry and saw the opportunity to launch a practice in uncharted waters and support our client. As they say, the rest is history. Since that time, we have been retained by many cannabis clients throughout the U.S. and consider ourselves one of the leading law firms handling cannabis-related businesses and investors today.

MCC: What specific cannabis projects have you worked on and what projects are you currently handling that you can talk about?

Moskol: We are helping several applicants for licensure across the country build their companies and raise capital. We are also working with several businesses that, while



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Frank A. Segall

not “touching” or selling the plant or flower, are involved with the industry in providing ancillary services such as financial services, technology and other consumer products. For example, we represent one financial group that will provide real estate financing for cannabis businesses looking to purchase the land on which they operate. We have another client that is providing asset protection services for executives and investors in this industry.

MCC: What are the biggest challenges overall for companies and investors that want to get into the cannabis business? What is the hardest issue your firm has tackled for a client?

Segall: One of the major issues confronting cannabis companies is the lack of financial institutions and services available to investors and operators as a result of the federal government still scheduling cannabis as an illegal substance. For example, for a group to successfully enter the market and obtain licensure in Massachusetts (one of the four states that legalized recreational marijuana in 2016),

a group needs four crucial components: access to a considerable amount of cash (or the ability to raise the millions of dollars necessary to construct the project); the ability to find real estate that is not only in a properly zoned section of the municipality but is also located in a town or city that is willing to accept such a business in its limits; the operational skills (or the ability to contract with consultants with those skills); and counsel experienced in not only cannabis but corporate finance matters. While each city, town and state presents its own unique challenges, many of these issues are universal no matter where a cannabis business is looking to operate.

We frequently meet with new potential clients looking for representation in this industry, but it quickly becomes clear that they are lacking some of these critical components for success, whether it be capital resources or operational experience. We are often forced to have very difficult conversations with these individuals. In some cases, we have declined representation, since our focus is on building a best-in-class practice and client base. That means we have to be selective in whom we represent. In some instances we have introduced one client to another – or to someone in our network – in order to help them fill gaps and create a stronger joint venture with a better chance of success.

MCC: What are the biggest opportunities you see in this industry?



Segall: The entire industry offers so many. On the business side, the newly emerging adult-use or recreational markets in the four states that legalized recreational use in 2016 (California, Maine, Massachusetts and Nevada) offer significant opportunities for operators and investors, once formalized. There are opportunities to invest in equipment, life sciences, technology, software and a multitude of other sectors.

Depending on one's tolerance to risk, there are also many different ways for individuals to get involved. There are publicly traded cannabis stocks available for purchase (mostly over-the counter, which means they are not traded on a formal stock exchange). There are several funds being raised that would enable an investor to be a partner in one that directly invests in a cannabis business, so the investor does not have direct ownership.

MCC: *Cannabis usage is currently prohibited at the federal level, but eight states have legalized marijuana for medical and recreational use, and 28 states and the District of Columbia have legalized it for medical use. What would you say to investors or entrepreneurs who are sitting on the sidelines and wondering if or when to jump into this industry?*

Moskol: If you are an entrepreneur or an investor, there is no longer time to sit on the sidelines if you want to become involved. Cannabis and cannabis-related businesses already generate billions of dollars in revenue and contribute hundreds of millions of dollars in tax revenue to the federal, state and local governments every year. This industry is here to stay, although we expect that there will be stricter compliance and due diligence imposed on businesses (which isn't necessarily a bad thing).

At some point, as barriers to entry are removed, investors and entrepreneurs will see decreasing opportunities to achieve the large returns many of these deals provide now. For example, banks, which are federally regulated, cannot provide loans to cannabis businesses because marijuana is not legal on a federal level. As a result, businesses are forced to take loans from private sources of money at high interest rates and/or sell equity in order to raise the starting capital needed to open a cannabis operation. If and when the time comes that a business can obtain the equivalent of a cannabis construction loan from a local bank, you've reached the point where the opportunities to invest in the industry at the ground floor –



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– Scott H. Moskol

when promised returns are high – are limited by the competition in the marketplace.

MCC: *Some states that have recently legalized marijuana for recreational use seem to be struggling with implementing these laws. Why is this process so difficult and how is that impacting the work you are doing?*

Segall: Some states like the Commonwealth of Massachusetts are unfortunately having issues with the implementation of recreational use laws, while other states have heard the voters speak and are implementing their mandate with less difficulty. The simplest answer may be that the legislators want to get it right. There is still a major stigma associated with marijuana use, especially recreational use, so it's harder for lawmakers to regulate than other industries like alcohol. If the cannabis industry is going to succeed, it needs strict guidelines and safeguards. Recreational licenses should not be given out like candy. Those licenses need to be in the hands of experienced operators, not neophytes who can tarnish the industry for everyone.

This uncertain regulatory environment in some states has created an unintended stifling effect. For example, in Massachusetts, a business that wants to obtain a license to grow and sell medical marijuana must first get a letter of non-opposition from the city or town where the facility will be located. Multiple cities and towns are refusing to

provide such letters of non-opposition until Massachusetts formally promulgates the new law and regulations for the recreational market. The towns and cities are fearful that, for example, the new recreational marijuana law would allow a licensed medicinal applicant to automatically be able to sell recreational cannabis. While some applicants have even pledged not to pursue a recreational license, cities and towns still want to see the final form of the legislation and its associated regulations before acting on medicinal license applicants. It's unfortunate that this has created an unofficial moratorium in many municipalities.

MCC: *Are you and your clients concerned about how the administration change in Washington, D.C., could impact state efforts to legalize marijuana for recreational and/or medical purposes?*

Moskol: We, along with the majority of our clients, believe that there will be little to no impact on the future of medical marijuana, and we expect more states will legalize such usage in the near future, whether via referendum or legislative approval. Right now, West Virginia is poised to become the latest state to allow doctors to prescribe medical marijuana. We also believe that more referendums will be put on statewide ballots seeking the legalization of recreational cannabis in the coming years, as occurred in Maine, California, Massachusetts and Nevada last year.

MCC: *Does the future look bright or hazy for cannabis businesses? What will this industry look like in 10 years?*

Segall: I don't have a crystal ball, but the future is definitely bright. I believe the industry will be "normalized" and no longer as stigmatized as it is now in certain parts of the country. In 10 years, I expect cannabis will be a high-growth industry, generating hundreds of billions of dollars in yearly revenue, and I will be proud to say Burns & Levinson had the vision to be at its forefront, helping its clients pioneer its growth.

Frank A. Segall is co-chair of the cannabis business advisory group and chair of the business law and finance groups at Burns & Levinson. He is based in Boston and can be reached at fsegall@burnslev.com.

Scott H. Moskol is co-chair of the cannabis business advisory group and the financial restructuring and distressed transactions group at Burns & Levinson. He is based in Boston and can be reached at smoskol@burnslev.com.