

White Nationalists Can't Nix Charlottesville Violence Suit

By **Y. Peter Kang**

Law360 (July 10, 2018, 6:40 PM EDT) -- A Virginia federal judge has allowed a suit alleging civil rights violations in connection with deadly white supremacist-associated rallies that took place in Charlottesville last year to move forward, saying the victims plausibly alleged a conspiracy to commit racial violence.

U.S. District Judge Norman K. Moon on Monday largely rejected the motion to dismiss lodged by more than a dozen neo-Nazis and white nationalists accused of violating a Reconstruction-era law known as the Ku Klux Klan Act, which was passed in 1871 to address the KKK's violence against minorities in the South. The suit, lodged by 10 Charlottesville, Virginia, residents who suffered injuries during the August 2017 rallies ranging from broken bones to emotional trauma, alleges violations of federal and state civil rights laws, negligence, assault and intentional infliction of emotional distress.

Among the defendants is James Fields, a member of neo-Nazi group Vanguard America, who drove his car into a group of counter-protestors following the "Unite the Right" rally on Aug. 12, which allegedly caused the death of legal assistant Heather Heyer. Fields is currently facing a state murder charge and federal hate crime charges.

Judge Moon said the allegations, taken as true, were sufficient to allow the bulk of claims to proceed at the motion-to-dismiss stage of the case. He greenlit claims lodged under federal law regarding conspiracy to interfere with civil rights.

"While ultimate resolution of what happened at the rallies awaits another day, the court holds the plaintiffs have plausibly alleged the defendants formed a conspiracy to commit the racial violence that led to the plaintiffs' varied injuries," the judge wrote in a 62-page ruling.

Judge Moon said allegations that the defendants engaged in a conspiracy to commit crimes in violation of state law were also properly alleged.

"As with Count I, the court concludes plaintiffs have, for the most part, adequately alleged that defendants formed a conspiracy to attack black and Jewish counter-protesters, and their supporters, because of racial animus," he said.

The judge cut one defendant loose from the suit, saying conspiracy claims lodged against Michael Peinovich, a prominent white nationalist who goes by the name Mike Enoch, were not plausibly alleged.

One of the plaintiffs' attorneys, Karen L. Dunn of Boies Schiller Flexner LLP, said they were satisfied with the ruling.

"The court's opinion is striking in its thoughtfulness and deliberateness and we are pleased that after such a careful review, the court decided our claims will move forward, likely to trial which has been set for next summer," she said in a statement. "In America, it is not lawful to target individuals or groups for violence based on their race, ethnicity or religion. The court has now made perfectly clear in a way defendants will be unable to ignore or gloss over: the First Amendment does not protect violence or threats to do violence."

An attorney for the defendants, James Kolenich of Kolenich Law Office, told Law360 that although he and his clients "take issue with a few of the court's legal conclusions," he was impressed with the "level of detail judicial effort" that went into the judge's opinion.

He added, "We are excited to finally get on with the business of forcing the plaintiffs to actually prove their claims with admissible evidence."

The plaintiffs are represented by Karen L. Dunn, Joshua James Libling, Philip Bowman, William Isaacson and Yotam Barkai of Boies Schiller Flexner LLP, Roberta A. Kaplan, Gabrielle E. Tenzer, Julie E. Fink, Christopher B. Greene, Joshua Matz and Seguin L. Strohmeier of Kaplan Hecker & Fink LLP, Alan Levine, David E. Mills and Robert T. Cahill of Cooley LLP, and J. Benjamin Rottenborn of Woods Rogers PLC.

The defendants are represented by solo practitioner Elmer Woodard, James E. Kolenich of Kolenich Law Office, John A. DiNucci of Law Office of John A. DiNucci, David L. Campbell and Justin S. Gravatt of Duane Hauck Gravatt & Campbell PC, and Bryan J. Jones of Bryan J. Jones, Attorney at Law.

The case is Sines et al. v. Kessler et al., case number 3:17-cv-00072, in the U.S. District Court for the Western District of Virginia.

--Editing by Jack Karp.

Update: This story has been updated to include a statement from the defendants' attorney.