

## ***In-N-Out of Court***

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In 1948, Harry and Esther Snyder would make carhops eventually obsolete by installing a two-way speaker and opening the first drive-thru hamburger stand in California: In-N-Out Burger was born. From that humble beginning, right next door in Baldwin Park, the chain has grown to over 200 restaurants, in California, Arizona, and Nevada. One would think that Ms. Snyder, now 86 years old, would be able to retire to a life of peace and contentment; instead, she finds herself right at the center of a profoundly nasty legal battle, which threatens her still-family-owned business and perhaps her very family as well. A great American success story has become a great American tragedy.

Not that Ms. Snyder is any stranger to sorrow. In 1976, Mr. Snyder passed away. In 1993, the younger of their two sons, Richard, died in a plane crash; in 1999, the older, Guy, died of an overdose of painkillers. The sons had been groomed to run the company, by learning the family business "from the ground up"; but with them gone, Ms. Snyder, who had continued to take part in day-to-day duties, assumed the role of president.

She also served on the three-person board of directors, with Richard Boyd, vice president of real estate and development, and Mark Taylor, vice president of operations. Boyd and Taylor

were co-trustees, with equal voting rights, of the family trusts that held some two-thirds of the stock and, thus, controlling interest in the company.

A quarter of the stock in In-N-Out Burgers, Inc. was held by Lynsi Martinez, who as the daughter of Guy Snyder and his first wife, Lynda Kelbaugh, is the sole surviving descendant of the founders. Martinez, now 23 years old, stands to inherit a third of the stock held by the trusts at age 25, another third at age 30—then giving her outright, majority control of the company—and the remaining third at age 35.

Further complicating matters, a half-sister of Martinez, another daughter of Kelbaugh, is married to Vice President Taylor, one of the trustees of the stock Martinez stands to inherit.

The stage was, thus, set for the tragedy that ensued.

By reading through all the suits and countersuits and supporting documents that have been filed over the last several months with the Los Angeles County Superior Court, two radically different accounts of what transpired emerge.

According to Boyd, Martinez is "the product of ... [a] broken marriage" who lacks "sufficient

personal maturity, experience, and skill necessary to successfully run" In-N-Out; she "traded a college education and work, in favor of other pursuits such as car racing, and partying hard." Boyd additionally alleges that "she had an affair with an employee with a reputation for selling marijuana ... and she ultimately divorced her first husband, to marry that employee." Boyd continues, "Martinez commenced holding weekly prayer meetings for INO employees at her home featuring prerecorded sermons from her mother's pastor, and 'healings,' while at the same time instructing Taylor into firing, demoting or transferring ... any INO employee she believes to have slighted her. ... Martinez has conspired to remove Boyd on false charges solely because she does not believe him to be a 'man of God.'"

Actually, Boyd's allegations charge that Martinez also wanted to remove him because, as co-trustee of the trust holding the stock, he stood in the way of her assuming control of the company before her 30th birthday; he alleges that she and Taylor and those she intimidated within the company wanted him—and Ms. Snyder—out of the way, so they could rapidly expand the company nationally and even internationally, which Boyd asserts would not allow In-N-Out to maintain the quality of their service and ingredients, presently almost entirely shipped out fresh from their Baldwin Park headquarters: It is generally agreed that the almost fanatical following In-N-Out has amassed among its customer base is due in large measure to their restaurants having no freezers or microwaves.

In response to this charge, Bob Emmers, of the Sitrick Company, a public relations firm representing In-N-Out, states that the company continues to open just nine or ten new stores a year, as it has for the last ten years.

On January 30, 2006, Boyd was fired "for cause" as vice president and said to have resigned his position on the board of In-N-Out Burgers, as a result of a special meeting of the board, consisting solely of Taylor, with attorneys, and, by telephone at her home, Ms. Snyder; Boyd states that even though he was still a member of the board, he was not allowed to participate in the meeting and that there was no official record made of the meeting.

Moreover, Boyd says that security guards stopped him from even entering Ms. Snyder's property; he alleges that Ms. Snyder has been kept in isolation by armed guards and that her visitors and phone calls have been screened and monitored and her phone line at times completely disconnected. Boyd also alleges that "Taylor, Martinez [and others] ... laid siege to Esther Snyder in her own home ... by taking turns sitting with Esther Snyder, praying over her, and conducting spiritual 'healings.'"

Boyd claims to represent the best interests of Ms. Snyder—he states that with the help of her nephews, whom he would prefer see inherit the company, he had previously rescued her from a nursing home in which Martinez and Taylor had confined her for a year after a broken hip—as well as the best interests of the company, as he says he had promised to the now-deceased members of the family.

In his lawsuits, Boyd also alleges that employees and vendors of In-N-Out have been coerced by Martinez and Taylor to make incriminating statements against him and to perform work on their personal property.

Boyd is seeking unspecified monetary damages as well as reinstatement to his former positions within the company, his attorney, Philip Heller, denying the legitimacy of the special board meeting, saying that it was nothing more than a "kangaroo court."

Not surprisingly, In-N-Out Burgers, Inc.—representing the positions of Martinez and Taylor—denies all of the allegations by Boyd. Indeed, they have filed their own civil charges against him in court; and through the Irvine Police Department, they have filed additional, criminal charges, for fraud and embezzlement.

In particular, on January 31, 2006, Martinez issued the following statement: "Mr. Boyd continues to circulate the most outrageous fabrications and untruths about me and my grandma in an increasingly desperate effort to draw attention away from his own misdeeds. It is shocking that a man who once occupied a position of trust to me and my family would sink so low with no seeming regard for the facts or the feelings of the people involved. ... His lies ... are the wild accusations of a man who is bent on harming not only me and my grandma but the Company we all care so much about."

According to the suit filed by In-N-Out, Boyd, as vice president of real estate and development, conspired with Michael Anthony Concrete (MAC), which has built over 90 In-N-Out stores,

and perhaps other contractors to defraud the company, over the course of several years. In their court filing, In-N-Out states: "Boyd ran the [Real Estate and Construction] Department with a high degree of autonomous control. ...

"Boyd established separate accounting and computer systems within the Department. Such measures provided Boyd with an opportunity to carry out various activities without much oversight or auditing. ...

"Boyd operated the Department in a way that was contrary to the interests of In-N-Out. Boyd selected contractors to perform construction on new In-N-Out stores without any competitive bidding process. ...

"Boyd's practices resulted in his most favored contractor, Defendant MAC, receiving contracts for over 90 In-N-Out stores over a 13-year period. These contracts were not subject to competitive bidding, and the values of these contracts, paid by In-N-Out, were grossly higher than industry standards.

"To reward Boyd for all of the In-N-Out money that he funneled to MAC, MAC performed construction services on Boyd's personal property. ... These actions were taken in concert with, and with the ratification of, Boyd, and were part of a common scheme to defraud In-N-Out and misappropriate its assets.

"In mid-2005, In-N-Out discovered that its construction costs had spiraled out of control, far out of proportion to inflation or the increasing cost of supplies or labor. ...

"In-N-Out hired Grant Thorton LLP, an independent forensic investigation firm, to investigate these matters. ...

"Documents were discovered that show that Boyd was having In-N-Out pay for work that was actually completed on Boyd's private residence, and that Boyd was falsifying and destroying documents in order to conceal his conduct."

In particular, the private investigators reported the Boyd diverted some \$15,000 of the company's money earmarked for the building of a store in Laughlin, Nevada, to the construction by MAC of a six-foot wall on his personal property in Bullhead City, Arizona.

For this article, Heller, Boyd's attorney, answered these charges by stating that In-N-Out, as part of its corporate culture, maintains high quality, both in its foods and in its construction, not by awarding contracts to the lowest bidder but by establishing long-term relationships with the highest quality suppliers and contractors; moreover, Heller stated that the contracts were routinely awarded by supervisors within the department, not by Boyd himself, and that in any event, they were fixed-price contracts: As long as MAC performed the work for which they were contracted, at the price at which they were contracted, then it was completely up to them how to spend the money, including a portion, if they chose, on property belonging to their longtime business associate, Boyd. Heller posed the question, why would Boyd, making millions of dollars as vice president, endanger that position by allegedly embezzling \$15,000 from the company?

According to the complaint filed by In-N-Out, "several witnesses confirmed that Boyd had a pattern and practice of using In-N-Out money to pay MAC and other companies to perform personal construction projects for Boyd ... including the construction of a patio and cabana at Boyd's home in West Covina, California."

The complaint by In-N-Out continues: "In response to In-N-Out's confronting Boyd with the evidence that he had stolen from the company, a charge Boyd did not deny, on or about December 7, 2005, Boyd filed suit against In-N-Out."

That suit would later be dropped, during negotiations; only to be followed by another by Boyd, on or about January 5, 2006. The countersuit was then filed by In-N-Out, on January 10. Boyd dropped his second suit, approximately two weeks ago; but in its place, he is now filing another cross-complaint, to bring all the claims together in one suit, according to his attorney, Heller (who also states that matters involving Boyd's status as co-trustee of the Snyder family trust funds will be decided separately, in probate court).

This convoluted and sordid case, ironically and sadly involving a company whose reputation has been built on an image of straightforwardness and wholesomeness, boils down to this: Are Martinez and Taylor ousting Boyd and holding Ms. Snyder incommunicado as part of an attempted coup, as Boyd contends? Or is Boyd simply an embezzler who is trying to cover his crime by casting blame and suspicion on those who caught him, as the company contends?

Perhaps Ms. Snyder, connected to all the principals in the case, holds the key. Even though she is 86 years old and arguably in frail physical condition, both sides agree that she is of sound mind—the two sides are resting much of their cases on sworn statements that they state they have obtained from her.

On January 12, 2006, according to a notarized and witnessed deposition presented by attorneys representing In-N-Out Burgers, Ms. Snyder swears, among other things, that "I no longer have any trust or confidence in Mr. Boyd and wish to see him removed as quickly as possible from any role with In-N-Out Burger, with me or my family, or with my family's trusts."

However, On January 23, 2006, according to a declaration presented by attorneys representing Boyd, Ms. Snyder swears, among other things, under penalty of perjury, that "I do not want Rich to resign or to be removed from any position. I want him to continue to serve for as long as he is willing. Knowing Rich as I do, I do not believe that he would ever betray me, my family or my company."

In breaking news, Heller, attorney for Boyd, reports that they will soon file a petition to compel Ms. Snyder to make a deposition; he claims that to date, they have been denied access to her—Heller states that he cannot reveal the means by which the declaration they have was obtained, without endangering the position of someone connected to the case—and that Ms. Snyder's statement once made under oath with both sides present will prove their case.

Presumably, the other side would insist that any such deposition would prove their case instead.

Putting the bitter particulars aside, there is a cautionary tale for businesses at large: Even within a company in which "all associates are treated like family," as In-N-Out's Web site so proudly proclaims, there is always the possibility of an ugly "divorce," especially with over \$300 million a year in sales at stake.

That's a lot of Double-Doubles.

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*Information for this article was obtained from documents filed with the Superior Court of the State of California in and for the County of Los Angeles, information previously reported in the Los Angeles Times, content from <http://in-n-out.com> and <http://hoovers.com>, and phone conversations and e-mail correspondence with Philip Heller, of Fagelbaum & Heller LLP, representing Richard Boyd, and Bob Emmers and Tony Knight, of Sitrick and Company, "a strategic communications firm," representing In-N-Out Burgers, Inc.*