Ivan the gorilla caught in legal tangle

PAWS wants him sent to Atlanta Zoo

By Don Carter
P-I Reporter

TACOMA – Ivan the controversial urban gorilla is now swinging through the legal jungle.

For starters, Ivan's owners, who have opposing views about his future, are suing each other in Pierce County Superior Court over the financial soundness of the family corporation that technically owns him.

A federal court also is considering how Ivan figures in a bankruptcy action. And the Progressive Animal Welfare Society wants to file suit to have Ivan forfeited to the federal government.

Considering the complexity of it all, the gorilla appeared calm and playful yesterday at the South Tacoma shopping center where he has been the star attraction most of his 29 years.

Ivan's legal troubles began last fall, when the B&I Realty Co., which owns the circus-themed B&I shopping center where Ivan lives, filed for Chapter 11 bankruptcy protection. The company listed $8.3 million in assets and $1.9 million in liabilities, with Ivan included as a $30,000 asset.

Ron Irwin, vice president of the family-owned corporation, said at the time that Ivan wouldn't be affected by the bankruptcy. The corporation needed protection, he said, because of a temporary cash-flow problem created by its switch from owner to landlord of the stores.

Irwin's sister, Mary Lou Borgert of Yakima, doesn't agree the cash-flow problem is temporary. She has filed a civil suit asking for an accounting of the family trust that owns much of the B&I stock.

In court documents, Borgert accused her brother and mother, Constance Irwin, of mismanaging the business so that it lost more than $1 million in 1990 and 1991 and would having continuing losses.

Borgert alleged her mother and brother diverted company money to pay for personal debts, home mortgage payments, property taxes, private school tuition, traffic tickets, professional football tickets and other expenses.

When she tried to ask about the trust's finances, Borgert said she was told: "It's not your money! You have no say."

The family trust, controlled by Ron and Constance Irwin, was set up by the will of Earl Irwin, Ron's father and Constance's husband, who died in 1973. In her suit, Borgert said neither she nor her children, as minority stockholders, had received any income from the trust since before 1980.

Ron and Constance Irwin, in a response filed by their attorney, denied Borgert's allegations. Neither Ron Irwin nor Borgert would comment on the cases yesterday, and Constance Irwin could not be reached for comment.

But in their bankruptcy petition, Ron and Constance Irwin asked that they be allowed to sell off some of the company property to satisfy debts and continue operating the shopping center. Borgert wants the company liquidated and Ivan "transferred to an appropriate zoological site."

The Progressive Animal Welfare Society (PAWS), which has been picketing and protesting Ivan's confinement for more than five years, agrees with Borgert. PAWS wants Ivan transferred to the Atlanta Zoo, where he could be "re-socialized" with the nation's largest colony of captive gorillas.

Yesterday, lawyers for PAWS and the Irwins met in bankruptcy court to argue whether the animal rights organization should be permitted to sue B&I to try to obtain Ivan's release.

While companies involved in bankruptcy are normally protected from suits to prevent erosion of creditor's claims, PAWS attorney John Costo argued that Ivan doesn't have much monetary value as an asset. He told federal bankruptcy Judge Philip Brandt that the market for

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Ivan's biography: From Congo to courtroom

■ **1964:** Earl Irwin buys Ivan, an infant lowland silverback gorilla captured in the Belgian Congo.

■ **1973:** Irwin dies, leaving B&I stock to his wife, son, daughter, grandchildren and a family-owned trust, with control of the trust and subsequent control of B&I going to the wife and son. Ivan, who now weighs 500 pounds, is owned by B&I.

■ **1987:** Progressive Animal Welfare Society begins campaign to have Ivan transferred to a zoo.

■ **1992:** PAWS reported that pop singer Michael Jackson considered transferring Ivan to his "Neverland" compound near Santa Barbara, Calif., but the plan apparently fell through because of the complexity of federal permits required; B&I files for Chapter 11 bankruptcy; PAWS offers to pay B&I Ivan's stated value, $30,000, for his release. Mary Lou Borgert files suit against brother and mother, asking for accounting of family trust.

■ **1993:** B&I rejects PAWS' $30,000 offer; PAWS seeks legal standing to sue B&I under terms of Endangered Species Act.

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gorillas isn't good because the federal Endangered Species Act makes it illegal to sell one.

PAWS contends Ron Irwin offered to sell Ivan to pop singer Michael Jackson last year and also has used Ivan in B&I advertisements, but Irwin denies he ever offered Ivan for sale or used him commercially. PAWS wants to sue B&I, invoking the Endangered Species Act's prohibitions against offering an endangered species for sale or using one for commercial purposes.

But the Irwins' attorney, William Beecher, argued yesterday that PAWS isn't a governmental entity with authority to enforce the Endangered Species Act.

The judge deferred a ruling and requested more written legal arguments from attorneys for both sides, who say it likely will be months before all the issues are sorted out.

Among the issues is who owns how much of B&I.

Although it's clear that Earl and Constance Irwin each owned half the stock when it was issued in the 1950s, it's less clear about subsequent stock issues and transfers, said Rex Stratton, one of Borgert's attorneys.

Today, he said, it appears that the family trust, Borgert and her children together own more than half of the B&I stock. And because Borgert recently won the right to have a receiver represent the trust in bankruptcy hearings, control could shift away from Ron and Constance Irwin.

Meanwhile, back at the shopping center, in faded photos and clippings that line a wall near Ivan's compound, Ron, Mary Lou, Earl and Constance are all smiles. The memorabilia recall the "world-famous shopping center's" glory days of the '50s and '60s, when the Cisco Kid, Batman and Robin, former Gov. Albert D. Rosellini and other notables visited the center and its menagerie.

Suing her brother and mother "was a very difficult thing for (Borgert) to do," Stratton said. "It's something she didn't want to do, but from her point of view, she was compelled to do it to preserve her family's share."

It was Borgert's idea to give Ivan to a zoo, Stratton said.

"If you're asking to liquidate the corporation, you have to do something about the animal," he said. "I don't think Tacoma wants him turned loose downtown."

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