



The Franchise Valuations Reporter



Our Expertise

Within the franchise, distribution and dealership context, we are experts in:

- Damages, Valuations & Expert Testimony
- Finance, Accounting and Tax
- Cyber Security

We offer a free initial consultation. If any readers have questions, you are welcome to email or phone us and we will provide our best answer as quickly as possible.

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Have a Damages or Valuation Question?

Call us for a free, confidential consultation. And we're always interested in your comments about the newsletter.

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We Write the Book

Franchise Regulation and Damages, the only treatise that covers damages in franchise disputes and valuations of franchises, is updated 3 times a year.

For more details, to see a Table of Contents or to place an order, go to



Valuations

SEC Head Warns on Unicorn Valuations

The chairman of the Securities and Exchange Commission, Mary Jo White issued a warning or veiled threat to Silicon Valley, about how the tech community has been playing widespread games with valuations. She called on over-valued private firms (ones valued at more than a billion dollars are referred to as "unicorns") to adhere to the same rules as public companies and prevent misleading investors about their value.

"Nearly all venture valuations are highly subjective," Ms. White told the audience at Stanford's Rock Center for Corporate Governance. "But one must wonder whether the publicity and pressure to achieve the unicorn benchmark is analogous to that felt by public companies to meet projections they make to the market."

Judge's Vicious, Intemperate Ad Hominem Attack

A trial judge in Westchester County, New York, has recently issued a blistering opinion[1] savagely maligning my professional qualifications and claiming I have no credentials worthy of note in the area of franchise valuations despite the fact that I have been doing them since 1984 - before there was even a recognized valuation profession - have been employed by many franchise systems and the IRS as an expert on franchise valuations over the past twenty years, and write a treatise on the matter.

The judge's decision finds that Planet Fitness franchise units are barely worth \$1.8 million after a capital investment of \$1.6-\$1.7 million. That is basically a holding that Planet Fitness is a garbage franchise which even after years of operation is barely worth the investment. Nothing could be further from the truth. The opposing expert opined the units were barely worth \$1 million each - less than the capital invested. I opined they were worth about \$5 million each and was subjected to a baseless *ad hominem* attack.

The judge chose to ignore recent sales of comparable Planet Fitness units **disclosed in the Franchisor's FDD** including one acquisition by the franchisor of eight fitness clubs in New York on March 31, 2014, for the total price of \$41,638,000 or \$5,204,750 per club. The Effective Date of the valuation in our case was May 14, 2014. It's hard to get any closer in time than that.

There were two additional acquisitions by the Franchisor disclosed in the FDD: the first was the acquisition of four fitness clubs in Pennsylvania and Delaware on August 1, 2012, for the total price of \$12,140,000 or \$3,035,000 per club; and the second reported transaction was an actual deal between the very Area Developer that was the subject of this litigation and the Franchisor. In that transaction the Franchisor acquired ten fitness clubs in the New York area on August 10, 2012, for the total price of \$38,747,000 or \$3,874,700 per club.

So which decision deserves to be respected and which condemned: the franchisor's determination (while holding a right of first refusal and in full possession of the facts) to pay more than \$5.2 million per unit within six

the Wolters Kluwer Law & Business web page [here](#).

DISCLAIMER

The information provided in this newsletter is for informational purposes only and should not be construed as legal or expert advice which can only be obtained from appropriate professionals. Franchise Valuations, Ltd. and Franchise Technology Risk Management provide such expert advice on the topics addressed herein.

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weeks of the Effective Date of the case at issue; or the judge's decision, ignoring the business judgement of one of the most successful franchisors in the country, that the units are worth barely \$1.8 million each and that the franchisor is so dumb that they paid MORE THAN TWO AND HALF TIMES what they were worth?

[1] *LaVerghetta v. Lawlor*

Damages

Dunkin Donuts Canadian Appeal Denied

We have previously written about the Dunkin Donuts case in Canada. [[See the June 2015 issue of The Franchise Valuations Reporter.](#)] The story has come to an end: the application of Dunkin' Brands Canada Ltd. (formerly Allied Domecq Retailing International (Canada) Ltd.) for leave to appeal to the Supreme Court of Canada has been dismissed with costs Côté J. dissenting. Thus, the ruling confirmed the trial court holding that Dunkin pay 10.9 million dollars (plus interests and costs) to a group of franchisees for lost investments and profits because the Dunkin' franchise agreements were found to include both explicit and implied obligations to provide the franchisees with support, and to protect and enhance the brand which it was found they failed to do against the onslaught from competitor Tim Horton's. It seems to be generally conceded however, that this is a Quebec specific and fact specific holding - not necessarily of broad application.

Withdrawal of Support, Services By Cottman Allegedly Breached Franchise Agreement

In a similar vein, Cottman Transmission Centers, a franchisor of transmission repair centers breached its obligation to franchisees under their license agreements by ceasing to provide contractually-mandated financial support and resources for the transmission franchise system, according to a complaint filed in the federal district court in Philadelphia (*The Jade Group, Inc. v. Cottman Transmission Centers, LLC*, March 17, 2016). The Plaintiff's attorneys are the formidable combination of Harris Chernow and J. Michael Dady.

The complaint states that Cottman's license agreements set forth certain continuing obligations to support franchisees, such as the requirement to: (1) provide training programs and meetings; (2) continue to develop and protect the good will associated with Cottman names and marks; (3) furnish an operator's manual; and (4) assist operators with obtaining a location, the layout of the repair center, installation of equipment, and finding personnel. The agreements also require Cottman to provide advertising services to franchisees in exchange for a weekly advertising fee. According to the complaint, a proposed Internet advertising campaign, which would have announced that Cottman was seeking additional franchisees was deep sixed. Instead, the complaint alleges the defendants announced that it would focus its resources on its AAMCO brand and would invest no resources in growing the Cottman brand and stopped allocating resources to support the Cottman franchise system causing Cottman to breach its contractual obligations.

Supreme Court Upholds Employee Class Action Against Tyson Foods and Dashes Business Hopes That Court Would Limit Use of Statistical Evidence in Class Actions

In a decision last month the US Supreme Court dashed the hopes of businesses seeking further limits on class actions, ruling against Tyson Foods Inc. In a closely watched case on financial damages calculations the court

held that it is acceptable for courts to use statistical estimates when establishing liability in multiparty cases against companies, rejecting a push by businesses to limit damages to proven injuries. The decision was significant both because of its 6-2 vote and its sweep, explicitly declaring that corporate lawyers had read too much into recent precedents curbing class-action litigation. Here is an [article with more details and a link to the decision](#) in *Tyson Food, Inc. v. Bouaphakao*.

Wisdom from Warriors

Two Quotations from Napoleon:

"I MAY LOSE A BATTLE BUT I NEVER LOSE A MINUTE."

"GOD FIGHTS ON THE SIDE OF THE LARGER BATALLIONS."