



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 and E-discovery of Electronically Stored Information

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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Franchise Technology Risk Management



Our franchise law and computer forensics experts provide consulting and implementation of all aspects of cyber security, ESI management and e-discovery for franchise systems - from preparation of cyber security and ESI-related policies and procedures manuals through collection, preservation, processing, production and presentation.

To inquire about our services,

Hot Off the Presses



The third edition of my BNA Tax Management Portfolio, "**Tax Aspects of Franchising**," has just been published. To purchase a copy, [contact our office.](#)

Also, we are proud to announce the publication of my article, "[Current Damages Issues in Franchise Disputes: Lost Future Royalties and the Value of a Terminated Franchise](#)," which appears in the current edition of *Dunn on Damages*.

Cyber Security: "Thinking Ahead of the Hack" U.S. Attorney for SDNY Issues Wake-Up Call

In a *New York Times* op-ed, Preet Bhara, U.S. Attorney for the Southern District of New York, says that cybercrime "is aimed directly at our national security, imperiling our infrastructure, government secrets and public safety." He goes on to warn that private business is also at risk because "even well-intentioned companies that are already spending large sums of money on high-tech security are overlooking the fundamental precautions."

What are some of these precautions? According to Bhara, "[e]ven simple measures - like employee training and regular threat assessments - can help companies avoid becoming the easy target."

We have a false impression that all hackers are hyper-sophisticated, digital versions of Tom Cruise rappelling down a building, "Mission Impossible"-style. But the more mundane reality is that companies are most often breached by hackers walking down virtual hallways, looking for a single unlocked door. And the proverbial unlocked door can mean entry into the entire data network.

In response, companies must start thinking ahead of the hack and locking their doors. It is simply no longer enough for company leaders to take a hands-off approach, leaving these matters to a few "techies." Such an attitude practically invites a hack. . .

But the most important step is the most obvious and fundamental one: understanding the threat in a comprehensive, serious manner. **Every member of a board or executive suite is duty bound to protect the institution against material risk, whether they currently possess particular expertise or not.** And yet, how many companies have a concrete plan in place to deal with a hack? How many conduct independent audits of their cybervulnerabilities?

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Worth Reading

We recommend this fascinating *Washington Post* series on cyber security for an explanation of "Zero Day" flaws.

[Part I: Understanding Cyberspace Is Key To Defending Against Digital Attacks](#)

[Part II: Cybersearch Engine Shodan Exposes Vulnerabilities](#)

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.

Please visit our websites at www.FranchiseValuations.com and www.ftm.biz

The answer, many in my position fear, is too few. [Emphasis added.]

Our network security expert, Henry Chan, couldn't agree more. He recommends these [10 Basic Computer Security Tips](#).

To review and/or design and implement your cyber-security policy and situation call Henry promptly at 212.689-0400 or e-mail him at Henry@FTRM.biz.

Expert Witnesses: What Works

Traits of Effective Expert Witnesses Defined

According to Sarah E. Murray[1], M.A., Ph.D. Cand., and Director of Jury Services, Suann Ingle Communications, dynamism, trustworthiness and expertise are the secrets to success for expert witnesses. And somewhat surprisingly she doesn't think expertise is the be-all and end-all. She tells expert witnesses:

Notice that what you might naturally put in the forefront - your expertise - is only one of the three factors that jurors use to evaluate you. You might initially find this to be a sad reflection on jurors and juries. However, if you think about it in light of your own experience in evaluating people, it will make a lot of sense. Each of us has only a very narrow slice of expertise relative to the immense amount of knowledge in our world. In most situations in everyday life - evaluating the skill of a financial advisor, say, choosing the best plumber to hire, or selecting a professional and qualified caterer for your wedding - most of us cannot usually rely on an in-depth knowledge of these fields to guide us. We have to rely on other, common sense cues that help us to determine if the person's purported expertise makes sense in light of the person's way of being in the world.

She also offers other suggestions for experts about to testify.

To use the expert paradox to your advantage, your testimony needs to come across as unbiased to jurors. If you come across as unbiased, rising above the pressures put on you in an advocacy situation, jurors will perceive your opinions to be trustworthy. Here are some basics for conveying that you are unbiased:

- If you testify for both sides, make sure that comes out during your direct testimony.
- Demonstrate to jurors that you considered a variety of scenarios or conclusions as you went about forming your opinion. An opinion that results from a complex process is more trustworthy than is a firmly held opinion that seems to have been pre-ordained.
- On cross examination, it is essential that you not appear to duck any questions from opposing counsel. Answer all his questions clearly and forthrightly, even those that may seem to damage your side's case. (However, there are techniques you can learn for answering a question and yet not giving opposing counsel the answer she or he wants.) People who are trustworthy and objective don't try to worm out of tough questions. If you directly respond to the hard questions and do not make a big deal out of your answers, neither will the jurors.

[1]The company's website is at www.suanningle.com, and Ms. Murray

may be reached at sarah@suanningle.com

Preparing to Leave a Business

Baby Boomers' Net Worth Is Often Tied Up in Businesses They Own and That Can Be a Problem

Veronica Dagher writes in *The Wall Street Journal*[2] that there are many mistakes that business owners make when planning for their exit. One massive one she notes is failing to get a realistic and professional opinion about the value of the business. She writes:

The Mistake: Incorrectly Valuing the Business

Richard Jackim worked with a client who was the founder of a small but successful consulting firm. The client calculated he'd need to sell his business for \$6.25 million to maintain his lifestyle in retirement, says the Chicago-based exit-planning adviser, and figured his business would be worth that much. He was wildly optimistic, however. All too often, owners base retirement plans on faulty valuations, causing drastic overhauls in retirement plans, not to mention blows to self-esteem, says Mr. Jackim.

The Fix: Well in advance of retiring, business owners should get a realistic appraisal of their business, to see if it will fetch what they'll need to retire. If it won't, the owner needs to adjust his or her retirement plans, or come up with a financial strategy to boost their income.

Mr. Jackim says a professional adviser can help determine what a business actually might sell for.

Also essential: understanding if there is a market for the company, how liquid the market is for lending and equity, what buyers are paying for similar companies and how they are structuring the deals.

As you know, Franchise Valuations, Ltd. provides such valuations.

[2] See the full text of the article, "Preparing to Leave," [here](#).

Think About Gift Tax Exemptions

The \$5.12 Million Gift-Tax Exemption Is Set To Fall To \$1 Million At the End of the Year

If you, or your client or your boss, are a successful owner of a franchise, distributorship or dealership, particularly members of the baby boomer generation, you should be thinking about a planned gift giving program to save on transfer taxes. As a recent article in *The Wall Street Journal*[3] points out:

"This is our opportunity to clean up errors and mistakes and make sure things are smooth sailing going forward," says James Lamm, an estate-planning lawyer at Gray Plant Mooty in Minneapolis.

At the beginning of last year, the gift-tax exemption climbed from \$1 million for single filers and \$2 million for married couples to \$5 million and \$10 million, respectively, while the top rate fell to 35% from 45%.

Indexed for inflation, the limits this year are \$5.12 million and \$10.24 million. (Congress changed the limits for estate taxes, too, raising that exemption to the same amount and lowering the maximum rate to 35%, also for two years.)

But the gift-tax exemption is set to go back to \$1 million and the top rate to 55% on Jan. 1 unless Congress intervenes. Estate planners don't expect lawmakers to address the issue until after the November election, and at that point some experts consider it likely that even if the estate-tax exemption gets pegged at \$3.5 million, the gift-tax exemption could be allowed to fall back to \$1 million.

The upshot: If you are planning to make gifts to your family for any reason, it is likely that you have more leeway now than later. And by passing along assets now, you also might avoid future estate taxes, Mr. Lamm says.

[3] [Kelly Greene, "A Golden Age of](#)