



The Franchise Valuations Reporter

Our Expertise

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

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



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Have a Question About Succession Planning for Franchise Owners?

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 valuations and damages in franchise disputes, is updated 3 times a year.

For more details, to see a Table of Contents or to place an order, go to the Wolters Kluwer Law & Business web page [here](#).

DISCLAIMER

New Tax Law (2017)

Devastating Analysis of the Trump Tax Law Changes Shows It's Done Virtually No Economic Good

From a recent [LA Times report](#): "You may remember all the glowing predictions made for the December 2017 tax cuts by congressional Republicans and the Trump administration: Wages would soar for the rank-and-file, corporate investments would surge, and the cuts would pay for themselves. The nonpartisan Congressional Research Service has just published a deep dive into the economic impact of the cuts in their first year, and emerges from the water with a different picture. The CRS finds that the cuts have had virtually no effect on wages, haven't contributed to a surge in investment, and haven't come close to paying for themselves. Nor have they delivered a cut to the average taxpayer. The negligible (at best) economic impact of the cuts shouldn't surprise anyone, the CRS says. 'Much of the tax cut was directed at businesses and higher-income individuals who are less likely to spend,' its analysts write. 'Fiscal stimulus is limited in an economy that is at or near full employment.'"

IRS Bars State SALT Cap Workarounds

The IRS last week put an end to state attempts to bypass the \$10,000 cap on state and local tax deductions while also limiting deductions for charitable donations in which the taxpayer gets a state tax credit.

Expert Testimony

Florida Will Adopt Daubert Standard

In a surprising reversal of a reversal, the Florida Supreme Court recently ruled that, "effective immediately upon the release of this opinion," the state would adhere to the *Daubert* standard when assessing the admissibility of expert testimony standing its October 2018 decision to stick with the *Frye* standard on its head. The issue has been the subject of legislative and judicial dispute. In 2013, the legislature amended the Florida code, section 90.702, dealing with expert testimony, to incorporate the *Daubert* standard in the state's rules of evidence. Then, in October 2018, the state's Supreme Court found the legislature had overstepped its authority, declared the amendment unconstitutional, and reinstated the *Frye* standard. And as noted, now they're back to *Daubert*.

Fraud - Particularity

Photo Studio Franchisee's Fraud Claims Proceed

Allegedly fraudulent financial performance representations made by the franchisor of Little Nest photography studios and its principal were pleaded with sufficient particularity according to the Court. In consolidated cases brought against Little Nest Group, a franchisor of photography studios, and its principal, Laura Meyer, the defendants' motion to dismiss claims for common law intentional and negligent fraud and violation of the Washington

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Franchise Investment Protection Act (FIPA) against the principal was denied because the plaintiff franchisee adequately alleged the who, what, where, when, how and why of her fraud-based claims and specifically identified the principal as an individual who provided false and misleading statements, the federal district court in Wilmington, Delaware, decided. Furthermore, the defendants' attempt to dismiss the franchisee's claims for actual and punitive damages, based on a limitation of remedies provision in the parties' franchise agreement, was rejected as premature (*Wagenbrenner v. Little Nest Group, LLC*, June 14, 2019, Fallon, S.).

Trade Secrets - Particularity

Misappropriation of Trade Secrets Claims Dismissed For Failure To Meet Heightened Pleading Standards

A Misappropriation of trade secret claims brought by a logistics company against a former employee and his new employer were dismissed without prejudice by a federal district court in Pennsylvania because there were insufficient facts alleged in the complaint that the employee had or would misappropriate the plaintiff's trade secrets. The court also declined to enforce a non-compete provision in the logistics company's employment agreement because it was geographically overbroad (*Pittsburgh Logistics Systems, Inc. v. LaserShip Inc.*, June 12, 2019, Hornak, M.).

Valuations

Recent Significant Valuation Cases Noted

Prof. Bogdanski's "Federal Tax Valuation" treatise highlights, *inter alia*, the following cases in the most recent supplement:

- *Estate of Cahill v. Commissioner*, wherein the Tax Court ruled that Section 2703 applied in valuing the rights of a decedent in a "split-dollar" life insurance arrangement with a related trust.
- *WMJ Holdings Corp. v. United States*, in which the Federal Circuit held that the taxpayer did not establish the values needed to allocate the purchase price of a business among the acquired assets for purposes of subsequent amortization and loss deductions.
- *Grainger v. Commissioner*. wherein the Tax Court rejected a taxpayer's valuation, based on original retail list prices, of hundreds of items of clothing that she purchased at large markdowns and then donated to charity.

ESOP Valuations

As reported by Business Valuation Resources, in *Acosta v. Wilmington Trust*, (U.S. District Court for the Southern District of New York, Civil Action No. 19-2793) the Department of Labor showed its continued propensity to litigate ESOP valuation cases. The contested transaction involved Stargate Apparel and a sister company, Rivstar Apparel, private companies. Stargate's founder and CEO owned essentially 100% of the two companies.

In the latter half of 2010, the owner hired CSG Partners, an investment bank, to advise him on a possible ESOP transaction. On CSG's recommendation, the owner engaged an appraisal firm to produce an initial valuation of the companies. The DOL claims that, before any valuation was done, CSG communicated to the appraiser what kind of offer the owner was prepared to make. The appraisal firm then produced a draft valuation that was in line with the offer. CSG then proposed Wilmington Trust as ESOP trustee. Wilmington hired as ESOP appraiser the very firm that had done the initial valuation for the owner/seller, on recommendation of CSG. The DOL

contends Wilmington either failed to investigate the ESOP appraiser's prior relationship with the owner and CSG or Wilmington hired the ESOP appraiser knowing that the latter had earlier worked for the owner "in connection with the same proposed transaction." Either way, Wilmington failed to hire an independent appraiser, the DOL claims.

Quotations

Be kind, for everyone you meet is fighting a hard battle - Plato

***Be not too hard, for life is short, and nothing is given to man -
Donovan***
