

The Franchise Valuations Reporter



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Our Expertise

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



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

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.

Bruce S. Schaeffer, Editor
Bruce@FranchiseValuations.com
212.689.0400

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,

Valuations

64 Ways to Increase and Enhance the Value of a Business

According to an [article by Edward Mendlowitz and Henry R. Mandell](#) although buyers look at earnings as the most important element in a value analysis, there are many other factors such as strategic value, competitive position, branding, secret processes, and cost to duplicate. Their article presents 64 items that can either increase or enhance a business' value, or in the absence of them, decrease the value.

2020 EBITDA Multiples Rebound

According to DealStats, in 2Q20, EBITDA multiples (median selling price/EBITDA) across all industries dropped to 3.7x as deal activity almost came to a halt, according to BVR's [DealStats Value Index \(DVI\)](#) report for 1Q 2021. But the multiples rebounded by the second half of 2020, to 4.7x in the third quarter and 4.4x in the fourth quarter, returning to levels near historical norms. "In doing so, this continued the trend of the median EBITDA multiple reporting at its highest level during the second half of the year as seen from 2015 to 2018 and in 2020," the report says.

Aretha Franklin's Estate Signs Tentative Deal Over Back Income Taxes Owed

The estate of the late, great singer is a cautionary tale making clear why people of wealth must consult with estate and tax advisers or suffer awful and unnecessary consequences. She left no signed will but they have found several pieces of paper purporting to be a will (unsigned) and a document labeled 'draft' with what appeared to be initials rather than a signature. Further, while the estate continues to dispute the amount sought by the I.R.S., it has agreed to pay or put aside the bulk of its earnings from royalties and other revenue streams to pay off millions of dollars in federal **income** taxes that the singer owed during her life, resolving a major financial issue that has

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

been hanging over the estate since Ms. Franklin died in 2018. The value of Ms. Franklin's estate for estate tax purposes also has not been decided, but some estimates range as high as [\\$80 million](#). Here is a [recap of the main issues](#).

Attorneys' Fees

Car Dealership Entitled To Fees, Costs For Defending Against Frivolous Dilution Claim

The 11th Cir has decided that a Florida district court did not abuse its discretion in awarding attorney fees under the Lanham Act's fee shifting provision to a Florida car dealership that prevailed in a trademark dilution claim brought by another Florida business because the plaintiff carried on with a frivolous claim for trademark dilution, despite knowing its asserted mark was not famous and that the claim lacked merit, which caused the defendant car dealership to incur significant expenses in defending against the dilution claim (*Off Lease Only, Inc. v. Lakeland Motors, LLC*, February 10, 2021, *per curiam*).

Fees, Sanctions Awarded Over Refusal To Dismiss After Being Presented With Valid License

A photographer, who refused to dismiss his copyright infringement case after the user produced a valid license from the photographer's distributor, was ordered by the federal district court in Manhattan to pay attorney fees and costs under Section 505 of the Copyright Act and sanctions under 28 U.S.C. § 1927 to the prevailing defendants, a candle manufacturer and three retailers. After being made aware that the facts were other than as they had believed, the photographer and his counsel changed gears and pursued a meritless theory for years for violation of the underlying license instead of bringing the case to a close. The photographer's former counsel, Richard Liebowitz, was jointly and severally liable for the attorney fees, costs, and sanctions because the award was necessary to deter Liebowitz from filing unfounded copyright infringement lawsuits (*Bechler v. MVP Group International, Inc.*, March 5, 2021, Preska, L.).

Wrongful Termination

7-Eleven Had Good Cause To Terminate Franchisee Under Michigan Law

Convenience store franchisor 7-Eleven had good cause under the Michigan Franchise Investment Law (MFIL) to terminate a franchisee that committed at least four material breaches of the parties' franchise agreement over a two-year period, triggering the agreement's valid termination provision. The franchisee's breaches included such things as failing to submit timely cash reports and failing to maintain a functioning video recording system in the store that would allow the franchisor to monitor the store. The franchisee's argument that the breaches were not material was rejected. In addition, the franchise agreement's termination provision was neither procedurally or substantively unconscionable under Michigan law (*7-Eleven, Inc. v. CJ-Grand, LLC*, February 8, 2021, Lawson, D.).

GM's Termination of Chevy Dealer Lawful Under New Jersey Franchise Protection Act

General Motors LLC (GM) had good cause to terminate a dealership under the New Jersey Franchise Protection Act (NJFPA), because there was undisputed evidence that the dealership had submitted false claims for warranty repairs in violation of the Dealer Agreement. The court granted summary judgment for GM, finding that the dealership's submitting of roughly 100 false warranty claims, was a ground for termination, and constituted a material breach of the Dealer Agreement. The court rejected all of the defendant's arguments for summary judgment on the wrongful termination claim that were grounded on the premise that GM was required to establish that the individual Dealer Operator, himself knowingly and intentionally breached the Dealer Agreement. Further, the court rejected the defendant's assertion that a franchisor attempting to prove good cause for termination must establish that it had conclusive evidence of fraud (or any other material breach) at the time that it issued the notice of termination. (*Mall Chevrolet, Inc. v. General Motors LLC*, February 8, 2021, Padova, J.).

Joint Employer/Independent Contractor

Minimum Wage – Restaurant Research

The eminent analysts at Restaurant Research have conducted a thorough survey of the opinions of restaurant operators with respect to the proposed \$15 per hour minimum wage. Nine out of ten operators are against it with one operator noting that a minimum wage in Mississippi should not be the same as a minimum wage in New York City. The [results of the survey along with the many comments offered can be found here.](#)

Uber Drivers Are Entitled To Worker Benefits, a British Court Rules

As [reported by the New York Times](#), Uber suffered an important labor defeat in its largest European market in February when Britain's Supreme Court ruled that drivers must be classified as workers entitled to a minimum wage and vacation time. The case had been closely watched because of its ramifications for the gig economy, in which companies like Uber rely on a sprawling labor force of independent contractors to provide car rides, deliver food and clean homes. Uber and other gig-economy companies say their model gives people flexibility to choose when they work, while critics say it has eroded job protections and the traditional company-employee relationship. The court ruled that although Uber said it was only a technology platform that connected drivers with passengers, it behaves more like an employer by setting rates, assigning rides, requiring drivers to follow certain routes and using a rating system to discipline drivers.

Vicarious Liability: New Jersey Federal Court Finds Hilton Not Liable for Accidental Drowning at Franchised Hotel

A federal court in New Jersey granted the motion for summary judgment filed by Doubletree hotel franchisor, Hilton Franchise Holdings, LLC, and its affiliate (collectively "Hilton"), finding that Hilton was not liable for the tragic accidental drowning of a child in a franchised Doubletree hotel's pool.^[1] The victim's family claimed that Hilton, the third-party hotel management company, and the Hilton franchisee were all negligent in causing the child's death. Hilton contended that it could not be vicariously liable for the child's death because it had no agency relationship with the franchisee noting that the governing franchise agreement specifically disclaimed the existence of an agency relationship between the parties. Finally, the court found that Hilton could not be directly liable for the drowning because it was not the landowner and, therefore owed the victim no duty of care. Accordingly, the court granted the motion for summary judgment in favor of Hilton.

President Biden Freezes DOL Final Rule on Independent Contractor Classification

President Biden has set out to reverse a number of Trump-era labor policies. One such reversal involves the DOL final rule on independent contractor classification (the “Final Rule”), which was published on January 7, 2021, and would have set new standards for determining when a worker is an employee or an independent contractor under the Fair Labor Standards Act. The Final Rule implemented a more employer-friendly “economic realities” test, which focused on (1) the nature and degree of the worker’s control over the work, and (2) the worker’s opportunity for profit or loss as the primary factors guiding the analysis of whether a worker should be classified as an employee or independent contractor. The Final Rule was set to take effect on March 8, 2021. On January 20, 2021, just hours after his inauguration, President Biden sent a memorandum to all agency heads directing them to freeze all regulatory activity pending review by the new administration. This action effectively killed the Final Rule before it could take effect. President Biden has stated that he aims to work with Congress to pass a federal independent contractor law that mirrors the “ABC” test some states use, including California through AB-5.

[1] *Burnet v. Hilton*, 2021 WL 118924 (D.N.J. Jan. 13, 2021).

Quotations

Always Find Time For The Things That Make You Feel Happy To Be Alive – Olivia Troye
