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The Franchise Valuations Reporter

Franchise Technology **Risk Management**

Our Expertise

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

- Finance, Accounting and Tax
- Damages, Valuations & Expert Testimony
- 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, please e-mail Henry@FTRM.biz
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Lost Future Royalties - Meineke v. RLB

The US Court of Appeals for the Fourth Circuit Gives Its Interpretation of North Carolina's Law of Damages

In the recent case of *Meineke Car Care vs. RLB Holdings**(designated Not For Publication) the Fourth Circuit overturned the District Court's grant of summary judgment which had thrown out the franchisor's damages claim for lost future royalties. But the appellate court did not say that lost future royalties are allowed - it merely said that they are not automatically precluded as a matter of North Carolina law if the issue is not addressed in the franchise agreement. Thus, there was an outstanding fact issue and the case was not appropriate for summary judgment.

But the decision raises more questions than it answers with respect to the issues the court considered: (1) termination vs. abandonment; (2) lost profits vs. lost royalties; (3) the meaning of "within the contemplation of the agreement"; (4) mitigation; and (5) the burden of proof for summary judgment.

For more details on this decision, see. . .

*US Court of Appeals, Fourth Circuit, Case No. 09-2030 (Decided April 14, 2011, Appeal from USDC WD NC)

Succession Planning for Franchisees

IMPORTANT: Franchisees Must Review Their Estate Plans in Light of the 2010 Tax Law Changes

According to the statisticians, more than 70 million Baby Boomers - including many franchisees - are now approaching retirement and yet more than 75% have not completed estate or succession plans. And even the ones that have been implemented within the past several years are probably turned on their heads by the new tax environment. As we have written before, in light of the new 2010 changes in the estate and gift tax, franchisees with net worths of less than $10 million must immediately review their existing estate plans to see if they have overfunded the Credit Shelter Trust and diminished the outright gifts to the surviving spouse. All documents drafted more than a year ago were planning for very different estate tax rates and a much lower exemption.

Also, franchisees need to know that the asset they own, their franchise, is defined by the franchise agreement and, at law, is only a contract right. So franchisees must be aware that the terms of the franchise agreement control all their rights to transfer the ownership of the franchise - whether by gift, bequest, devise or sale and whether *inter vivos* or post-mortem - regardless of what their wills or trusts may say. Therefore, even though the new $10 million exemption for husband and wife ($5 million each) generally removes estate taxes as an issue for franchisees, nonetheless the franchise(s) are usually the largest assets in the estate and need to be planned for with the specific approval of the franchisor in mind.

Franchise Valuations Ltd. is available to conduct seminars tailored to your system on these issues. Contact Bruce@FranchiseValuations.com for more

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 topcis addressed herein.

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details.

Nexus Roundup: Supreme Court Appeals and Proposed Legislation

Petition for Certiorari File Against Washington's Business and Occupancy Tax Levied on Sellers Without "Physical Presence"; KFC Also Files for Certiorari Against Iowa Corporate Income Tax Levied Without "Physical Presence"; Federal Legislation Proposed Requiring "Physical Presence" for Nexus

A certiorari request to the U.S. Supreme Court has been filed in the case of *Lamtec Corporation v. Department of Revenue of the State of Washington**. The petition claims there are two questions presented:
1) Does the holding in *Quill*** that the Commerce Clause prohibits imposing sales and use tax on a corporation without physical presence in the State "apply to other state taxes, such as an excise tax on conducting business within the State?", and
2) Were Lamtec's minimal contacts sufficient to establish nexus?

Right after Lamtec, on April 28, 2011, KFC also filed a petition for certiorari asking the U.S. Supreme Court whether Iowa violates the Commerce Clause by imposing its corporate income tax on an out-of-state business that has no physical presence in the state. (We discussed the Iowa Supreme Court ruling in the January issue of this newsletter.)

On the same issue of whether or not "physical presence" is a pre-requeisite for tax nexus, a Bill denomminated the Business Activity Tax Simplification Act of 2011 (H.R. 1439) was introduced in the U.S. House of Representatives by Rep. Bob Goodlatte, R-Va., and several cosponsors on April 8, 2011.

For more on the petitions and the bill, see. . .

*Filed April 19, 2011.
**504 U.S. 298 (1992).

Cybercriminals Using Franchisee-First Strategy

Security Experts Recommend Amending Franchise Agreements and Operating Manuals

According to an article in *Multi-Unit Franchisee*, the use of a "franchisee-first attack" strategy by hackers to penetrate computer networks is becoming a common scenario. Frequently, the first successful breach occurs at a franchise location and then spreads to the whole corporate system; thus, penetration of one franchise unit's security can give hacker gangs a master key to the entire network. For a restaurant chain, a single report of credit card data loss can have the same negative impact as a food safety failure; a single incident can wreck the reputation of the entire system, cost millions to clean up and expose the chain to litigation for years to come.

For more on reducing identity theft incidents, see. . .

*If techie talk makes your eyes glaze over, help is available to deal with amending your franchise agreement or operating manual to include data security policies and ongoing security awareness training. **Franchise Technology Risk Management**, the technology division of Franchise Valuations, Ltd., specializes in implementation of proper technical and written procedures for franchise systems. Contact Henry Chan at Henry@FTRM.biz for more information about our services.*

CyberCrime

More Reasons to Secure Your Franchise System Network Against Hackers

Here are some links to recent articles on cybercrime:

An Attack Sheds Light on Internet Security Holes

Children's Place Says Customer Database Hacked

Sony confirms PlayStation Network hack exposed user info