



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

Damages

Business Interruption Insurance - Lost Business Claims

The N.B.A.'s Houston Rockets and restaurants like Chez Panisse are among those suing their insurers for refusing to pay "business interruption" claims during the coronavirus outbreak. There are two main issues: liability and damages. [As reported by the New York Times](#) most carriers are claiming there is no liability. For a review of the damages issue [we attach three sections](#) that address it from our treatise "Franchise Regulation and Damages" published by CCH Wolters Kluwer.

Valuations

Deal Stats 3Q Results

With the coronavirus pandemic affecting small businesses across the U.S. throughout the second quarter of 2020, EBITDA multiples moved lower across all industries, coming in at an average of 4.4x a decline. In the second quarter of 2020, the net sales multiple rose to its highest level over the six-year period, at 0.61x. EBITDA, as a percentage of net sales, rose to 11% in the second quarter of 2020, moving up 1.0 percentage point from its rate of 10% in the prior quarter, when it reported at its lowest level since the fourth quarter of 2018. EBITDA multiples are the highest for the information sector, 11.2x, and the mining, quarrying, and oil and gas extraction sector, 8.6x, and are the lowest in the accommodation and food services, 2.6x, and the other services sectors, 3.1x.

CCF Being Abandoned for DCF, NACVA, Speakers Say

According to [Business Valuation Resources](#) the capitalized cash flow (CCF) method has been all but abandoned for the time being in favor of the discounted cash flow (DCF). One of the speakers, Jim Hitchner, noted that valuers are not limited to a five-year DCF -- they can use two years, three years, or whatever time frames they feel are appropriate. Hitchner says he is using a three-step approach: Step 1 is to examine whether the subject firm can even survive over a certain time frame; Step 2 is to determine whether the firm can improve and to what extent; and Step 3 is to estimate some level of normalized operations post-pandemic. He also suggests valuers consider using different risk rates for different discrete time periods.

IRS Encourages Abusive Conservation Easement Taxpayers to Settle

In IR-2020-152 the IRS is calling on any taxpayers involved in syndicated conservation easement transactions who received a settlement offer from the agency to accept it soon. The Service made the offer/request in the wake of the Tax Court's recent strike down of four abusive syndicated conservation easement transactions. The four recent Tax Court decisions disallowed conservation easement deductions totaling nearly \$21 million (*Village at Effingham, LLC, TC Memo. 2020-102, Dec. 61,715(M)*; *Riverside Place, LLC, TC Memo. 2020-103, Dec. 61,716(M)*; *Maple Landing, LLC, TC Memo. 2020-104, Dec. 61,717(M)*; *Englewood Place, LLC, TC Memo. 2020-105, Dec. 61,718(M)*).

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. provides such expert advice on the topics addressed herein.

Please visit our website at www.FranchiseValuations.com

Joint Employer, Independent Contractor, Vicarious Liability

7-Eleven Franchisees & Association Counsel Eric Karp Oppose AB-5 Franchise Exemption

The National Coalition of Associations of 7-Eleven Franchisees' (NCASEF) is urging 7-Eleven franchisees to oppose 7-Eleven, Inc.'s campaign to add a franchise exemption to newly passed California law AB-5.

Uber and Lyft Must Make Their Drivers in California Full Employees, Judge Rules

[According to the Washington Post](#), Uber and Lyft must make their drivers in California full employees. A California Superior Court Judge said the companies had failed to comply with the state's Assembly Bill 5, which was signed into law last year and classified certain categories of gig workers as employees. The judge ordered the companies to stop referring to drivers as independent contractors and comply with unemployment and wage floor provisions for the workers.

7-Eleven Not Liable for Vicarious Liability - Franchisor Lacked Sufficient Control over Franchisee to Establish Duty of Care to Franchisee's Employees

A federal Court in New Jersey granted summary judgment after finding that the franchisor did not owe a duty of care to the plaintiff, who was shot in an armed robbery at a 7-Eleven store operated by a franchisee. *Boutahli v. 7-Eleven, Inc.*, 2020 WL 3287127 (D.N.J. June 18, 2020). On January 10, 2014, after midnight, two men walked into the store, demanded the contents of the cash register, and pistol-whipped and shot Boutahli four times before fleeing the scene. Boutahli suffered permanent injuries for which he was seeking compensation from various parties, including 7-Eleven. Boutahli argued that 7-Eleven had acted negligently when it failed to protect him adequately from the attack. 7-Eleven moved for summary judgment, arguing that it did not owe any duty of care to Boutahli. The court held that while 7-Eleven did have certain controls over the store (for example, maintaining certain bookkeeping records, required training, and the right to convert the store into a gas station and to require the store to carry certain products), those controls did not amount to the day-to-day control that would result in 7-Eleven's control over the store. Additionally, the franchise agreement clearly stated the parties were not agents of the other. Accordingly, the court granted 7-Eleven's motion for summary judgment.

Attorneys' Fees

Attorney Fees Denied for Defense of Suit Over HOTEL CHICAGO Mark

A federal district court in Chicago has denied a renewed request for attorney fees in defending a trademark infringement suit involving the HOTEL CHICAGO mark brought by the owner of a hotel in the River North District of Chicago. The defendants failed to prove that the case was exceptionally weak or frivolous based on an objective unreasonableness standard, especially when the magistrate judge recommended that the court issue a preliminary injunction. The court also concluded that the plaintiff hotel owner did not engage in an unreasonable manner of litigation when it had a good-faith belief that it acquired secondary meaning for the mark (*LHO Chicago River, LLC v. Rosemoor Suites, LLC*, July 15, 2020, Kocoras, C.).

Biotechnology Company to Receive Over \$300,000 in Attorney Fees From Former Employee

Atlas Biologicals, Inc. (Atlas)-a company that sells bovine-serum products-has recovered \$308,554.50 in attorney fees from a former employee who was found liable for trademark infringement, misappropriation of trade secrets, and breach of fiduciary duty. Atlas persuaded the court that the attorney hours and hourly rates were both reasonable, and that the case warranted an upward lodestar adjustment. Atlas's motion for \$38,577.35 in expert witness fees was denied as courts do not have discretion to impose costs that are not expressly allowed by statute. Atlas previously was awarded more than \$2 million in damages (*Atlas Biologicals, Inc. v. Kutrubes*, July 10, 2020, Arguello, C.).

Attorney Fees Awarded in Sargon of Akkad YouTube Copyright Case

An individual who successfully defended against copyright infringement claims in connection with his posting of a YouTube video, on fair use grounds, was entitled to an award of his attorney fees, the federal district court in New York City has decided. The attorney fee award was appropriate because there was evidence of improper motivation by the plaintiff, and the case was objectively unreasonable. Fees were warranted, the court held, even though a GoFundMe campaign had already garnered more than the amount of the fees sought (*Hughes v. Benjamin*, August 5, 2020, Sullivan, R.).

Quotations

When experience is not retained, infancy is perpetual - *George Santayana*

Those who cannot remember the past are condemned to repeat it - *George Santayana*