



The Franchise Valuations Reporter



We're Moving!

On August 15th, Franchise Valuations Ltd. and Franchise Technology Risk Management is moving 5 blocks north to new offices at:

3 Park Avenue
15th Floor
New York, NY 10016

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

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



Expert Witness Excluded for Using Excessive Growth Rate

Estimating Growth Rate Based Solely on "Judgment" Deemed Insufficient

In a recent insurance action seeking coverage for a business interruption loss*, plaintiff's forensic accounting expert used an estimated growth rate for revenues of 7.76%, as a result of which his opinion and testimony were excluded. The expert, Eric Sullivan, initially said he based his growth estimate on conversations with management but after the judge had excluded him, on a motion for reconsideration, the expert said he had also relied on a series of comparisons for different periods within the prior three years. The court did not buy it saying:

The problem with this line of argument is that neither Manpower nor Sullivan demonstrates that compiling a list of possible growth rates and then choosing a rate from this list is an acceptable way to choose a growth rate in the field of forensic accounting. To offer an opinion under Rule 702, an expert must satisfy the court that his or her opinion is guided by principles and methods that are regularly applied by others in the relevant field. *Zenith Elecs. Corp. v. WH-TV Broad. Corp.*, 395 F.3d 416, 419 (7th Cir.2005) (experts must "follow scientific approaches normal to their disciplines"). In the present case, Manpower and Sullivan do not point to literature from the field of forensic accounting identifying the principles that a forensic accountant should apply when choosing a growth rate. Although Sullivan repeatedly refers to his "judgment" and the fact that this is how he has been calculating business-interruption losses over the course of his career, that is not good enough. It's what's normal in the field of forensic accounting that matters, not what Sullivan normally does.

[More on the court's reasoning may be found here.](#)

Franchise Valuations Ltd. provides consulting and testifying expertise for money damages. Readers are invited to contact us at (212) 689.0400 or Bruce@FranchiseValuations.com to see if a damages or valuation report is appropriate for your situation.

**Manpower v. Insurance Co. of the State of Pennsylvania*, 2011 WL 1356945 (USDC ED WI).

Surge in Valuation Cases

The Number of Cases Involving Business Valuations Has Doubled

The BVLaw database, operated by BV Wire which specializes in business valuation cases, reported that it now has more than 3,000 federal and state cases. They also reported that more than a quarter of these opinions were rendered in the past five years, while the database goes back 1980. They used to see 5 to 6 cases per month but this year are averaging 10 to 12.

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.

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

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 or call (212) 689-0400

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

Valuations: Gift Tax Discounts

Widespread Use of Discounts Disclosed for 2008 Gifts

Taxpayers reported 102,608 gifts in 2008 against which valuation discounts were taken according to a recently released IRS study. IRS economist Melissa J. Belvedere reported that "the dollar value of these discounts totaled \$3.7 billion" and that the majority of discounts exceeded 40% of the reported fair market value of the gifts. The report also disclosed that "approximately 43.6% of discounted assets were stock, while real estate made up 21.1% of discounted assets."

Cyber Crime: Hackers Zero in on Small Firms

Unsuspecting Business Owners Pay Steep Price for Complacency

A front-page article in the *Wall Street Journal* last month highlighted an increasingly tantalizing target of Internet hackers: small companies. Among the victims examined in the article: a newsstand, a burger restaurant, a pizza parlor and a Ford dealership. While the media tend to report extensively on cyber attacks against large companies (Sony PlayStation, Citibank, Lockheed Martin), any retailer that accepts credit or debit card payments or uses online banking is equally vulnerable.

Franchise outlets are particularly inviting to those seeking customer account details. Owners tend to be unsophisticated about basic hacking precautions. The WSJ report cites a 2010 survey conducted by the National Retail Federation and First Data Corp. which found that 64% of small- and medium-sized business owners believed they weren't exposed to card data theft and only 49% had conducted an assessment of their security.

Whether the breach is from a disgruntled employee or from a criminal conducting a remote electronic sweep, hackers have declared open season on small businesses. Owner/victims interviewed for the WSJ report were shocked to discover that complying with the card-issuers' standards (PCI-DSS) did not provide sufficient protection. In addition to having to cope with the general business disruption caused by an unauthorized intrusion, some were hit with tens of thousands of dollars in fees for post-incident forensic security examinations. For a business operating on thin margins, one attack can be a severe setback.

*The network security experts at **Franchise Technology Risk Management** have put together a 10-point tip sheet on computer security that is available [here](#). For more information on how FTRM can customize a network security program for franchises, talk to Henry Chan at (212) 689-0400 or e-mail him at Henry@FTRM.biz.*

More Reasons To Harden Your Network Security

[The Cloud Darkens](#) (Editorial in support of beefed up regulations)
[Hackers Select a New Target: Other Hackers](#)
[U.S. Cyber Security Chief Quits After Hacker Attacks](#)

BNA Publishes Commentary

We are pleased to announce that BNA, publisher of the Tax Management Portfolios series, has posted our [recent commentary](#) on nexus issues.

Nexus Roundup

Business Nexus Subject of Philadelphia Questionnaire

In an unusual step for a city (as opposed to a state), the Philadelphia Department of Revenue issued an alert to notify taxpayers that the department's audit unit is currently working to find businesses located outside of the city but having corporate and personal income tax nexus with Philadelphia. Nexus questionnaires are being sent out explaining business nexus and asking those businesses to report any activity they have in Philadelphia.

If a taxpayer's business has nexus with Philadelphia and is not filing and paying Philadelphia business taxes, taxpayers are advised to contact the department to bring the company into tax compliance by entering into the Voluntary Disclosure Program. Taxpayers who meet the conditions of the program may be eligible for a waiver of all penalties owed.

[Amnesty Support Group and Nexus Project, Philadelphia Department of Revenue, May 13, 2011.]