



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



Valuation of Franchises

Why Valuing Franchises Is Different from Valuing Other Businesses

Our article for the Institute of Business Appraisers on that very subject is ten years old but still relevant. [Here is a link](#) for those who might find it useful.

Cryptocurrency

IRS Sending Warning Letters to More Than 10,000 Cryptocurrency Holders

According to an article in the *Wall Street Journal*, the Internal Revenue Service has begun sending letters to more than 10,000 cryptocurrency holders, warning about penalties for failing to report income and pay tax on transactions involving virtual currencies. The agency expects its mailing to be completed by the end of August. It is sending three variations of one letter, depending on the information it has about the recipient. An IRS spokesman declined to say whether the letters stem from information turned over by digital-currency platform Coinbase but it is known that in mid-March of 2018, Coinbase provided data-under a federal court order-on about 13,000 accounts requested by the IRS. [You can read the full text of the article here.](#)

"Consideration" Sufficient to Compel Arbitration

Second Circuit Says Subway's Form of Franchise Application Which Mandates Arbitration For Dispute Resolution Is Adequately Supported By Consideration

Whether or not an arbitration agreement is supported by adequate consideration is a question concerning contract formation for the court, as opposed to the arbitrator, the Second Circuit Court of Appeals has ruled. According to the Court, the arbitration agreement contained in Subway's franchise application was supported by adequate consideration: to wit, the franchisor's review of the application. Thus, an order denying the franchisor's motion to compel arbitration on the grounds that the arbitration agreement was not supported by adequate consideration was vacated (*Doctor's Associates, Inc. v. Alemayehu*, August 14, 2019, Lynch, G.).

Joint Employer, Independent Contractor

No Summary Judgment - Employee Versus Independent Contractor Status an Open Question

Finding many questions of fact as to the critical issue of whether the plaintiff sales representatives were employees or independent contractors a federal district court in New York, denied cross-motions for summary judgment finding that the issue as to whether sales reps at retail cellular telephone

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stores operated by a Verizon Wireless dealer were employees or independent contractors remained in dispute. The sales reps claimed that the company violated the minimum wage and overtime provisions of the FLSA and the NYLL by misclassifying them as independent contractors but the district court determined that the disputed issues would need to be considered within the totality of the circumstances as they apply to the individual plaintiffs (*Holick v. Cellular Sales of New York, LLC*, July 19, 2019, Mordue, N.).

Sales Rep Business Expenses Counterclaim in Trade Secrets Misappropriation Suit Can Proceed

A former sales representative could assert claims for unreimbursed business expenses because he sufficiently alleged the company misclassified him as an independent contractor. He was sued by his former company for sharing trade secrets with a competitor and the court allowed his counterclaim for unreimbursed business expenses to proceed because he sufficiently alleged that the company misclassified him as an independent contractor. His overtime claims failed as he did not allege a workweek that exceeded 40 hours (*Snap! Mobile, Inc. v. Croghan*, August 1, 2019, Koh, L.).

Ninth Circuit Withdraws Opinion: Asks State Supreme Court Whether Dynamex Should Be Given Retroactive Application in Jan-Pro Franchisee Suit

Withdrawing its recent opinion, the Ninth Circuit acted to question the retroactivity of the *Dynamex* decision to the California Supreme Court. In *Dynamex* the California Supreme Court adopted the ABC test for determining whether workers are independent contractors or employees. Soon thereafter, the Ninth Circuit found that the *Dynamex* test was applicable to a class claim filed by workers for a "three-tier franchising" model. But it withdrew its May 2 opinion in *Vazquez v. Jan-Pro Franchising International, Inc.*, and certified to the California Supreme Court the question of whether *Dynamex* applies retroactively. (*Vazquez v. Jan-Pro Franchising International, Inc.*, July 22, 2019, per curiam). It should be noted that California appellate courts generally do apply intervening state Supreme Court rules retroactively when reviewing cases, even if the judgment in the trial court was entered prior to the Supreme Court ruling.

7-Eleven Franchise Owner's Illinois Wage Law Claim, That He Was an Employee, Tossed

The sole owner of a company that was the franchisee of an Illinois 7-Eleven store and the operator of that store, was unable to state a valid claim against the franchisor 7-Eleven for taking improper deductions from his wages, arguing that he was an employee. The claim failed because Patel, the franchisee, failed to adequately plead that the franchisor had agreed to pay him "wages" under the meaning of the Act. Thus, his claim was dismissed and his motion for a preliminary injunction to prevent the franchisor from terminating his franchise was denied because there was no longer an operative complaint (*Patel v. 7-Eleven, Inc.*, August 5, 2019, Chang, E.).

Impairment Losses: Write Down of "Brand" Value

Even Warren Buffet Can Be Wrong

The *Wall Street Journal* reports that Kraft Heinz Co. (in which Buffet's

Berkshire Hathaway is a big investor) reported falling sales and wrote down the value of its brands again, reflecting operational missteps as well as the enormous pressure on food giants to improve their products as consumers gravitate to newer alternatives. Kraft Heinz said that it had booked charges reducing the values of its assets by \$1.22 billion for the first six months of its fiscal year. That included \$744 million related to businesses including international divisions and its U.S. refrigerated foods unit, along with \$474 million in declining value reflecting the company's lower stock price. Kraft Heinz in February wrote down the value of its Oscar Mayer and Kraft Heinz brands by \$15.4 billion and slashed its dividend. The food giant said in June that Velveeta, Cool Whip, A1 steak sauce and many other brands could also face downward revisions if sales continue to deteriorate.

Quotations

Poor Mexico, so far from God and so close to the United States.

Porfirio Díaz (Mexican President, 1876-1880 and 1884-1911)