

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.

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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](#).

Expert Witnesses

Expert Witness Industry Revenue Trends

In a comprehensive article by Michael D. Pakter, which we highly recommend and which can be found [here](#), the author reviews current norms with respect to:

- Expert Witness Hours and Rates
- Industry Growth
- Industry Divisions
- Geographical Distribution
- Fees and Billing Procedures

“Several survey findings are:

- 19% of expert witnesses currently work full-time for a firm primarily involved in expert witness work; 35% currently work full-time for a firm not primarily involved in expert witness work, but spend some time on expert witness work; 20% of expert witnesses are semi-retired from their normal profession and spend some time on expert witness work; and 15% of expert witnesses are fully retired from their normal profession and spend some time on expert witness work.
- Most expert witnesses spend only a portion of their time performing expert witness/litigation consultant work.
- Nearly all expert witnesses (98%) are paid, at least in part, on an hourly basis for their expert work.
- Almost nine out of ten experts (87%) say their work involves some travel time away from their primary workplace, but the clear majority (61%) spend less than 10% of their time away from their workplace on an assignment.
- Almost seven out of ten respondents (69%) have been performing expert witness/litigation consulting work for more than ten years, while only five percent have less than three years' experience.”

Attorneys' Fees

Taco Franchisee's Win Over Franchisor Affirmed But Not Attorneys' Fees

A Texas state appeals court upheld a jury verdict which awarded damages to a franchisee because the franchisor breached the franchise agreements and committed fraud. However, the trial court erred by awarding attorneys' fees in the franchisee's favor after the jury had found the franchisee was entitled to no fees, because the appellate court found that the issue was one of fact, not law.^[1] The Court ruled that by rendering an attorney fee award in the franchisee's favor after the jury had found the franchisee was entitled to no fees was beyond the Court's power in the full amount the franchisee requested. Thus, the franchisor was granted a new trial on the amount of the franchisee's attorney fees.

Pizza Chain's Unreasonable Copyright And Trademark Claims Against Scottish Restaurant Warranted Fee Award

In *IMApizza LLC v. At Pizza Ltd.*, (July 27, 2021, Kelly, T) an award of attorney fees under the Copyright Act and the Lanham Act was warranted in a case brought by the U.S. operator of a chain of pizza restaurants against the owners of a pizza restaurant in Scotland. The behavior was deemed egregious. The claim for copyright violations was objectively unreasonable, as U.S. copyright law did not apply extraterritorially to a Scottish restaurant. In addition, it was exceptional for the pizza chain to bring an extraterritorial Lanham Act claim without alleging any facts that suggested an effect on U.S. commerce.

[1] *Upshaw v. Lacado LLC*, July 22, 2021, Walker, B

Valuation Discounts and Premiums

Size Effect Is "Fiction," Damodaran Reiterates

"There has been no size premium for the past 40 years," said Professor Aswath Damodaran (New York University Stern School of Business), who has been called the "Dean of Valuation." If the academic community says that the size effect disappeared long ago, why do valuation practitioners continue to embrace it? Damodaran points out that one reason is the time horizon of historical returns. If you look at the last 40 years, the size effect is very different than if you go all the way back to the 1920s. Damodaran points to another reason for clinging to the size effect, which is simply this: It's easier to defend something everyone else is doing.

Roger J. Grabowski, a managing director with Duff & Phelps, takes just the opposite position in his article, ["The Size Effect Continues to be Relevant"](#).

Joint Employer

"Breastaurant" Employees Sufficiently Allege Harrassment and Discrimination Claims

In *Anderson v. Twin Restaurant Oakbrook, LLC*, (July 15, 2021, Alonso, J.) the Court refused to dismiss the Title VII, Pregnancy Discrimination Act, and ADA claims of 32 employees who alleged that restaurants discriminated against them by, among other things, grading them on

their appearance, watching them while they changed clothes, and placing them on "do not hire" lists if they complained. Nor was the court willing to dismiss their claims because the court found the employees plausibly alleged that one defendant, which was involved with their franchising and management, was their joint employer. The employees claimed that as part of the application process, applicants had to put on a Twin Peaks Girl uniform—a plaid shirt and short shorts—and the manager would then take pictures to send to corporate for approval. If corporate approved, the applicant was hired immediately and provided with a plaid shirt but had to buy her own shorts, rhinestone belt, and winter boots. Further, they alleged, female employees were often required to wear lingerie, which they had to purchase, for week-long costume parties hosted by Twin Peaks and the restaurants created an atmosphere that resulted in rampant sexual harassment in which managers, staff, and customers felt free to touch the female employees.

The International Franchise Association Releases Statement on the Recent White House Joint Employer Ruling

(WASHINGTON, July 29) - *"It's disappointing that the Biden Administration wishes to throw out a simple, clear and thoughtful rule and return to an expanded joint employer standard that would place a cloud of uncertainty over the heads of local small business owners that are trying to lead this economic recovery. The joint employer standard released in 2020 helped small business owners navigate the crisis, keep employees safe, and protect their communities during the COVID-19 pandemic. Moreover, the 2020 standard also ensured brands could leverage their networks to assist small business owners in navigating the Paycheck Protection Program (PPP) and other critical emergency lending measures.*

Franchises share the same values as this administration and are committed to addressing inequities in our economy and society. Nearly one-third of franchises are owned by people of color, a higher ownership rate than non-franchised small businesses. An expanded joint employer standard will be responsible for the dissolution of small business owners' equity and the closing of an inclusive route to generational wealth for those historically locked out of the entrepreneurial marketplace."

Wrongful Termination Under WFDL

Watch Dealer Did Not Plausibly Allege a Violation of the Wisconsin Fair Dealership Law

In *Watch & Accessory Co. v. Garmin International Inc.*, (July 7, 2021, Griesbach, W.) the complaint alleging that Garmin violated the Wisconsin Fair Dealership Law (WFDL) by attempting to modify or rescind a contract between the parties to sell Garmin watches was dismissed. The agreement under which WatchCo sold Garmin watches did not constitute a dealership under the WFDL because WatchCo did not plausibly show the existence of a community of interest between the parties. The complaint did not plead any facts suggesting the existence of shared goals and a cooperative effort more significant than the typical vendor-vendee relationship. Thus, there was no showing of interdependence required to allow one to reasonably infer the existence of a community of interest.

Numbers

966 - Shorthand for the grueling schedule that has become the norm in China for workdays: 9 AM to 9 PM 6 days a week

Madison 5-1190 - Perry Mason's phone number at the Brent Building, Suite 904, Los Angeles

Quotations

Don't Look Back, Someone May Be Gaining On You - Satchel Paige

Preserve Your Memories, They're All That's Left You - Paul Simon