



The Franchise Valuations Reporter



Our Expertise

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

- Damages, Valuations & Expert Testimony
- Finance, Accounting and Tax
- 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.

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Exit and Succession Planning for Entrepreneurs : US Trust White Paper

Rewards Abound For Owners Who Prepare

A White Paper commissioned by U.S. Trust and prepared by Barbara B. Roberts and Murray B. Low of the Columbia Business School[1], highlights the lessons learned from entrepreneurs who successfully transitioned their companies by selling to outsiders or transferring their businesses to family members. The entire study, *The Owner's Journey*, may be accessed [here](#).

Based on 8 case studies of family-owned businesses, the report identifies key issues for owners, among them:

- To understand the real value of your business you need to "have a third-party valuation of the company years before the sale";
- Separate ownership and management issues;
- Always have the business ready for sale;
- Don't automatically assume family members are the best choice for succession;
- View estate planning and succession planning as ongoing processes.

Timing Is Key

The authors observe that the market for medium-sized companies (\$25 million to \$1 billion in revenues) has been robust. "In 2014 middle market sale activity - in terms of both volume and value - was historically high, and competition from strategic buyers and private equity firms for high-quality businesses was particularly stiff."

What Do Buyers Want?

Some of the characteristics that make a business attractive to a buyers are:

- Recurring revenue stream and cash flow
- History of profitability and potential to expand
- Strong industry fundamentals
- Competent management team
- Intangible assets - like a brand or trade secrets

[1] Barbara B. Roberts, Entrepreneur in Residence, and Murray B. Low, director of Entrepreneurship Education, are both with The Eugene Lang Entrepreneurship Center, Columbia Business School.

Valuation

Delaware Confirms Importance of Merger Price in Appraisal Proceedings

The Delaware Court of Chancery issued its post-trial decision in the appraisal of Ancestry.com, rejecting claims brought by hedge funds seeking an award substantially in excess of the merger price.[1] The decision confirms that a

We Write the Book

Franchise Regulation and Damages, the only treatise that covers valuations of franchises, 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

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.

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price resulting from a comprehensive, arm's-length sales process will be accorded substantial weight in Delaware appraisal proceedings.

This was another in the ongoing recent proliferation of post-merger appraisal litigation often brought by hedge funds following an investment strategy known as appraisal arbitrage, where the funds take significant positions following the announcement of a merger solely for the purpose of bringing an appraisal action. At trial, the hedge funds offered an expert's discounted cash flow analysis purporting to show that the value of the company was more than \$42 per share, well in excess of the \$32 per share merger price. However, the Court did its own DCF analysis and found it very near the actual merger price; and, therefore, held that the merger price would prevail because there had been a "robust" auction which had resulted in a legitimate price. The Court explained, "it would be hubristic indeed to advance my estimate of value over that of an entity for which investment represents a real-not merely an academic-risk, by insisting that such entity paid too much."

[1] *In re Appraisal of Ancestry.com, Inc.*, C.A. No. 8173-VCG (Del. Ch. Jan. 30, 2015)

Termination

Wrongful Termination

An agricultural equipment manufacturer could not overturn a jury's finding that its termination of a dealership was unlawful under the Wisconsin Fair Dealership Law. The Wisconsin Court of Appeals determined that the dealership's claims were not time-barred, sufficient evidence supported the jury's finding, and the verdict was not tainted by the use of a map.[1] The court reasoned that neither the map nor a plan to terminate Chili regardless of Chili's performance was central to the gist of the claim that CNH terminated Chili without good cause by imposing requirements that were unreasonable and that were applied in a discriminatory fashion. The judgment was therefore affirmed.

Liquidated Damages - Hotel Case

The federal district court in Newark, New Jersey, granted a motel franchisor summary judgment on its breach of contract claim against a franchisee terminated for abandoning the franchise. The franchisor was entitled to liquidated damages and recurring fees[2]. The court determined that Super 8 was entitled to liquidated damages and recurring fees, pursuant to the agreement, and that these fees could be granted on summary judgment.

[1] *Chili Implement Co., Inc. v. CNH America, LLC*, April 30, 2015, per curiam. Appeal No. 2014AP1496

[2] *Super 8 Worldwide, Inc. v. Anu, Inc.*, April 29, 2015, Wigenton, S., Civil Action No. 13-4852

Nexus

Louisiana Court Rules No Nexus for Passive Limited Partner

The Louisiana Court of Appeal recently ruled that a corporation's passive ownership interest in a limited partnership doing business in Louisiana is not sufficient to create Louisiana corporate franchise tax nexus.[1]. The court held that because capital contributed to a limited partnership is no longer owned or used by the contributing partner, an ownership interest in the partnership does not create franchise tax nexus.

[1] *Utelcom, Inc. v. Bridges*, Dkt. No. 535,407 (Division "D", Ct. App., First Dist., Sept. 12, 2011)

Cybersecurity

"I've Looked at Clouds From Both Sides Now" and They're Not Safe!

A report from the Cloud Security Alliance (CSA) reported that "cloud computing" is very vulnerable based on "nine major categories of threats that face cloud technologies". The report advises that organizations "must weigh these threats as part of a rigorous risk assessment, to determine which security controls are necessary." A White Paper has been issued entitled "Playbook: Overcoming Cloud Security Concerns" which explained how to deal with the 9 CSA threats which are listed as:

1. ***Data Breaches.***
2. ***Data Loss.***
3. ***Account or Service Traffic Hijacking.***
4. ***Insecure Interfaces.***
5. ***Denial of service.***
6. ***Malicious Insiders.***
7. ***Abuse of Cloud Services.***
8. ***Insufficient Due Diligence.***
9. ***Shared Technology Vulnerabilities.***

The White Paper points out that with proper planning most of these threats can be eliminated.

Cyber Attacks Upend Attorney-Client Privilege

Security experts say law firms are perfect targets for hackers and cybersecurity firm Mandiant says at least 80 of the 100 biggest firms in the country, by revenue, have been hacked since 2011. In 2012, Bloomberg reported that the large Washington firm Wiley Rein was targeted by hackers linked to China's military in connection with a trade dispute it was handling for a maker of solar panels. McKenna Long & Aldridge lost Social Security numbers and other employee data last year when one of its vendors was targeted, the firm reported.

Chad Pinson, a managing director at Stroz Friedberg, a New York-based cybersecurity firm says law firms aren't doing nearly enough. But that's changing as firms come under pressure from clients to bolster their defenses. Many Wall Street banks, including Bank of America and Merrill Lynch, typically require law firms to fill out extensive (up to 20-page) questionnaires about their threat detection and network security systems. Some clients even send their own security auditors into firms for interviews and inspections.

Scott Angelo, chief information officer at law firm K&L Gates, says all firms should hire consultants to run "white hat hacking exercises" -- tests that simulate real attacks to try to identify vulnerabilities. We've been recommending that in this newsletter for years. But protection doesn't come cheap. "If you're not spending seven figures on security," Angelo says, "you're not spending enough."

Upcoming Article in June Issue of Franchising World

Be sure to see our upcoming article in the June issue of the IFA's *Franchising World*: **"Identify What's Missing From Your Current Cyber-Security Posture,"** by Bruce Schaeffer and Henry Chan. We'll provide a link to the article in this space once it is posted.