

The Franchise Valuations Reporter



July 2023 | Vol. 15 - Issue 7

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.

Bruce S. Schaeffer, Editor
Bruce@FranchiseValuations.com
845.386.9622

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,

Valuations

Business Valuation Firm Billing Rates Shot Up in 2022

According to a Business Valuation Resources study 83% of business valuation firms increased their billing rates in 2022. This is a much greater percentage than the last survey (2018) found, when 60% of respondents said they raised rates. Increases in 2022 ranged from 3% to 25%, with an average of 11%.

Pereira Method Used For Valuing Marital Interest in Construction Firm

As reported by Business Valuation Resources, in *Mamone v. Mamone*, 2023 Nev. App. Unpub. LEXIS 207; 2023 WL 3579949, a Nevada divorce case, the court considered whether the valuation of the marital portion of a business which was separate property should be calculated under the *Pereira* or *Van Camp* approach. The husband started the business prior to marriage and was a key person in its success.

The *Van Camp* method generally applies when business value is due more to economic forces than to the efforts of the spouse. Under this method, "if the in-spouse [the husband in this case] working for the claimed separate property business during marriage receives compensation that is equal to or greater than what is fair or reasonable for the services provided, then the community may not have an interest in the business at the date of divorce." The valuation expert opined that the compensation the husband received was "at least reasonable." Therefore, the marital estate would have no community interest.

The *Pereira* method generally applies when business profits are the result of the spouse's efforts. Under this

go to the [Wolters Kluwer Law & Business web page here](#).

method, “the value of the business at the date of marriage is allowed a reasonable rate of return/appreciation through the date of divorce. The excess, if any, of the business value at the date of divorce over the separate property value represents the potential value of the community interest.” Using this method, the community property interest value came to \$510,000. The district court ultimately decided that the husband’s company “would not have succeeded without [his] labor, skill and business relationship.” The husband appealed, but the appellate court affirmed, noting that there was “ample evidence in the record that support the district court’s decision to adopt *Pereira*. The district court did not abuse its discretion.”

Damages

Addendum to Painting Business Franchise Agreement Removed Any Rights of Franchisor to Relief Against Former Franchisee

In *360 Painting, LLC v. Misiph*, (July 13, 2023, Moon, N.) a federal district court dismissed a lawsuit filed by a franchisor of residential and commercial painting services, 360 Painting, against a terminated franchisee entity and the entity’s individual owner (together, the franchisee). The franchisor alleged that the franchisee breached the parties’ franchise agreement, misappropriated trade secrets, and made disparaging remarks on social media to harm the franchisor’s business. However, the court determined that an addendum to the franchise agreement precluded any claim for damages based on breach of contract or equitable relief. The addendum, which directly negated the sections of the franchise agreement addressing obligations for the franchisee including damages and expenses upon termination, and made those damages unavailable upon termination. It was separately executed by both of the parties at the same time as they entered the franchise agreement. Moreover, the court found that the franchisor’s claims for tort, trade secret misappropriation, and civil conspiracy did not meet the minimum pleading requirements.

Virtual Law Offices Accused of Impersonating Prominent Trademark Attorney

In *Ardalan v. Doe*, (July 12, 2023), a lawsuit has been filed by a prominent California law firm, One LLP, and one of its partners claiming that providers of virtual legal services have been using the partner’s identity and her affiliation with the firm to offer fraudulent trademark registration services to the public. One LLP and its partner allege that Law Integral, LLC, Deputy Trademark, Trademark Integral, and individuals associated with those entities have misappropriated the partner’s identity and falsely represented to customers that the partner is the head intellectual property lawyer of the virtual law offices. This is in violation of the partner’s common law and statutory right to privacy. The lawsuit also asserts claims for counterfeiting, trademark and false designation of origin, and unfair competition. One LLP and its partner are seeking a preliminary and permanent injunction, compensatory and punitive damages, and attorney fees and costs.

Joint Employer/Independent Contractor *Independent Distributors of Baked-Goods Are Not Employees of Pepperidge Farm*

In [Carpenter v. Pepperidge Farm, Inc.](#), (July 14, 2023, Pappert, G.) a federal district court in Pennsylvania granted summary judgment in favor of Pepperidge Farm, Incorporated against three “independent direct-store-delivery partners” (“IDPs”). The IDPS purchased their distribution territories for Pepperidge Farm baked-goods products on consignment and delivered them to retail stores. The sole issue was whether the IDPs were independent contractors or employees. The court found that the undisputed facts showed that Pepperidge Farm and the IDPs were independent contractors, primarily because they did not have the right-to-control the way the work is performed.

Executive Compensation *Planning for Golden Parachute Payments*

In a [comprehensive article by Stephen D. Kirkland](#), the issue of golden parachutes is reviewed in detail. Years ago, these payments were fully tax deductible by the employer if they were “ordinary and necessary” business expenses under Internal Revenue Code § 162. However, due to controversy over large executive pay packages, the Tax Reform Act of 1984 added § 280G to the Internal Revenue Code. This is important when it applies because Section 280G provides that no deduction is allowed for any “excess parachute payment” paid because of a change in effective control of the corporation or a change in the ownership of a substantial portion of its assets. The affected payment may be to an employee, independent contractor, or other person who performs personal services for the company and is an officer, shareholder, or highly compensated individual (§ 280G(c)). In addition, Code § 4999(a) imposes a 20 percent excise tax on the recipient of any such payment. Since the payment would be taxed to the recipient as ordinary income, his or her total tax could exceed **65 percent**. This could include federal income tax, Medicare tax, the 20 percent excise tax, and any state and local income taxes. Wow!

Quotations From J. Robert Oppenheimer

“The optimist thinks this is the best of all possible worlds. The pessimist fears it is true. ”

“Knowledge cannot be pursued without morality.”

Franchise Valuations Ltd | 529 Mountain Road, Bloomingburg, NY 12721

[Unsubscribe {recipient's email}](#)

[Update Profile](#) | [Constant Contact Data Notice](#)

Sent by bruce.schaeffer@franchisevaluations.com powered by

