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Let's hear it for the 2018 class of Franchise Times Legal Eagles.

These attorneys live and breathe franchising. And that's important—ask any of them. They will tell you experience in the franchise sector is of the utmost importance.

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No matter the issue, the Franchise Times Legal Eagles want to get it solved fast, cheap and efficient. Nobody lasts long on this coveted list while trying to make waves in a dramatic court battle or driving up hours researching franchise law. For business owners

and leaders, having a knowledgeable partner with the business case top of mind is priceless—even when the bill comes.

So sit back and enjoy a little free insight from the Legal Eagles and what makes this group so special.

This year, we talked to some of the consolidators about what it takes to get a deal done in today's red-hot market and checked in with some of the newest Legal Eagles about how they specialize within franchise law.

Congratulations to all our Franchise Times Legal Eagles, and keep up the great work. [FT](#)

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Franchise Times LEGAL EAGLES®

CONTENTS:

■ The U.S. Legal Eagles.....	48	■ The Consolidators.....	54
■ Big Legal Trends To Watch.....	50	■ Meet the New Class	62
■ NLRB and Joint Employer.....	50	■ The Legal Eagles Hall of Fame.....	69
■ FASB Changes	50	■ Strange Cases	71
■ Sexual Harassment	51	■ New Legislation.....	71
■ M&A Market	51	■ NASAA Item 19 Updates.....	71
■ Menu Labeling.....	51	■ The Canadian Legal Eagles	72

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Legal Eagles sound off on hot topics



Big Trends to Watch

What is the biggest trend you're watching in the next couple of years?

“Franchisors simplifying their franchise offering and their presentation of that offering is a major trend that I see accelerating in 2018. I am proactively working with my franchisor clients to simplify the offering and therefore sell more franchises.”

—David Cahn, Whiteford Taylor & Preston

“In 2019, Canadian trademark laws will be amended to eliminate the requirement that you must actually use a trademark in order to get it registered. It will be interesting to see how many brands take steps to apply for trademarks which they might never even use, just to make sure that nobody else beats them to it.”

—Chad Finkelstein, Dale & Lessmann

“Continued consolidation, especially by private equity and other investors, acquiring multiple franchise systems. Our approach is to counsel caution and due diligence, especially regarding impact on franchisees, who may be unhappy, leading to systemic strife, possible litigation.”

—John Dienelt, Quarles & Brady

“A significant trend is the increasing interest on the part of franchisees to form formal associations of franchisees for the particular brand in which they are operating. In that connection, we are also pleased to see that franchisors, in general, appear to be more open to recognizing, and sometimes even welcoming, associations of franchisees, and working with them collaboratively to address issues of common concern that will benefit the system.”

—J. Michael Dady, Dady & Gardner

“Franchisors appear to be bullish on pushing up their profits. Area developers and sub-franchisors are vulnerable in many systems because franchisors are looking to oust them and take their profits. We've gotten three preliminary injunctions against termination or non-renewal in the last month and intend to keep doing the same, if necessary.”

—W. Michael Garner, Garner & Ginsburg



The NLRB and Joint Employer

The topic du jour of 2016 has eased, but with some hiccups. What does the future have in store for joint-employer and National Labor Relations Board considerations?

“The NLRB has vacated its Hy-Brand decision and, for now anyway, Browning-Ferris is again operative law. Franchisors should not be overly alarmed. For the NLRB, in its touchstone franchisor-as-joint-employer proceeding against McDonald's Corp. (very much grounded in the Browning-Ferris decision's approach), recently announced plans to seek a settlement with McDonald's instead of continuing to pursue its three-year-old lawsuit that accused the QSR chain of being a joint employer of its franchisees' employees co-liable for those franchisees' labor law violations. And we are also quite confident that the recent NLRB announcement will only result in a subsequent reversal of Browning-Ferris through one avenue or another.”

—David Kaufmann, Kaufmann Gildin & Robbins

“While joint employer is certainly not dead, I think the immediate sting that the franchise community was preparing for is no longer so immediate. However, I do think that franchisors and franchisees and those connected to the industry will work hard this year to make sure that there is no retraction towards the progress made on clarifying the issue of joint employer over the last few months.”

—Justin Klein, Marks & Klein



FASB Changes

What do new Financial Accounting Standards Board rules mean for franchise systems?

“I'm watching to see how franchisors and regulators will react to the financial statement changes required by FASB ASC 606. Will franchisors revise fee structures in order to recognize more revenue upfront? Will regulators understand and adjust to the changes; or will they require an increased number of deferral, bond or escrow arrangements? April should be interesting. I don't think it will be pretty.”

—Michael Levitz, Drumm Law



Sexual Harassment

With the #MeToo movement and other discussions bringing sexual harassment into the limelight, how do you approach the sensitive topic?

“ I always remind clients that sexual harassment claims are not going to come sealed in a pretty little envelope marked ‘Sexual Harassment Claim.’ You need to pay careful attention to what your staff and crew are telling you.”

—Stephen Cohen, *Stephen Cohen Law*

“ Some years back I defended the CFO of a franchisor accused of this, and managed to keep the situation quiet and the CFO kept his job. Writing a large check solved a lot of problems. Not sure the CFO would be as lucky today.”

—Carmen Caruso, *Carmen D. Caruso Law Firm*

“ You must be as proactive as you can be and, when it seems inevitable you are reacting, you need to move quickly, decisively and with sensitivity to the allegations.”

—John Dienelt, *Quarles & Brady*

“ Our advice is not to hope it doesn’t touch them. Policies addressing harassment must be reviewed and updated. It is not enough to follow guidelines that provide regulatory compliance. It is important that those policies speak to all staff, that there are no impediments to reporting, and that these policies are reiterated with total sincerity. People must be able to work and achieve their potential in the workplace environment. This applies to diversity policies as well.”

—Allan Dick, *Sotos LLP*

“ One client told us they were implementing a system of getting waivers from their employees because it’s bound to happen. We advised them that’s a bad idea ...”

—Justin Klein, *Marks & Klein*

“ To be brutally honest (and sexist), men need to get their collective mind set to the place where they acknowledge the value of each person with whom they deal because of the person’s quality of character and work ethic and not because of her booty. As humans, we cannot ignore the fact that we are sexual—but like so much in life, there is a right and wrong way to go about it. To paraphrase MLK: one must judge another by the content of his or her character and not by the way s/he fills out one’s clothing.

Frankly for me, if a client does not believe in this, the person is not a client.”

—Michael Katz, *Corporon & Katz*



M&A

What advice do you have for clients approaching a large transaction in this hot mergers & acquisitions market?

“ One, put on your seat belt. During the 20 years that I have been doing M&A deals, the deals have changed a little, but client expectations have changed a lot! In recent years, I’ve noticed a trend: Clients expect M&A deals to close within days after negotiations start. So, I generally tell clients that I will try to push the deal as quickly as humanly possible, but that they should fasten their seat belt, and sit back because it tends to be a long ride.

Two, follow the money. Often M&A negotiations will get caught up in complex details. I like my clients to remember that like most things in business, M&A negotiations really are just about one issue: money. How much risk (money) are you willing to take, in exchange for how much benefit (money). So, don’t get too caught up in the details, and try to keep your focus on the goal.”

—Elissa Deitch, *Drumm Law*

“ It has been very interesting to see franchise growth patterns in many franchise systems that are similar to pre-recession times. It’s creating an interesting paradox—on one hand there’s a lot of excitement in the private equity community about tapping into some fast-growing systems, but at the same time there’s some fear about the sustainability of those systems. It has led to some very interesting discussions.”

—Beata Krakus, *Greensfelder, Hemker & Gale*



Menu Labeling

It’s been delay after delay and change after change, so what is going on with menu labeling?

“ Clients operating in the foodservice and hospitality sectors are confused by the menu labeling moving targets. Delays, then comment periods; and just when it appeared that the final rule would take effect, it was delayed and again delayed. The law is now scheduled to become effective on May 7, but legislation just passed in the House, if enacted into law, will result in another delay, and more changes.

To be fair, H.R. 722, passed in the House on February 6, would make some revisions favorable to the industry, like giving operators flexibility in the way calories for multi-serving menu items may be presented; and eliminating a private right of action, precluding class action litigation on account of violations.”

—Michael Levitz, *Drumm Law*



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The Consolidators

These pros know what it takes to get deals done

By Nicholas Upton

Between due diligence, risk assessment, negotiations, indemnity agreements and insurance as well as a bit of hand-holding and education along the way, it's no small task to get a deal done in today's market. And given the extreme competition for deals across the franchise space, it's not getting any better.

"Deals are not getting easier, but if they were, we'd be out of a job. So I can't totally complain about that," said David Paris, one of the founding partners of Paris Ackerman based in New Jersey and a Franchise Times Legal Eagles Hall of Famer.

His firm was behind one especially complex deal that saw a franchise restaurant operation split into seven groups and sold off to various buyers—each with their own desires and needs.

Across the table working for the seller was Andrew Bleiman, the managing lawyer at the Illinois office of Marks & Klein. He said in this market, one big issue is the sky-high valuations seen across the M&A space. That means negotiations and adding value when possible so while it might not hit the huge multiples of EBITDA (earnings before interest, taxes, depreciation and amortization), everyone walks away happy.

"Whether it's covering the cost of reimagining or the cost of transfer fees, or whether it's having the buyer pay for fees and costs associated with the landlords," said Bleiman, "there may be other areas where they can find value other than just money in the purchase price."

Those valuations are drawing attention, and new entrants from private equity, family offices and strategic buyers are driving valuations even higher. Amy Cheng, partner at Cheng Cohen and legal adviser to private equity firm NRD Capital during the firm's 2017 take-private acquisition of Ruby Tuesday, said new buyers have her playing the role of educator.

"I think the market shift has brought more sophisticated players into franchising, which I think is a good thing. But it also means an opportunity to educate more people," said Cheng.

So what do these three consolidation experts do when a deal crosses their desk?

Due diligence

The first thing on the buy side is a deep

look at every business document out there from the franchise disclosure document (FDD), to the franchisee contracts, insurance, leases and everything in between so buyers have a true view what they're buying.

"It's our job to minimize surprises and keep them at bay," said Paris.

That's not generally fun work but important. It mostly consists of eyeing every line and every word to uncover oddities or potential legal risks in a huge number of documents that cover every aspect of the business. Paris said it does require a team with a varied skill set to take it all in.

"These are not the most complex or sophisticated deals—we're not buying subsidiaries of Microsoft or Google, but they do get sticky and you want people who can think on their feet," said Paris. "Real estate, M&A and finance all come together on these deals, so you need a cohesive team."

He said he's dropped his litigation process altogether and has been bulking up with seasoned lawyers to help with the ever-growing list of transactions.

From the seller's perspective, due diligence consists of a credit check and being prepared for the buyer to dig in.

"At its most rudimentary level, it's, 'Do they have their information organized in such a way that they can present it to potential acquirers?'" said Bleiman. "Having the due diligence materials in order, having

the leases in order, understanding the state of the lease, the state of the franchise agreement, and the amount of term left on them. Understanding what the reimagining requirement will be for them. If they have a store remodel that is due that will impact the value of that store."

He said all that work should start before a buyer shows up. Making the business better will only mean a better sale price.

"It's trying to be more proactive in making sure that even if they have this interest that they are ready with the documents. And

I think on the front end there's work to be done to make sure that the person you chose as your buyer is going to pass muster with the franchisor down the line," said Bleiman.

"You don't want to do a deal with the first guy who comes to the table with the most money. That's all well and good but if they don't have experience or infrastructure, that could complicate matters."

At the brand level, Cheng said the first order of business is scouring the central franchise document.

"Right away, we would do certain

due diligence. We'd look at the company FDD—that's the first thing I'd look at," said Cheng. "That gives you a pretty good sense about how the company has conducted business."

Within the FDD, attorneys are looking



"You never want to make a price or set a price and after you do the due diligence, reduce the price. Neither party is happy at that point."

— Amy Cheng, Cheng Cohen

M&A continued on 56



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M&A continued from 54

for a handful of key things: lawsuits, openings and closings, and compliance with franchise laws. The FDD also offers a clue to whether the franchisees are happy—and they're usually happy when they're making money. But that's not the whole picture.

"The quality of the royalty stream is huge and the term of the royalty stream," said Cheng. "Let's say this year's royalty stream is \$10 million, that's great. But what often people don't pay attention to is the term. If a term is three years and most of them are expiring next year, you can't count on that royalty stream."

A big group of expiring franchise agreements isn't necessarily a deal killer, but it will certainly affect the price. That's why Cheng says it's important not to take the cocktail napkin math to heart; it might be best to skip the ballpark figure altogether until the diligence work is done.

"My advice to people is to understand those basic parameters before you get into the pricing. You never want to make a price or set a price and after you do the due diligence reduce the price. Neither party is happy at that point," said Cheng. "People forget the disclaimers, they remember that you said \$100,000."

Getting it done

After all the due diligence work is done, the clock starts ticking. There's an old adage that time kills deals, and it's true. The longer the clock is ticking the more issues pop up. That means a transactional legal firm goes from bleary-eyed document readers to full-time negotiators. They're pushing all the stakeholders to move fast as soon as the initial price is calculated.

But in a market like this, all the players know valuations are high, the buyers are generally well capitalized and the gatekeepers are looking to get in on the action as well. Landlords are some of the chief boat rockers.

"On the landlord side, you typically need to obtain lease assignments and a host of other documents that the party or the bank requires, so when you're up to 20, 30, 60 stores, you're usually dealing with a commensurate number of landlords. Not to over-generalize,

but they view this process as a way to take a pound of flesh," said Paris. "That can impact the timing of the closing and the

integrity of the asset."

If some of those landlords are being stubborn, it can mean a new agreement for a select number of stores or the former operator acting as a guarantor—adding complexity and time. Bleiman said this phase can trigger another round of due diligence and negotiating around the new leases.

"You try to have a handle on that and make sure that there aren't any unusual lease provisions, take-back provisions or requirements to pay off the landlord," said Bleiman. "We've seen some crazy things in these leases."

He said it's a lot of phone calls and emails, "prodding and cajoling" to ensure they work efficiently.

"I always say, it's our No. 1 priority and it's their 101st priority," said Bleiman. "I don't begrudge them, so we just have to push and push."

There's also pressure on the deal from the brands. First and foremost, they are protecting the brand from poor operators so sellers need to make sure a buyer will make the grade. And while they're not always looking for that pound of flesh in an immediate monetary sense, they're often looking at M&A as fuel for growth and updates.

"When you either unilaterally allocate assets to different buyers or when the franchisor steps in and takes a stake in that asset allocation process, it becomes tiered or staggered closings. That is very much a recipe

for disaster if it's not dealt with right," said Paris.

It's a lot of communication, organization

and getting franchisors excited about the deal, hence the growth and update provisions that have become so common in franchise transactions.

"It's a process. I would say most franchisors understand the situation and aren't going to stand in the way of a deal; having said that we've seen them do it," said Bleiman. "We've seen transfers that aren't being approved or buyers that have been rejected."

For Cheng, after due diligence is done, there's a lot of education for the new buyer, especially for the new entrants to the franchise world.

"I think most are trying really hard to educate themselves, that's my No. 1 priority," said Cheng. "A lot of the people that are looking for private equity are not just looking for money but also a certain support for their system. That's important when these matches are being made, that both parties understand that."



"Deals are not getting easier, but if they were, we'd be out of a job. So I can't totally complain about that."

— David Paris, Paris Ackerman

Right-sizing the risk

The final step in the whole consolidation process—after the leases are checked, the franchisor is happy and the bank is on board—is negotiating around risk before signing all the documents.

"No system big or small is going to be perfect. Just because we uncover certain things about a system, doesn't mean that we suggest our client doesn't buy it," said Cheng. "Our advice should be, what are the risks and what we can do to minimize the risk."

There will almost always be certain legal questions, potential liabilities and other legal issues that transactional lawyers must negotiate around. Sellers rarely wash their hands completely and buyers rarely move on risk free. In short, it's never a picture-perfect happy ending, but the right legal partner can make it better. **ET**



"We've seen some crazy things in these leases."

— Andrew Bleiman,
Marks & Klein



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Andrae Marrocco is a Partner in the Toronto office of Dickinson Wright. He advises Canadian and international businesses on all aspects of Canadian franchise and distribution law. Clients and peers note Andrae's specific expertise in cross border franchising transactions (including adapting systems to the Canadian market), and his corporate M&A experience that make him an invaluable advisor on franchise mergers and acquisitions.

Andrae is a *Certified Franchise Executive* and frequently presents at Canadian and international franchise conferences and events, and routinely writes for national and international franchise journals and publications. He is an active member of North American franchise organizations, and serves on several steering committees including the Executive of the Franchise Law Section of the Ontario Bar Association and the IFA's Legal Symposium Task Force.

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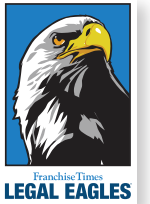
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Mackenzie has authored numerous articles, including "Enforcing the Bargain or Buying Your Way Out? The Right to Specific Performance in Franchise Agreements versus the Concept of Efficient Breach," the New York Chapter of the Franchise Deskbook, and "Defense for Nondisclosure of Liability for Lost Profits," all of which were published by the American Bar Association's Forum on Franchising. She is also committee member of the Young Lawyers' Division of the Forum.

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Josh and his team help entrepreneurs find success through franchising. "My practice allows me to help people realize their dreams, while fulfilling one of my own."

Josh most enjoys working with new and emerging franchisees to help them create great franchise programs. Additionally, Josh is the founder and host of Franchise Euphoria, a top-rated podcast on iTunes.

Through his podcast, blog, business and legal services, Josh is able to help people learn more about franchising and make smarter franchise decisions.



The New Class

Specialized lawyers from across franchising

By Nicholas Upton

The 2018 class of first-timers to the Franchise Times Legal Eagles list aren't fresh-from-the-nest attorneys, but that doesn't mean they are any less bright-eyed and bushy-tailed. It just means they've taken the time to become the eager and able specialists necessary to navigate franchise law's most esoteric corners. Here's an introduction:

A unique corner

Karl Brandes, a partner at Phelps Dunbar in Florida, sees all manner of franchise law cases as a litigator and mediator. But he has deep experience with petroleum marketing, a unique part of the franchise space that falls under all sorts of special

rules and regulations. "You have landlord tenant issues, breach of contract issues and environmental issues at gas stations, you have crimes that occur, you have people get hurt," said Brandes. "There are so many different legal considerations brought to bear connected with franchising."

That unique practice area also has ramifications for the rest of his practice, especially when it comes to a push for new franchise rules. It's been dubbed the Small Business Parity Act in Florida, but a number of states are looking to pass similar legislation that ensures franchisees that are operating in good faith avoid at-will terminations, keep renewing and transfer their licenses.

The short version sounds great for franchisees, but Brandes said it sounds like a problematic rule from petroleum's past.

"It was theoretically designed to level the playing field. But you saw a lot of validation of the practices of the franchisor and not as many wins in court for the franchisees," said Brandes.

"It may benefit both by providing a structure, but as long as they're complying with that, you might see a lot of franchisees be frustrated. They may have their business fail not because of some reason under the statute, but ultimately because the courts say this franchisor has jumped though all the hoops."

He'll certainly be watching how it plays out, and will pad his future cases with wisdom from the wild world of 1980s petroleum marketing law.

Newcomers continued on 64

Meet the new Legal Eagles:

1. Douglas Ferguson at RWO Law
2. Laura Lewis at Mullin Law
3. Evan Goldman at Hill Wallack
4. Adrienne Boudreau at Sotos LLP
5. Karl Brandes at Phelps Dunbar
6. Andraya Frith at Osler
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Julianne Lusthaus has been practicing law since 1996. She has significant experience representing franchise and business clients in transactions and disputes including representing franchisor and franchisee clients in all aspects of their franchise relationships. Julianne Lusthaus is a member of the Governing Committee of the ABA Forum on Franchising. She has published extensively on franchise law issues and is the co-author of the chapter on "Representing Franchisees" in the Fundamentals of Franchising, 4th Edition. Julianne Lusthaus is also a frequent speaker on franchise issues at events hosted by various organizations including the ABA, the IFA and the NYS Bar Association and is Program Co-chair for the 2018 ABA Annual Franchise Forum.



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The Richard L. Rosen Law Firm, PLLC

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Richard L. Rosen has represented franchisors and franchisees in a wide range of business and legal matters for over 40 years. Mr. Rosen has formed and counseled franchisee associations and franchising entities and has mediated, arbitrated and litigated on their behalves when necessary. His Franchise clients have encompassed virtually all business areas including the fast food, gyms, fitness centers, healthcare, fashion, real estate, gas stations, optical, hotel, recreation, home improvement, childcare, elder care and learning fields. Mr. Rosen has written and lectured extensively on franchise issues. He is a member of the ABA Forum on Franchising, a founding member of the Franchising and Licensing Section of the New York State Bar Association and its immediate past Chairman, Chairman of the Fair Franchising Standards Committee of the AAFD, a member of the Steering Committee of the National Franchise Mediation Program, a member of the CPR Institute for Dispute Resolution Distinguished Panel of Neutrals and a member of the IFA. Richard is listed in the International Who's Who of Franchise Lawyers and the International Who's Who of Business Lawyers, Who's Who in America, Who's Who in American Law, Who's Who in the World, Best Lawyers in America, 101 Best Franchise Lawyers in America and Charter Member of Franchise Lawyers Hall of Fame (the Franchise Times), Super Lawyers and a variety of similar publications. In 2008 Richard was the recipient of the AAFD's Lifetime Achievement Award for his contributions to franchising and he was honored by Lawyer Monthly in 2016 and 2017 as its Franchise Attorney of the Year in the USA. He received the Global 100 Award as Franchise Attorney of the Year in the USA in 2017. In 2018 Richard was named one of the 100 Best Attorneys in the World by LegalComprehensive.com



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Newcomers continued from 62

Helping start-ups

Evan Goldman, chairman of the franchise practice at Hill Wallak, specializes in helping startup franchises with their unique legal needs and getting up to speed with the franchise model.

“A few things that keep coming up are for start-ups, they don’t really know what being a franchisor means. They’ve heard of it, they’ve seen McDonald’s, but they don’t really know,” said Goldman. “So it’s really teaching them what they can and can’t do and what the boundaries are.”

And he’s taking a few lessons from major brand blunders to get the new class of franchisors started on the right foot. One increasingly important legal frontier for all brands, but something that is scalable if done right early on, is data security.

“Data security is really huge,” said Goldman. “Making sure that the franchisor is setting up a model that creates a solid structure for their ‘zees to work under and make sure that once they’ve grown to five, 10, 20 locations that the data doesn’t become so insecure that you can be hacked.”

From the North

Of course the Legal Eagles wouldn’t be complete without some star Canadian lawyers like Adrienne Boudreau, a litigation lawyer with Sotos LLP. As the U.S. market becomes more and more competitive, brands are looking northward with mixed legal results.

“We’re seeing continued interest of U.S. franchisors expanding to Canada. Often that’s not something that devolves into a litigation matter, but that’s something we’re seeing,” said Boudreau.

What becomes a court battle can, however, be easily remedied by a lawyer with Canadian expertise.

“Sometimes what we see is a franchisor who doesn’t get that legal advice before coming to Canada,” said Boudreau. “We do have different rules, we do look at the U.S. FDD and build on that, but the Canadian disclosure rules are very different. If you’re a franchisor coming to Canada, you really need to work with Canadian counsel—the penalties can be very extreme.”

Around the world

International growth means different things to different people. For international specialist Douglas Ferguson at RWO Law out of Denver, Canadian laws aren’t the biggest enigma. But beyond our neighbor to the north, there are plenty of disclosure oddities around the world.

“The big change I’ve seen in the 30 years

I’ve done this is the amount of foreign countries that have come out with their own franchise laws,” said Ferguson. “When I started it was just the U.S., then Mexico came on line, then Spain, France and Brazil.

“Today there’s over 25 countries that have some sort of FDD disclosure requirements, some have relationship laws, some have registration requirements. So staying on top of that has increased the amount of effort tremendously.”

But for Ferguson, that complex international landscape and FDD item orders, codes and registration oddities isn’t the first step. He also helps clients navigate the murky laws around intellectual property.

Before a client ever goes into a country, “you have to get on top of the trademark issue,” said Ferguson, who has relationships with counsel around the world for on-the-ground insight into those intellectual property idiosyncrasies.

‘Better be bulletproof’

Texas-based Laura Lewis at Mullin Law said her franchise specialization means straddling the line between litigation and transaction. She said that makes both sides of her practice area stronger.

“Because I litigate my own documents, I have a different eye because it’s going to be me in the courtroom. So they better be bulletproof,” said Lewis.

She’s also plugged in to the real estate world, helping her clients navigate the complexities of leases, transactions and especially the recent nuances of a very active market.

“Because it’s such a hot market, there’s a lot more risk-shifting. Landlords are trying to shift a lot more risk to franchisees, which is hard, the average franchisee can’t survive an indemnification clause that covers everything,” said Lewis. “So that makes it hard for the small franchisee.”

But because of her personal relationships across the real estate world, she can say, “Hey, you know I helped you out, now you got to get my hot dog guy in here,” said Lewis.

Those connections and creative documents help keep risk-averse landlords happy, but also maintain an open path to sensible real estate for small and growing franchisees.

Choosing sides

For Andraya Frith, a Toronto-based lawyer and chair of Osler’s National Franchise and Distribution Practice Group, specialization means sticking with one side of the franchise model. She and the Osler team work exclusively with franchisors.

“We work only for franchisors. We think that separates us quite a bit from other Canadian firms,” said Frith. “We

philosophically think that we can act in the best interest if we only act for the franchisors, and we can be consistent in how we approach a litigation defense, because we don’t have to think about the other side of the relationship and our role there.”

She helps brands work through all manner of Canadian law, from the wage increases to new rulings about when a contract can be rescinded. But a major part of her advisory work focuses on the relationship between franchisor and franchisees. While it’s not necessarily a bad thing to have a franchisee group or association form, keeping that relationship from turning toxic blends legal and relational skills.

“I act as a strategic adviser to our franchisor clients when they’re working through relationship issues or when associations form. I do a lot of litigation work to form the arguments and strategies,” said Frith.

A business mindset

Jason Power, at Barber Power Law Group, is solely focused on transactions, but like many of the Legal Eagles, he builds a business mindset into the practice, something especially helpful for small franchises. Power is essentially the negotiating ringer for his clients.

“A start-up franchisor can be a little harder to negotiate because they don’t have enough purchasing power as someone with a dozen or 100 locations. So early on we’re laying the groundwork, but many times we’ll at least get some kind of incentive so that when franchisees come in, they’ll have some rebates and stuff like that that puts money in their pocket,” said Power.

He said the same negotiating tactics work for the franchisor.

“We can sometimes get a rebate back to the franchisor which allows them to be more profitable, or we can just get that discount for the franchisees, which lets them keep more of their money and makes them value their relationship with the franchisor because they see that they’re actively out there negotiating better prices. So it improves morale and means better economics,” said Power. “Then as they grow larger and they have more locations, we’ll go back and renegotiate.”

These new Franchise Times Legal Eagles give just a glimpse at the deep specialization of the expert legal professionals within franchise law. For every issue, there is a lawyer somewhere within the franchise bar that has dealt with it before.

So let’s hear it again for the new class, sorting out the ever more complex legal framework that makes up franchise law with deep specialization and a like-minded approach for clients large and small. [FT](#)



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Providing comprehensive, practical, solution-oriented franchise and business legal services, the Firm's national franchise and hotel practice represents leaders in franchising and distribution, including franchisors, single and multi-unit franchise owners, area developers, master franchisees, franchisee associations, distributors and businesses desiring to expand through franchising and distribution systems.

The firm provides its franchise clients with franchise disclosure document, regulatory, business & corporate, merger & acquisition, real estate, leasing, PMPA, intellectual property (trademarks, licensing and e-commerce), employment, financial services, immigration (EB-5), day-to-day counseling and dispute resolution services, including mediation and arbitration.

Harris has served on various franchise committees, including the ABA Forum on Franchising Governing Committee, IFA, Montgomery County, Philadelphia and New Jersey Franchise Law Committees; and is a frequent speaker on franchise and business related topics.

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Shipe Dosik Law LLC

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Pete Dosik is a leader in Atlanta's franchise law community as well as a sophisticated business law generalist. He is committed to providing clients with high-value, efficient, and practical legal service at a reasonable cost.

Drawing on his experience as in-house counsel at Church's Chicken® and Starwood Hotels, Pete develops in-depth knowledge of his clients' businesses and emphasizes practical methods to protect his clients while helping them achieve their goals.

Pete advises franchisors on how to establish, operate, and grow "best-in-class" franchise systems. He prepares Franchise Disclosure Documents and franchising agreements that incorporate best practices in franchising. He advises on domestic and international franchising, complying with federal and state franchise laws and regulations, dealing with franchisees, enforcing brand standards, terminating non-compliant franchisees, and resolving disputes.



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Kitt Shipe is a transactional attorney focusing on franchise and licensing law. Her experience includes advising and assisting clients in all legal aspects of structuring, operating and growing their franchise systems in compliance with U.S. and international franchise registration and disclosure laws, as well as state franchise relationship laws.

Kitt was in-house counsel for a multi-brand franchisor of 7 brands with 2,000+ units operating globally, and Jan-Pro Franchising International, Inc., a company with over 10,000 franchises. Drawing on these experiences, she is committed to balancing exceptional client service and work product with efficiency.

She is extensively experienced in drafting Franchise Disclosure Documents and franchise documents. She provides business-oriented advice on dispute resolution, risk management, brand protection, system acquisitions, and managing franchise relationships.

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Singler Professional Law Corporation

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A perennial Legal Eagle and Martindale-Hubbell's Client Distinction Award recipient (awarded to less than 1% of all lawyers), Pete's clients herald his effectiveness: "The best move we made was hiring Pete. He had the right mix of legal knowledge and business acumen, along with an uncanny ability to predict the franchisor's next move time after time. It was almost as if he held an unfair advantage. Through his honesty and integrity, he was able to earn the trust of our entire association." Henry Straight, Texas.

We represent franchisees and franchisee associations in all business related matters, from formation and organization, to financing and growth, negotiations (individual and system-wide) and, if necessary, litigation.

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- Real Estate

Spadea Lignana

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Tom Spadea is a partner at Spadea Lignana, LLC. Tom spent more than 15 years in corporate and entrepreneurial positions before completing law school at Temple University's Beasley School of Law. His undergraduate degree is in finance from Marquette University, where he graduated Cum Laude. Tom is a Certified Franchise Executive (CFE), a non-legal designation earned from the International Franchise Association. Tom is the founding member of the Philadelphia Franchise Association and is the current President and Chairman.

Spadea Lignana has represented dozens of new franchisors with their launches and has assisted franchisors and franchisees alike with a variety of legal issues, including private equity transactions, franchise agreement and lease transactions, litigation, trademarks, partnerships, and real estate deals.

Tom's background includes being a business owner, franchise broker, business broker and senior executive with several national franchisors. This experience gives Tom a unique understanding of the needs of clients not just as an attorney but as an entrepreneur.

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Adam J. Siegelheim, Shareholder, exemplifies Stark & Stark's client-focused approach in his practice representing franchisors and master franchisees throughout the United States. Adam's cross-functional Franchise Law practice includes preparation of disclosure documents and franchise agreements, state registrations, regulatory compliance, and international expansion.

Adam is a member of the International Franchise Association, the American Bar Association Forum on Franchising, and is the past -Chair of the New Jersey Bar Association Franchise Law Committee. He was recently presented with the designation of

Certified Franchise Executive by The Board of Governors of the Institute of Certified Franchise Executives.

The law firm of Stark & Stark offers a full range of legal services for businesses and individuals. More than 100 attorneys, over 30 practice disciplines, and a philosophy of putting the law to work for our clients is the basis from which we build and maintain our practice.

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Selected as **Legal Eagles 2018**



Zarco Einhorn Salkowski & Brito, P.A. wishes to congratulate Robert Zarco, Robert Einhorn, Robert Salkowski, Alejandro Brito and Colby Conforti for being selected as Legal Eagles in 2018! This distinction is in recognition of the firm's high-level of professional success. On behalf of everyone at Zarco Einhorn Salkowski & Brito, P.A.,

CONGRATULATIONS!

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Kerry Olson	Faegre Baker Daniels LLP	Minneapolis, MN	Franchisors	Litigation/ Transactional
David Oppenheim	Greenberg Traurig	New York, NY	Franchisors	Transactional
Ryan Palmer	Gray Plant Mooty	Minneapolis, MN	Franchisors	Transactional
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A PENCHANT

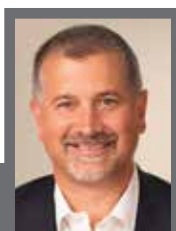
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Congratulations to our attorneys selected as "Legal Eagles" by industry peers and clients. Building on a 40-year legacy of innovation, they are driven by the ambition to soar higher and see further in the service of their franchise clients.

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Nicole represents franchisors and franchisees in all aspects of their legal needs, from litigation and arbitration to regulatory, real estate and employment work. She has experience obtaining injunctive relief on behalf of franchisors and defeating injunctive relief sought against franchisees. Nicole regularly represents franchisors and franchisees in state and federal court and in arbitration matters. Recently, she successfully represented a franchisee in a complex breach of contract action against a franchisor that was ultimately affirmed by the U.S. Court of Appeals for the Third Circuit. Most recently on the transactional side, Nicole negotiated a large international deal that will allow her client to franchise an American concept throughout Vietnam.

Nicole regularly speaks at the American Bar Association's Forum on Franchising, has written chapters for ABA franchise books and has been published in the *Franchise Law Journal*. She is proud to have been recognized as a Franchise Times' Legal Eagle seven times.



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Warshawsky Seltzer

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Dan's practice focuses on representation of franchisors in all aspects of domestic and international franchise law. Dan also regularly represents franchisees in non-litigation matters. Warshawsky Seltzer is a franchise focused law firm with relevant expertise in franchising, distributorships, business opportunities, licensing, dispute resolution, corporate, real estate, technology, trademarks and financing. The Firm offers flat fee package plans for ongoing legal services and places special emphasis on recruiting attorneys with business ownership and/or in-house experience. This "real world" experience allows the Firm's attorneys to better understand the needs of their clients and provide practical advice.

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The Hall of Famers

Kudos to four who made list 10 years in a row

Michael Drumm:

“Michael Drumm excels at what he does. Michael and his team are efficient, forward thinkers, and on top of their game. They provide great advice when situations occur and respond almost instantly. I could not think of someone better to work with.”

—Tony Lamb, founder and CEO of Kona Ice

“Mike is not your typical attorney, and we love that. Not only is Mike effective, but he’s fun and light-hearted. He takes the dread out of dealing with legal issues. He is our Legal Eagle.”

—Shanna Schulze, general counsel at Massage Heights

Justin Klein:

“I have known Justin for 11 years. In all matters in which we have been involved I have nothing but respect for his work. I truly appreciate his professionalism.”

—Michael Einbinder, founding partner at Einbinder & Dunn



Nancy Lanard:

“Nancy Lanard and her attorneys are beyond description. I am a first-time franchisee and she and her firm quite simply took me by the hand and took care of me and protected me. I’ve recommended her to every

person I can think of. She’s fast, efficient, reliable and trustworthy. Most of all she cares about me.”

—Bill Polk, Dogtopia franchise owner

“Rapid, honest, constructive and she gives personal attention to every request. Nancy really understands my unique needs and tailors her response directly to me in easy to understand and execute language.”

—Andy Snelgrove, consultant at The Franchise Consulting Co.

Stéphane Teasdale:

“Stéphane is an outstanding lawyer; his understanding of the interplay between contentious and transactional matters is outstanding, especially concerning Quebec.”

—Frank Robinson, Partner at Cassels Brock

“Stéphane is the main ‘go-to’ attorney in Canada for all matters related to Quebec and a regular speaker and committee member for ABA, IFA and other international franchise law groups.”

—Robert Lauer, partner at Haynes Boone



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David L. Cahn, a partner in the firm Whiteford Taylor & Preston L.L.P., is in his 21st year of providing franchising legal services. After representing franchisors and franchisees in litigation for several years, Mr. Cahn evolved into an outside general counsel for franchisors and franchisees. For franchisors, his focuses include creating and maintaining franchise disclosure documents and contracts; state franchise registrations; trademark selection, protection and enforcement; and negotiating with franchisees and other business partners. For franchisees, his focuses include evaluating franchise opportunities, negotiating franchise agreements and real estate leases, and creating LLC operating or shareholder agreements. Mr. Cahn also represents buyers and sellers of a variety of closely-held businesses.



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Got questions? Legal Eagles answer



Odd Jobs

What's the most interesting or unique legal issue you've worked on in the past few years?

“Are franchisee's listings on third-party websites such as Yelp, including 'star ratings' and customer reviews, assets that the franchisee can keep at the end of the franchise term as long as the franchisor's trademarks are removed? This was a key issue in negotiating an agreement between my franchisor client and a departing franchisee.

The franchisee wanted to avoid the post-expiration non-compete, and my client was willing but wanted the franchisee to have to 'start over' in the business and not trade on goodwill developed under the franchise. There was no case law that we could find governing that internet issue. The agreement struck was a compromise in many respects, and of course that may lead to litigation in 2018 between the former franchisee and my client.”

—David Cahn, Whiteford Taylor & Preston

“The Simon / Starbucks lawsuit has put the question of enforceability of operating covenants back on the map. This needs to be watched carefully given the volatility of the industry.”

—Stephen Cohen, Stephen Cohen Law

“We're seeing clients who have launched a franchise without the use of an attorney using a template FDD from unethical consultants. It is a real problem when franchisees get signed up, sometimes even in registration states in clear violation of state and federal law. Fixing those systems and trying to clean up the mess is both challenging and rewarding when done right. It seems over the last few years more and more unscrupulous consultants are helping people franchise their business while steering them away from getting proper legal advice and guidance. It's a dangerous trend that negatively impacts the entire industry.”

—Tom Spadea, Spadea Lignana

“Restaurants, in particular, embracing the opportunities presented by and seeking to understand the challenges posed by cannabis legalization. What's interesting is that we are all learning this new frontier together with equal amounts of experience, or lack thereof.”

—Chad Finkelstein, Dale & Lessmann



New Legislation

We're over a year into the presidency of Donald Trump, and tax reform has been the big legislative change thus far. What do you see coming from Washington and the statehouse?

“Unfortunately it would be surprising if the U.S. Senate acts on the Save Local Business Act, H.R. 3441, as passed by the House, since it has not yet been referred to any Senate committee and the Senate's Republican leaders likely will focus on completing other legislation that has a larger public impact. So other than perhaps a few additional state laws protecting the franchise relationship from joint employer, I do not expect great change over the next year.”

—David Cahn, Whiteford Taylor & Preston

“The tax cut has had a dramatic impact on optimism. The first few months of 2018 have been record-breaking in terms of our clients wanting to do new deals. The general pro-business attitude and pull back on over-regulations has also had a dramatic impact on optimism, which is a key driver for investment and new projects. For the first time in many years, legislative changes are driving optimism instead of fear.”

—Tom Spadea, Spadea Lignana



NASAA Item 19 Guidelines

Does new guidance from the North American Securities Administrators Association mean uniformity in the Item 19?

“There is some anxiety about the new Item 19 guidelines. They are not necessarily that difficult to comply with, but the proof is in the pudding—how they will get interpreted by state examiners. I suspect there may be more comments on Item 19 this year than typical, which may make the annual renewal stressful to many franchisors.”

—Beata Krakus, Greensfelder, Hemker & Gale

“The Item 19 disclosure is always confusing. When a prospective franchisee tries to compare them from system to system, there wasn't an easy way to do that. Hopefully with the new NASAA Guidelines for Item 19 there will be more uniformity that will make it easier for a prospective franchisee to compare different systems' Item 19.”

—Nancy Lanard, Lanard and Associates



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