

# MEET BEST & BRIGHTEST ATTORNEYS IN FRANCHISING

Let's hear it for the 2019 class of Franchise Times Legal Eagles.

These attorneys live and breathe franchising and truly understand the nuances of this unique business model. That deep understanding is now more important than ever.

Looking around the franchise industry, it's hard to miss the dissent in some systems and also the extreme need for innovation. Both can put incredible strain on a franchise system. These legal professionals try to both prevent such issues, but also aim to work efficiently toward a positive resolution because they understand what is at stake for both the brand and the franchisee.

With a keen mind for both the legalese and business, they understand the gravitas of every single legal battle, every transaction and every document. That engenders a spirit of collaboration and efficiency among this tight-

knit group of legal professionals.

No matter the issue, the Franchise Times Legal Eagles want to get it solved in a fast, cheap and efficient manner. 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.

This year, we dug into the two most pressing legal issues in franchising: the wave of franchise dissent seen among brands large and small, and the necessary updates and innovation that can get ugly fast. We also chatted with our 2019 inductees to the coveted Legal Eagles Hall of Fame and touched base with some of the newest Legal Eagles.

Congratulations to all our Legal Eagles and keep up the great work. **FT**

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## Franchise Times LEGAL EAGLES®

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## GIVE THEM A HAND.

DLA Piper congratulates our 18 franchise and distribution lawyers listed by *Franchise Times* magazine as Legal Eagles.



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# Words of wisdom on major issues



## Franchisee Dissent

**What can be done to keep everyone pushing in the same direction?**

“The unit economics always tell the tale. The real war out there—winning the hearts and minds of brand customers—requires franchisor and franchisee alignment. Alignment need not be perfect, but it must be strong—and it must be based on the franchisor’s standards. Once the parties acknowledge this fact, the better their results against the competition.”

— Kirk Reilly, Gray Plant Mooty

“Consistent expectations, clearly communicated within franchise systems, are strong steps toward minimizing conflict and keeping conflicts from escalating.”

— Nicole Micklich, Urso, Liguori & Micklich

“Have all sides sing, or at least memorize the lyrics of, ‘Walk A Mile In My Shoes,’ and practice doing that.”

— John Dienelt, Quarles & Brady

“Stop emailing and talk to each other! Or, better yet, meet to discuss issues in person!”

— Andrew Bleiman, Marks & Klein

“Most franchisors are trying to do the right thing for their brand and their franchisees. Identifying ‘squeaky wheels’ within the franchise ranks and trying to either resolve their problems or minimize their impact is important because complaining and in-fighting is a cancer to the system.”

— Laura Lewis, Canada Lewis & Associates



## M&A Guidance

**Consolidation is still a mega trend across the industry; how should we proceed?**

“When doing your diligence in connection with an acquisition read the financial statements! Many sophisticated franchisees book unit-level expenses to a parent or management company. We recently dealt with a seller who buried its workman’s comp insurance in the parent company’s financials. When this issue was identified later in the game, and we realized the impact the expense would

have when added back at the unit level, the buyer’s bank backed out of the deal.”

— David Paris, Paris Ackerman

“There are certain brands selling off their corporate locations to franchisees. My concern there is that many of these corporate locations are failing. How will a franchisee make them successful when the franchisor was unable to make them profitable and the franchisee must also pay royalties and other ongoing fees to the franchisor?”

— Nancy Lanard, Lanard and Associates



## Cautionary Words

**What do you think everyone in franchising should be wary of or understand a little better?**

“The art of smart writing—what not to write, never to write and what needs to always be written—and the use and misuse of the attorney-client privilege is a big deal. Lawsuits are most often won and lost by the written word, and ill-considered emails are now the new ‘gold standard’ that lead to most liability awards.”

— Kirk Reilly, Gray Plant Mooty

“Correct use of trademarks and ongoing management of a franchisor’s trademark portfolio is key. Oftentimes, franchisors are not aware that you must use a trademark exactly as it has been registered. Franchisors must also be careful to avoid inadvertently allowing trademark registrations to lapse or failing to register new marks.”

— Faye Lucas, Sotos

“The importance of properly positioning a business for sale prior to marketing the business for sale. Sellers are frequently losing significant value by marketing their businesses for sale before taking steps to maximize value by doing internal due diligence and setting up the business for a successful sale before going to market.”

— Andrew Bleiman, Marks & Klein



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Congratulations to Joseph S. Goode on being named a Franchise Times Legal Eagle three years running.



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# Looking ahead to coming attractions



## Coming Soon

What are you watching for in 2019 and beyond?

“We are already seeing an uptick in bankruptcies—both franchisor and franchisee. I am approaching it by working closely with bankruptcy counsel to figure out the best next move for our clients. Bankruptcy is a different world with a very distinct legal vocabulary.”

— Deborah Coldwell, Haynes & Boone

“In 2019, I’m watching to see whether the number of franchise purchasers declines and also whether there is a shift in the sophistication and/or financial strength of franchise purchasers. As 2018 progressed, it seemed that perhaps the numbers of serious prospective franchisees was declining, and that some franchisors may have been leaning more on brokers for leads than in the past. For now, I am waiting to see whether a trend develops. I am also always interested in the success rates of new franchisees.”

— Nicole Micklich, Urso, Liguori & Micklich

“I continue to follow, and remain fascinated by, litigation and other activity with regard to anti-poaching provisions in franchise agreements. There are now perhaps a dozen putative class actions against franchisors, alleging that these provisions violate the antitrust laws. Although my instinct is that the issues that are being raised are a ‘tempest in a teapot,’ I certainly believe that they create some risk for franchise systems; especially in the way the antitrust laws have treated franchising.”

Had the franchisors ‘cleaned out their attics,’ eliminating provisions, like the anti-poaching provisions, they don’t need or want, they would have eliminated the risk that now, for at least some, has exploded into class action antitrust litigation that is, at minimum, going to be expensive in terms of legal fees and company time.”

— John Dienelt, Quarles & Brady

“Brands are looking to go international sooner than was previously the experience, and require more sophisticated and comprehensive advice to assist in laying the right infrastructure and protections to venture across borders.”

— Andrae Marrocco, McMillan

“I am seeing landlords aggressively taking action to default franchisee tenants so they can re-rent for full market value. Many of these franchisees negotiated good rental rates and favorable renewal rights during the recession and now the landlord wants out of the lease where they may only be collecting 75 percent of the current market rent. They are using every way imaginable—particularly by strictly enforcing the requirement that rent be paid on

or before 5 p.m. on the first day of the month, even though the parties may have historically had other arrangements. I had to get a restraining order against one landlord to prevent him from locking out my client on this same type of issue.”

— Laura Lewis, Canada Lewis & Associates

“The importance of the retail lease negotiations is a legal topic most people do not understand or regard seriously. A retail lease can lead to the success or failure of a retail franchisee’s business. The legal issues in a lease, not just the business terms, are critical to the success or failure of the business.”

— Nancy Lanard, Lanard and Associates



## Tech Tactics

From delivery and kiosks to the desire for convenience, what can a system do to update successfully?

“The increase in adoption of new technology and use of third-party delivery platforms, e.g. UberEats, is a big trend. Systems need to ensure franchise agreements are flexible enough to accommodate new technology and product/service delivery models to be integrated into the system.”

— Faye Lucas, Sotos

“More than ever it is critical that franchisors tailor their agreements to their particular franchise system and, as far as is possible, build in future-proof mechanisms (for new technologies, system changes, etc). This lesson has been learned as new technologies are being adopted like never before.”

— Andrae Marrocco, McMillan



FranchiseTimes  
**LEGAL EAGLES**

## About this project:

This list of star legal professionals in the franchise industry is built with nominations and recommendations from clients, peers and other legal professionals. Hall of Fame Legal Eagles are lawyers who have been named to the list for 10 years.



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# System change is a prickly process

By Nicholas Upton

**U**pdates, renovations or brand innovations. Whatever you want to call it, system change can be a challenge for concepts large and small. While just about anyone in a franchise system understands the need for innovation and keeping up with the competition, it's wise to both prepare for that innovation at a foundational level and ensure that it makes sense for the franchise.

Given the frantic adoption of technology by consumers, the new pace of system change can weigh on the franchisor-franchisee relationship.

"I think we're facing a new era of 'needs' for keeping up with what's going on," said Bret Lowell, a partner in the franchise practice at DLA Piper. "The classic pattern there has to do with remodels and renovation of stores, but with the technology revolution that's upon us, we're seeing a lot more in the way of software and IT upgrades and franchising needing to keep up.

A landmark case came out of the Wendy's system when DavCo, a 140-unit franchisee, refused to update its locations or invest in a new point-of-sale system. According to legal documents, DavCo said the updates were in "violation of the franchise agreements, commercially unreasonable and breaches of the implied duty of good faith."

A bitter three-year legal battle ended "without prejudice," and the entirety of the DavCo holdings were acquired by NPC International, Wendy's largest franchisee, which took on the updates.

## Smart and reasonable

The outcome was not ideal for anyone, racking up legal fees and becoming a major distraction. But as Lowell said, such disputes

**"If there is a franchisee out there that a change doesn't work for, forcing it upon that franchisee could be problematic."**

**- Bret Lowell**

can largely be avoided by embedding some good practices into the standard operating procedure.

"I start with the premise that the franchisor needs to roll these things out in a smart and reasonable manner.

"By doing so they keep the dispute to a minimum, and we find that they are rolled

out in a win-win-win sort of way for the benefit of the franchisor and the franchisee and the system as a whole," said Lowell.

The ideal rollout process depends largely on what kind of innovation is involved. Remodels and ongoing updates to keep the actual properties looking fresh among a competitive set are generally baked into the franchise disclosure document in explicit language around timelines and investments.

But for the slew of non-standard or unforeseeable updates at the writing of the FDD, there needs to be some contractual wiggle room for whatever innovation might come along.

"Where we don't have that specific language, franchise agreements have or typically have general language. You'll find language about how you must follow the requirements of our operating manual," said Lowell. "The manual is a tool to roll out changes, as manuals are recognized as legally modifiable in order to keep up with change over the, say, 20-year term of the franchise agreement."

If those updates become disagreements, franchisors have the power to either terminate the franchisee based on not adhering to brand standards, or go to court seeking specific performance to force the issue. Smart brands will also include contract language that will rationalize the updates across the system and stay out of court.

"It comes to a rub because every franchisee is not identical. For example, you may have one franchisee with many units and one with few units. Maybe it makes sense for the large franchisee that can afford it but not the small franchisee that can't afford it," said Lowell.

"Yet the franchisor needs to look at the system as a whole and keep the brand positive and shiny when it comes to consumers

and customers. If there is a franchisee out there that a change doesn't work for, forcing it upon that franchisee could be problematic, so ideally the terms of a compromise upgrade can be worked out."

## 'Use plain English'

Franchisees don't always have a lot of power to make that case, especially when the majority of the system is adhering to the change. But they can watch for certain language in the FDD to see what's ahead.

"Franchisees should look for provisions that allow the franchisor to change fees over the course of the franchise agreement. Any fee that can change should say so in Item 6 of the franchise disclosure document," said Mike Drumm, founder of Drumm Law.

But to keep the system strong and avoid

franchisee unrest, franchisors should try to be clear about what those requirements could be.

"Use plain English," said Drumm. "I have seen many franchise agreements try to tackle technology issues with legalese and use outdated terms like CD diskette or electronic website on the worldwide Internet. Everyone knows technology changes, so be up front about it."

And if a dispute comes up, it's in everyone's best interest to find a resolution as soon as possible.

"When I look at disputes, I see that we could have gotten there six months ago. Every time," said Brian Schnell, partner at Faegre Baker Daniels. "We just weren't having the right conversation."

Change, however, will be constant as consumers crave innovation and a reflection of their daily lives in the franchise industry. That means it's up to both franchisees and franchisors to come together on innovation.

"A big part of this is customers and consumers are demanding innovation," and if a system doesn't innovate, "they won't continue to be relevant. They'll die on the vine," said Schnell. [FT](#)



▲ Bret Lowell of DLA Piper.



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Laura's past experience as a successful entrepreneur, combined with experience as inhouse and outside counsel for a variety of franchise brands, provides her with a unique and valued understanding of her clients' business challenges. She enjoys a reputation for being a strong negotiator, a practical strategist, a creative problem solver, and a tireless advocate for her clients.

Laura advises clients in all legal aspects of structuring, operating and growing their franchise systems, including compliance with state, US and international franchise registration and disclosure laws, franchisee management, enforcing brand standards, terminating non-compliant franchisees, protecting trade secrets, and resolving disputes. Laura is a successful litigator, with arbitration and trial experience in state and federal courts nationwide, including obtaining injunctive relief.

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CARMEN D. CARUSO LAW FIRM tries more franchise and dealership cases to judges, juries or arbitrators than most other law firms and Carmen is now a

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Carmen and his team also serve as outside general counsel to the recently formed independent franchisee association of one of America's most iconic brands.

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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 regularly advises local and national multi-unit operators and emerging franchisors on regulatory, growth and strategic positioning with respect to their franchise systems. Josh also assists franchisees and franchisors with litigation, commercial real estate, franchise succession planning, and all matters relating to the franchise relationship.

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Ritchie's clients benefit from his wealth of experience representing both sector-leading franchisors as well as innovating emerging concepts. From launching their franchise system to navigating a successful business sale, franchisors and multi-unit franchisees alike rely on his timely, practical counsel.

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We believe that the problems facing many corporate clients today can be addressed by taking a preventive approach. We assist clients in identifying potential problems prior to them maturing into litigation. If appropriate, we take advantage of settlement opportunities before litigation.

We also stress risk avoidance services, including the evaluation of client's business, IP and HR practices, policies and procedures and regulatory compliance issues. All of these strategies are designed to maximize recovery and enhance the client's position.

We represent manufacturers, distributors, franchisors, pharmaceutical companies, pharmacies, healthcare providers, retail/food chains and developers.



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- Franchise & Distribution
- Intellectual Property
- Trademarks & Trade Secrets
- Litigation
- Regulatory Compliance
- Labor & HR

# MOHAJERIAN

A PROFESSIONAL LAW CORPORATION

# Newcomers to list draw compliments

**R**aise a glass, a pen or a gavel and meet the new class of Legal Eagles!

These freshmen Legal Eagles were nominated to this esteemed list for the first time this year for a variety of reasons. But one thing binds them all together: a focused franchise practice and positive client outcomes—what more can you ask for?

They said the key to excelling in the franchise space is being invested in each client. That means understanding their goals and giving them real-world options, not undue litigation or painful proceedings. They know above all to be mindful of the client's business and not their own bottom line.

Congratulations to these fledgling Legal Eagles and thanks for the great work. The industry looks forward to your thoughtful presence for years to come.

## Morgan Ben-David AXS Law Group

“Honest, ethical and hard working. I recommend without hesitation.”

—Eric Mausner,  
Founder at Mausner Law Firm

“Morgan is a bright, resolution-oriented counsel who brings her tremendous skills to each client's project and is forward thinking in helping advance her client's goals.”

—Aaron Tandy, partner at Pathman Lewis

## Srijoy Das Archer & Angel

“Srijoy is the go-to person for anyone looking to expand their business to India. He is well-versed in all aspects of franchising, licensing and distribution in India.”

—Debi Sutin,  
partner at Gowling WLG

“Srijoy is a go-to attorney in India for U.S. brands. He was very helpful with our client's expansion into that territory, and is very accessible, attending ABA Forum events and also INTA events.”

—Lewis Cohen,  
client at Mishcon de Reya Group



▲ Morgan Ben-David, of AXS Law Group, one of the 20 new Legal Eagles.

## Bruce Napell Lagarias, Napell & Dillon

“Bruce is a zealous advocate for franchisees and a leader in the California franchise bar community. I never hesitate to ask his opinion about interesting issues of franchise law.”

—Matt Kreutzer,  
lawyer at Howard & Howard

## Jonathan Barber Barber Power Law Group

“Jonathan is an incredible attorney, cares about his clients, and consistently goes above and beyond the call of

duty. His firm is one of our most valuable and trusted partners, and they helped us achieve great success in 2018. We are blessed to have Jonathan as our attorney.”

—Landon Eckles, client at Clean Juice

## 2019 NEW CLASS

<p><b>Theo Arnold</b> <i>Singler</i></p>	<p><b>Srijoy Das</b> <i>Archer &amp; Angel</i></p>	<p><b>Nicole Micklich</b> <i>Urso, Liguori &amp; Micklich</i></p>	<p><b>Peter Siachos</b> <i>Gordon &amp; Rees Scully Mansukhani</i></p>
<p><b>Jonathan Barber</b> <i>Barber Power Law Group</i></p>	<p><b>Edward (Ned) Levitt</b> <i>Dickinson Wright</i></p>	<p><b>Bruce Napell</b> <i>Lagarias, Napell &amp; Dillon</i></p>	<p><b>Briar Siljander</b> <i>Trio Law</i></p>
<p><b>Morgan Ben-David</b> <i>AXS Law Group</i></p>	<p><b>John Forrest</b> <i>Fahey, Shultz, Burzych, Rhodes</i></p>	<p><b>Iris Rosario</b> <i>Gray Plant Mooty</i></p>	<p><b>Ritchie Taylor</b> <i>Manning, Fulton &amp; Skinner</i></p>
<p><b>Jennifer Bippus</b> <i>Drumm Law</i></p>	<p><b>Rob Lauer</b> <i>Haynes &amp; Boone</i></p>	<p><b>William Sentell</b> <i>Polsinelli</i></p>	<p><b>Susan Tegt</b> <i>Larkin, Hoffman, Daly &amp; Lindgren</i></p>
<p><b>Cassandra Da Re</b> <i>Dale &amp; Lessmann</i></p>	<p><b>Faye Lucas</b> <i>Sotos</i></p>	<p><b>Andrew Sherman</b> <i>Seyfarth Shaw</i></p>	<p><b>John Verhey</b> <i>DLA Piper</i></p>
<p><b>Jess Dance</b> <i>Polsinelli</i></p>	<p><b>Leonard Macphee</b> <i>Polsinelli</i></p>	<p><b>Brad Shipe</b> <i>Shipe Dosik Law</i></p>	



## Moye White LLP

[moyewhite.com](http://moyewhite.com)

Lynne Hanson, partner and co-chair of her firm's Franchise and Distribution Group, has more than 20 years' experience advising franchisors on franchise registration and disclosure laws, franchisor-franchisee relations, compliance, international expansion, mergers and acquisitions, general business matters, and trademark issues. Her national practice includes representing franchisors operating domestically and internationally in a variety of market segments, including food service, professional services, retail consumer products and services, real estate, healthcare, and automotive aftermarket. In addition, Lynne has written extensively for franchise law publications and is the President of the Denver Chapter of the Women's Franchise Network and a key organizer of the Denver Franchise Business Network meetings for over a decade. Also, Lynne is Counsel and a Board Member for Cocktails for a Cause, a Denver-based nonprofit organization of women who give to the local community by making much-needed product donations as its core mission.



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- Mergers and Acquisitions
- Private Equity
- Intellectual Property

# Moye White



## Mullin Law, PC

[mullinlawpc.com](http://mullinlawpc.com)

Cheryl is the founding shareholder of Mullin Law, PC, a full service commercial law firm located in the Dallas-Fort Worth area, and leads the firm's practice in areas of franchise, corporate, tax, intellectual property, and commercial litigation. In addition to "Legal Eagle" recognition, Cheryl has been recognized as one of the top franchise lawyers in *International Who's Who Franchise Lawyers* since 2013. She is AV-Rated by Martindale-Hubbell, has been selected by her peers as a Texas *Super Lawyer* since 2012, and has been selected for inclusion in the peer-rated *Best Lawyers in America* since 2007. Cheryl received her J.D. from Widener University School of Law in 1995 and her LL.M. (Taxation) from Southern Methodist University in 2013.



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- Intellectual Property
- Commercial Litigation

 **MULLIN LAW, PC**  
ATTORNEYS & COUNSELORS



## Preti Flaherty

[preti.com](http://preti.com)

Tim Bryant has successfully prosecuted, defended and assisted franchisors across the country in resolving countless disputes related to franchise regulatory, intellectual property and business relationship issues. He has also assisted numerous start up and existing franchise businesses with their relationship agreements and disclosure/regulatory compliance. Tim is repeatedly recognized by *Benchmark Litigation*, *Best Lawyers in America* and *Chambers USA* for his work in the areas of franchise law and commercial litigation.



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- Business Law & Litigation
- Construction Litigation
- Arbitration & Mediation
- Intellectual Property

# PretiFlaherty



## Reger Rizzo & Darnall LLP

[regerlaw.com](http://regerlaw.com)

The Firm's national franchise and hotel practice provides franchise, hospitality and business legal services to franchisors, brands, single and multi-unit owners, area developers, management companies, master franchisees, franchisee associations, and businesses desiring to expand through franchising and distribution systems.

The Firm provides clients with franchise regulatory (FDD's), corporate, merger & acquisition, real estate, leasing, intellectual property, employment, financial, and immigration services, along with day-to-day counseling and dispute resolution services, including mediation and arbitration.

Harris has served on various committees, including the ABA Forum on Franchising Governing Committee, IFA, and county/state bar association Franchise Law Committees. He is a frequent speaker on franchise, hospitality and business-related topics, and serves as a mediator and arbitrator.



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- General Business
- Intellectual Property
- Real Estate/Leasing
- Immigration (EB-5)

**REGER | RIZZO | DARNALL LLP**  
Attorneys at Law



## Shipe Dosik Law LLC

[shipedosiklaw.com](http://shipedosiklaw.com)

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 franchise 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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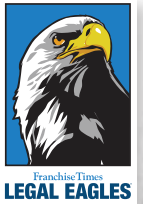


## Shipe Dosik Law LLC

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For over 20 years, Brad Shipe has represented franchisors and franchisees in all phases of their relationship, including preparing disclosure documents, complying with state relationship laws, negotiating franchise agreements, offering counsel on transfers and terminations, and representing parties in lawsuits and alternative dispute resolution.

Brad also has extensive experience in trademark and patent law. He assists clients in developing, maintaining, and expanding their intellectual property portfolios by providing initial clearances, preparing registration and renewal filings, responding to office action letters, negotiating and enforcing co-existence agreements, and prosecuting and defending both opposition and cancellation proceedings and infringement lawsuits.



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- Trademarks & Patents
- Litigation, Arbitration, and Mediation

# SHIPE DOSIK LAW LLC



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## Spadea Lignana

[spadealaw.com](http://spadealaw.com)

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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- Private Equity
- Real Estate

 **Spadea Lignana**  
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## Stark & Stark

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[StarkFranchiseLawBlog.com](http://StarkFranchiseLawBlog.com)

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 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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**STARK & STARK**  
ATTORNEYS AT LAW



## 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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- International Franchising

  
**WARSHAWSKY SELTZER**  
THE FRANCHISE LAW FIRM PLLC



## Whiteford Taylor & Preston L.L.P.

[franbuslaw.com](http://franbuslaw.com)

David L. Cahn, a partner in the firm Whiteford Taylor & Preston L.L.P., is in his 22nd 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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- Intellectual property
- Business transactions
- Real estate leases

 **Whiteford | Taylor | Preston**<sup>LLP</sup>

# Pull a few strings

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## Franchise Times<sup>®</sup> TOP200+



# 10 years on ranking garners kudos

These six franchise specialists join the Hall of Fame this year. Each has been a part of the Legal Eagles list for 10 years and they join a select group of the best franchise legal professionals in the industry. Congratulations to these star lawyers and thanks for being such an integral part of the franchise community.

We talked with a few of our new Hall of Famers; here's what they said:

## Keith Kanouse

### What keeps you working in franchise law?

It's multifaceted, which I like in terms of various disciplines, you have to be aware of so many things. There are all these different businesses and industry segments; it really boils down to being a method of distribution and I'm a big fan of it, provided it's a win-win.

### You've made a point of helping franchisees navigate contracts throughout your career. How?

The vast majority of 'zees are their own worst enemy by not hiring a lawyer and an accountant—you need both.

Most people never really read the contract or the FDD, and when they start they fall asleep. So I concentrate on the FDD and the agreement and I prepare a 15- to 20-page memorandum to the contract, which is in three different colors. The black is the actual language of the addendum changing a certain provision.

### Why don't you think this is a bigger deal to franchisees?

There are lots of people under onerous contracts, but nobody talks to their lawyers because everyone is making money.

### What do you wish would change in the industry?

Back in 2007, I wrote an article that was published in the Franchise Law Journal advocating for a single franchise registry.

It'd make it so much simpler. Let the regulators focus on enforcement so there's not fraud going around instead of nitpicking an FDD that nobody is going to read.



▲ Keith Kanouse, founder of Kanouse & Walker.

## Ryan Palmer

### What's a big trend you're watching?

There's been a lot of interest in franchising as a business model and trying to figure out the best way for private equity to be part of a franchise group.

I don't think anyone has settled on what the best way to do it is. That's part of the fun for the lawyer on the business side; we get to figure it out every time. It largely depends what the franchisee is looking for and what the horizon is for the private equity.

### You started in finance, how did you wind up in franchise law?

My first projects back in the early 2000s were drafting loan documents for franchisees. I've seen franchise

finance get more sophisticated from there; it's been interesting to watch how it changes.

Beyond that, it's really the diversity of issues where you have to understand commercial leasing, commercial law, privacy and IP and all the stuff that goes into advising a franchisor.

### Why do you think you made it into the Hall of Fame?

We work really hard to serve our clients well, obviously, but we work especially hard to be practical and solutions oriented. I think people appreciate that. I think as lawyers we're trained to raise issues, but when we do we always want to offer a solution.

We view ourselves as a counselor and adviser and we want our clients to think of us as that, so we don't want our clients to fear calling us or thinking of us as the phone call they have to make.



▲ Ryan Palmer, principal at Gray Plant Mooty.

## Peter Lagarias

### What got you into franchise law?

I started practicing law as a plaintiff antitrust lawyer for the Federal Trade



## 2019 HALL OF FAME

**Peter Lagarias**  
*Lagarias Law Offices*

**Keith Kanouse**  
*Kanouse & Walker*

**Ryan Palmer**  
*Gray Plant Mooty*

**Rebekah Prince**  
*Barnes & Thornburg*

**Peter Singler Jr.**  
*Singler*

**Timothy J. Bryant**  
*Preti Flaherty*

Commission in the late '70s. Once I got to the commission, the FTC franchising rule was enacted and it went into effect in 1979; I was put in charge of the rule for the West Coast. We wound up bringing the very first case under the franchise rule in the whole country.

It was a great case involving a company that sold franchises, but they were actually an organized crime family. That got me very interested in the whole field of franchising. I went into private practice and within a year I had my own firm.

### What's a big issue you see in the industry?

These agreements are very one-sided and there's a tendency not to negotiate anything with many franchisors. When you have that type of one-sided relationship and they're not being treated the way you'd expect, it's a problematic relationship.

This is not all franchisors, probably not even the bottom 10 or 20 percent where these problems surface.

**You only work with franchisees and their associations—you kind of like fighting for the underdog don't you?**

I've always been that way. I went to Berkeley during the Vietnam War and I clerked for a guy who had a huge monopolization case, he worked for the antitrust division. So yes, I enjoy representing real people with real problems.

We've also been involved, especially me, in seeking legislation. When franchisees cannot negotiate an even-keeled franchise agreement the only way to protect themselves is with legislation.

**Peter Singler**

**Why do you think your clients and peers nominated you for so many years?**

Integrity and results. We provide business and practical advice to complement legal advice. We also believe that every dollar spent with our firm should be an investment that shows a tangible return.

**What's a big trend you're watching?**

There is much more litigation than collaborative work with franchisors, albeit the systems where franchisors/associations are working cooperatively and are doing phenomenal things. Particularly with the significant influx of private equity funds buying franchise systems, getting people to the table to work together—which yields significantly better results for all concerned—is much more of a chore these days.

**How has that changed how franchise systems work?**

The influx of private equity ownership is having a significant impact on franchise systems. It is not uncommon for franchisees to see three or four ownership groups during their franchise term, and even more management teams. Franchise

associations are essential to a healthy system and provide a consistent and stable channel for franchisee issues to be voiced, meaningful feedback to franchisors and to provide systems and support.



▲ Peter Singler, founder of Singler Professional Law Group.

**What would be a positive change for the industry?**

I am ordinarily critical of business regulations. However, there is a great deal of inconsistency in franchise laws, disclosures, etc. This creates a significant administrative burden for franchisors, and not a lot of substantive protections for franchisees. I think it is time for federal legislation to simplify pre-sale disclosures, but also provide basic relationship and pre-sale protections for franchisees.

**Your A to Z Source for Franchise Law.**  
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**Congratulations to our Legal Eagles**



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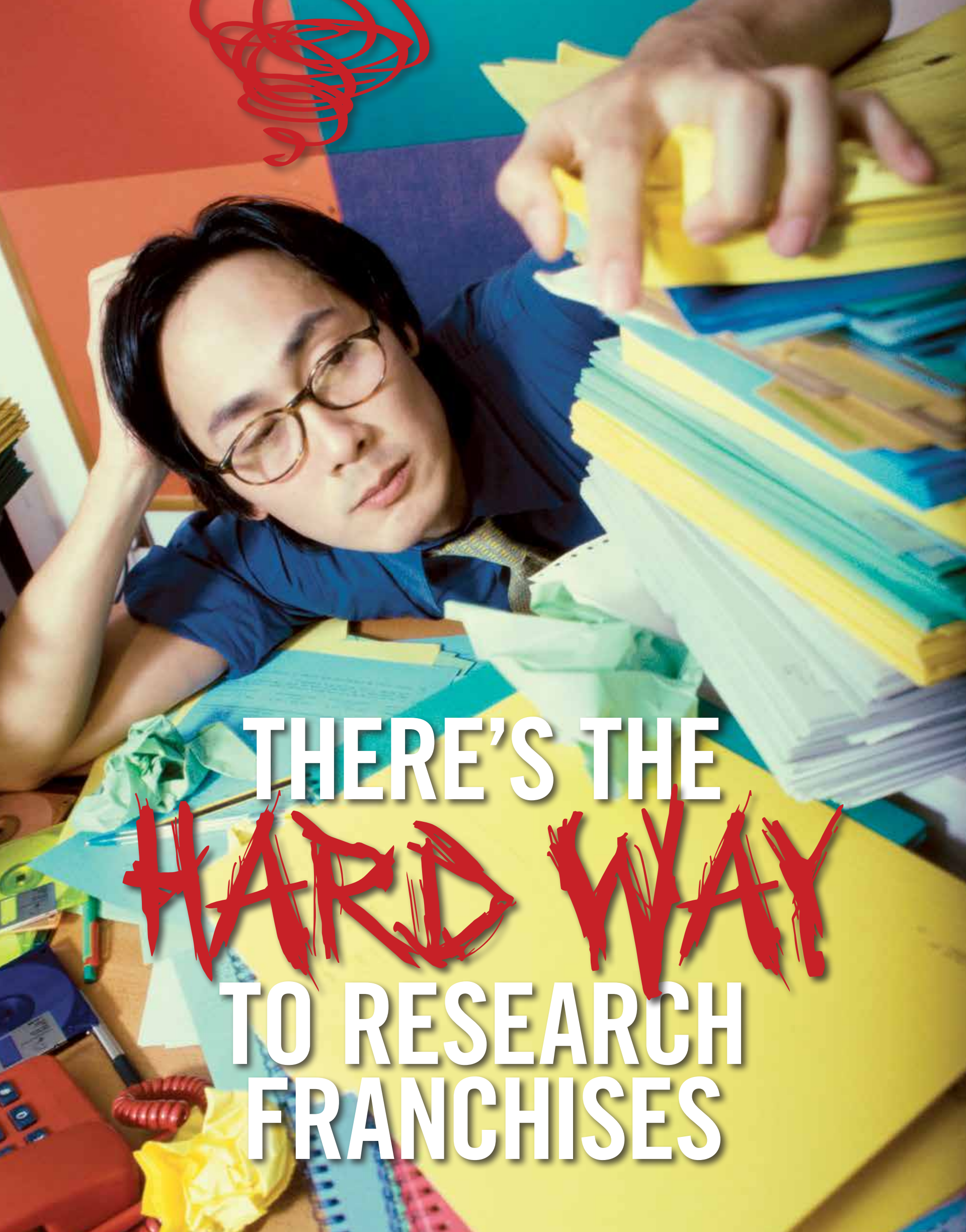


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Try our blog, Franchise Law Update, at [franchiselaw.foxrothschild.com](http://franchiselaw.foxrothschild.com)



THERE'S THE

**HARD WAY**

TO RESEARCH  
FRANCHISES



# Trust, money at core of most conflict

By Nicholas Upton

**B**rands large and small have been making headlines for one unfortunate reason lately: franchisee dissent. From emerging chains up all the way to McDonald's, franchisees have been organizing and calling out their franchisors for issues from costs of goods to marketing and shoddy equipment.

There are simply too many disputes to keep track of them all, but in almost every system, the battle lines are drawn over profits or a lack of trust in brand leadership.

Cases such as Tim Hortons franchisees protesting operational changes, or the association forming in McDonald's to push back against expensive remodels, or the group of Gigi's Cupcakes owners filing suit over price increases are in the headlines. And those are just the big cases.

"These big profile cases in the media, they're the tip of the iceberg. Most franchise systems, a lot of the franchisees don't have the wherewithal to launch these kinds of claims against their franchisors that some of these big systems have," said Joseph Adler.

Adler, a Canadian partner at Hoffer Adler, has explored many of these dissent cases and the legal mess that comes out of them. He said even when franchisees are making good money they'll push back when they see missed potential to make even more.

But disputes also arise from perceived mismanagement of money, as seen in the Tim Hortons class action lawsuit brought by the Great White North Franchisee Association. One of the allegations against the company was that it misused the franchise's marketing fund.

But after an issue, big or small, dissent can become insidious for the entire system.

**"It's hard to find resolution when parties have dug in and want to win the dispute, win the motion, win the lawsuit."**

— Brian Schnell

"Apart of the money, I think it's an issue of trust. It's a breakdown in the system. The franchisor promises something and doesn't follow through or brings something different and the franchisees say, 'We can't trust these people,'" said Adler.

That can quickly spiral and both sides

dig in, causing more damage to the overall system.

"More often than not, in a dispute, there's been a breakdown in communication and the parties have stopped listening to one another and trying to communicate in a collaborative way and they've moved to trying to win," said Brian Schnell, a partner at Faegre Baker Daniels who works mostly with franchisors.

When both sides are looking to win, all the typical franchise work takes on the stink of whatever the actual dispute is.

"It's hard to find resolution when parties have dug in and want to win the dispute, win the motion, win the lawsuit. Everybody does that, the lawyers, the business people, and all the sudden that tends to taint other conversations, other relationships get more difficult. For example, for a field support person to provide support even if they have nothing to do with the dispute," said Schnell.

To avoid such situations, Schnell says it comes down to maintaining collaborative communication, even if the power is still in the hands of the franchisor.

"I'll often hear that doing that takes more time, doing that is more difficult because it's like herding cats. There'll be a dozen excuses why that's more challenging than



▲ Brian Schnell, partner at Faegre Baker Daniels.

in a non-franchise system where the decisions can just come down from on high," said Schnell.

"If a franchisee hasn't been involved, your margin in getting decisions right is so much smaller. If you haven't involved them you better get it right almost all the time. If you've involved them, they'll say, 'You involved us and collectively that didn't work out, let's work on the next one.'"

## Time for an exit?

The legal tactics when both sides have dug in are generally the same as exiting a problem franchisee or pursuing a rescission of a misrepresented contract. If faced with unscrupulous actors, 'zees can often point to misrepresentations or other illegality and work to get out of the contract. But for dis-

putes around strategy or arguably logical innovations, contracts favor the franchisor.

"These agreements are very one-sided and there's a tendency not to negotiate anything with many franchisors. When you have that type of one-sided relationship and they're not being treated the way you'd expect or when you have systems that don't work well for a large number of franchisees with these one-sided contracts, it's a problematic relationship," said Peter Lagarias, senior partner at Lagarias,

Napell & Dillon.

Lagarias, who works exclusively with franchisees, said he's been part of legislative pushes to balance the contract, but in most states franchisees are still on the business end of complex and one-sided contracts. That leaves franchisees leading disputes in the proverbial crosshairs.

"The franchisors divide and conquer. They're taking the approach that they can buy out and settle some of the grievances with some of the key people who are causing trouble," noted Adler. "I see that in smaller systems or midsize systems where the franchisor is picking off some of these leading franchisee dissenters."

One Tim Hortons franchisee serving as president of the Great White North Franchisee Association, for instance, had his contract terminated over sharing sensitive brand information.

The best protection for franchisees is a close read of the FDD and other contracts with a lawyer and talking to current franchisees and those who have left. This can help avoid the surprises that lead to franchise disputes. [FT](#)

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