



Franchise Times

# LEGAL EAGLES®

## Meet the top attorneys in franchising

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case top of mind is priceless—even when the bill comes.

This year, we cover a mix of important legal topics and government action.

We break down the FTC’s review of the Franchise Rule, and report on which state legislatures are following in California’s FAST Act footsteps, on pages 33 and 42.

Find out how attorneys helped their clients pull off major M&A deals, on page 38.

Also check out how these legal pros are assisting clients as they navigate force majeure matters in response to international issues, on

page 48.

Finally, meet the new class of Legal Eagles and find out who made the Hall of Fame, on pages 54-57.

Congratulations to all our Legal Eagles. **FT**

—Matthew Liedke, *Legal Eagles* editor

Articles by Beth Ewen, Megan Glenn, Matthew Liedke, Laura Michaels and Emilee Wentland

Survey and research by Jenny Raines

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# Action at FTC turns to franchising

By Emilee Wentland

The Federal Trade Commission in early 2022 sued failed burger franchise Burgerim, signaling a renewed regulatory focus on franchising as it also reviews and proposes a number of moves that could affect the industry.

Among them are the Franchise Rule, non-compete employment clauses and establishing a private right of action. Some steps could have far-reaching impacts, franchise attorneys say, while others feel essentially obsolete.

The FTC is reviewing the Franchise Rule, which establishes what franchisors are required to disclose to franchisees, and is considering a number of changes. FTC Chair Lina Kahn has made clear she wants to eliminate deceptive practices that negatively impact franchisees, employees and consumers. The commission has been seeking public comments on the matter since 2019.

Shipe Dosik Law attorney Kitt Shipe said the FTC is reviewing rules related to franchising because of franchisors who have violated disclosure laws. She referenced Burgerim and its owner, Oren Loni, who sold more than 1,000 franchises in five years, collected franchise fees and opened few stores. The stores that did open weren't turning the profits promised, she said.

Neither the FTC nor the Franchise Rule guarantee a franchisee's private right of action, but there's nothing that prohibits it outright. An effort is being made in Congress, though, with the American Data Privacy and Protection Act. Introduced in June 2022, the legislation would guarantee U.S. citizens a private right of action, enforceable by the FTC, meaning individuals could sue regardless of the state they live in

"I do think it has sprung from a lot of abuses in franchising, accumulated abuses," Shipe said. "But, the really big one is Burgerim. Members of the different regulatory authorities are being called to answer for what the heck happened. What went wrong? How did that get through and

create hardship for so many franchisees?"

Changes to disclosure rules could put an end to franchisors who—knowingly or unknowingly—misrepresent the brand in their FDDs. "No longer will franchisors be able to just print shoddy FDDs and there not be recourse," Shipe said, speaking on if the bill is passed.

The FTC is also considering proposing an earnings claim rule, which would address misrepresenting potential earnings. Plave Koch attorney David Koch said that rule would likely have a heavier impact on franchising than a non-compete ban. "I think that the mindset of the commissioners right now is to move toward broader, multi-industry rules, as opposed to industry-specific rules," Koch said.

Koch doesn't see Franchise Rule changes going forward until these other rulemaking proceedings are completed. "Even if they were to adopt changes in the Franchise Rule, that's not satisfying because they really want the concepts to apply across the board," he said.

## Non-compete ban wouldn't impact 'zors—yet

In early 2023, the FTC announced a proposed ban on new and existing non-compete clauses, agreements that prohibit employees from moving to a competing brand within a specified time period. As proposed, the ban wouldn't impact the non-competes franchisees sign that restrict them from owning a competing brand or starting their own. The FTC, however, has asked for comment on whether to include franchising in the ban.

Spadea Lignana attorney Tom Spadea, whose firm represents franchisors in regulatory and transactional matters, said he

wouldn't see the point of extending the non-compete clauses to franchisees. In recent years, his clients are focused more on protecting the brand's intellectual property, rather than enforcing non-competes.

When franchise lawyers are writing and reviewing a franchise agreement—a document that typically is good for 10 years—they have to plan for potential amendments to current laws, rather than what's in the law at the time, Spadea said. "We're trying to lean a lot heavier on the intellectual property and the trademarks and operations manual and the non-solicitation actions, as opposed to leaning everything on the non-compete," he said.

"It's a recognition that even if nothing happens at the federal level, a

lot of states are moving in that direction," Spadea continued. "You want a document that you can enforce across the country, because it's a real potential harm to franchisors" if a franchisee signs a deal, spends a few years learning the ins and outs of the business, and then that franchisee abandons the brand and starts a competing business.

A ban on non-competes for franchisors "seems like an overreach, and could really hurt franchising," he said.

Andrew Bleiman, an attorney at Marks & Klein, has worked in all realms of franchise law since he started in the space 20 years ago. In the employment arena, he's seen a "softening of enforceability" in regards to non-compete clauses. In franchising, however, he thinks the ban could be problematic.

"It could potentially lead to franchisees ... operating a competitive business without continuing to be a part of the brand, paying royalties and all that," Bleiman said. If franchisees can own and operate a competing business, franchising as a whole would be negatively impacted. "It can really deteriorate the brand that they were a part of, if it's a lot of people doing that."

Bleiman doesn't think there's a problem regarding non-competes in franchising. For franchisees, "The notion that 'I want to do this alone and not be a part of the brand anymore' usually doesn't come up," he said.

FT



▲ David Koch of Plave Koch



▲ Tom Spadea of Spadea Lignana

# When attorneys are on trend watch

## What is the biggest trend you're watching in 2023, and how are you approaching it?

“ On one hand, private equity is still very much obsessed with franchising. PE firms are acquiring franchisors at every stage of growth and in every industry, and they're paying huge multiples. On the other hand, franchise founders are acquiring other businesses and franchising them. Once they've done it with their first business, they can quickly build out systems and support to launch additional franchises. There are also more niched brands emerging that differentiate themselves ... There's going to be a lot of competition between generalists, but I think the specialized brands are going to own 2023. ”

—Jonathan Barber, *Franchise Law*



“ I'm keeping a close eye on the FTC's proposed non-compete clause rule. Depending on the scope of the rule, if passed, it could eliminate non-competition covenants in franchise agreements, which franchisors rely on to protect their system standards. I have been discussing this possibility with clients actively, to ensure that we are employing additional measures to protect the intellectual property and valuable know-how that define each franchisor's system. ”

—Amanda Dempsey,  
*Saxton & Stump*

“ I anticipate that we will continue to see the consolidation of brands across industries as private equity and multi-brand companies scoop up single-brand franchise systems. In order to prepare clients in light of this landscape, the advice I give is, 'start the way you want to finish.' When establishing the infrastructure for a franchise, considering the exit strategy is key. New franchisors must understand that the steps and procedures that the brand owner is putting in place today will have a direct effect on the potential sale of the brand tomorrow. ”

—Cassandra Da Re,  
*Dale & Lessmann*

“ The biggest trend is the emergence of franchisors seeking new and aggressive growth opportunities after almost three years of pandemic-related efforts to keep their systems together and viable. We are working very closely with our franchisor clients to help strategize and execute plans for growth. ”

—Allan Dick, *Sotos*

“ With interest rates at 10 percent, franchisors are laser-focused on unit-level economics. Being focused on franchisee profitability and cash flow has never been more important. ”

—Ritchie Taylor, *Manning Fulton*

“ Sophisticated service brands! Those successful but not sexy home service-based brands are especially what 'zees are leaning into this year. It's a market shift away from the traditional fitness and food focus toward those recession-resistant brands with quick-to-break-even models that are easily scalable. ”

—Kit Higgs, *Kit Franchise Law*

“ State data privacy statutes and how those regulations fit in with the franchise model and the franchise system's use of data in all aspects of the business, particularly with order processing and marketing/advertising tactics, is critical in today's world. Not being proactive with data collection and retention practices could lead to significant exposure for the franchisor. ”

—Ashley Weis, *Eastman & Smith*



“ Franchise system developers who know little about the core business, convince the founder to franchise, and sell the sizzle rather than the beef. The problem is that the core business may be perfect for an industry professional, but not to the uninitiated franchisee. The developer does not realize this and the franchises are sold to the wrong folks.

We have been successful in negotiating exits for people who should not be in the business, but the franchisor gives so much away in selling commissions, that the franchisor does not have the money to make things right. Ultimately, these will be failed systems, which may disappear with a whisper rather than a bang. ”

—Craig Tractenberg,  
*Fox Rothschild*

“ From a regulatory environment, monitoring how examiners are reacting to franchise questionnaires and acknowledgements. Also, working with clients to ensure their development teams are properly trained. This helps reduce the risk of improper sales practices. We are encouraging clients to do a thorough review of documents to ensure compliance which, in turn, will result in ease and speed of the FDD being registered. ”

—Trish MacAskill, *Akerman*



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Carmen D. Caruso and his firm are sought-after for high stakes litigation and arbitration cases throughout the United States. Nationally recognized for its success in franchise and dealership litigation, and at the negotiating table, the firm's cases have expanded legal protections for franchisees and dealers, and their independent associations, against anti-competitive, abusive, and bad faith or fraudulent conduct.

Carmen's practice extends to all types of business and professional liability litigation, and Carmen is also an Arbitrator for the American Arbitration Association.

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Richard Bayer, a partner with Einbinder & Dunn LLP, leads the firm's franchise regulatory practice. Richard has extensive experience in representing franchisors with the development and growth of their franchise systems domestically and internationally. Services for franchisors include franchise disclosure document preparation and registration, franchise sales compliance and onboarding, corporate structuring, mergers & acquisitions, trademark registration and protection and commercial real estate leasing. Richard also represents franchisees in connection with the acquisition of single-unit, multiple-unit, area development and master franchises, the formation and operation of franchisee associations, as well as matters involving corporate structuring, financing, commercial real estate leasing, and mergers & acquisitions. Richard is a frequent author and speaker on franchise and business law topics.

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Mackenzie L. Dimitri is a partner with Einbinder & Dunn LLP. She splits her practice between litigation, representing franchisor and franchisee clients in trials and other dispute resolution forums throughout the country, and transactional work, which includes an extensive number of complex franchise acquisitions, including for multi-unit franchisees, drafting and negotiating commercial contracts including franchise disclosure documents, and advising on corporate structure, among other things. Ms. Dimitri is a member of the American Bar Association Forum on Franchising, the Women's Caucus for the Forum, the International Franchise Association, IR Global, and other prominent legal organizations.

Ms. Dimitri is a frequent author and presenter, including the ABA article, "Enforcing the Bargain or Buying Your Way Out? The Right to Specific Performance in Franchise Agreements versus the Concept of Efficient Breach," an upcoming article for the IFA on representing franchise systems in their handling of social justice issues, the New York Chapter of the Franchise Deskbook, and a number of magazine and trade journal articles. Ms. Dimitri has also spoken at several franchise conferences, hosted webinars, and taught continuing legal education classes on franchise legal issues, and is a frequent contributor to Einbinder & Dunn's legal blogs.

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Michael Einbinder is a founding member of Einbinder & Dunn LLP. He is a member of the American Bar Association Forum on Franchising, the International Franchise Association and other prominent franchise organizations, as well as a frequent speaker at leading franchise industry events. An author in numerous publications, he has contributed a chapter to the "Franchise Litigation Handbook," and to "Covenants Against Competition in Franchise Agreements," both published by the ABA Forum on Franchising. Michael Einbinder also serves as an arbitrator in franchise cases for the American Arbitration Association.

Einbinder & Dunn handles litigation, arbitration, and mediation nationwide for both franchisors and franchisees (including associations). The firm also represents start-up and established franchisors in franchise development and regulatory compliance.

In addition, Einbinder & Dunn represents multi-unit and single unit franchisees in transactional and real estate matters of all kinds.

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Mark is a founding member and current President of Fahey Schultz Burzych Rhodes PLC. He leads the firm's franchise practice, representing start-ups to Top 300 franchise systems in virtually all aspects of the industry. Mark takes his role in representing franchisors far beyond the traditional preparation and registration of disclosure documents. Mark counsels clients on franchise sales compliance, franchise relationship management, dispute resolution, supply chain contracting, marketing, and operations. For over 30 years, Mark has lived out his passion working with executives and representing businesses looking to expand their business model through franchising.

Mark is a frequent author on franchising topics for the Michigan Restaurant and Lodging Association's magazine and the Franchise Law Journal. He is also nationally recognized by publications such as "The Best Lawyers in America," "Super Lawyers," and is rated "AV" by Martindale-Hubbell - the highest possible rating.

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John is Of Counsel with Fahey Schultz Burzych Rhodes PLC. John has over 30 years of experience representing and advising established and start-up franchisors in all aspects of franchise, business opportunity, and distribution law. He has extensive experience in compliance with federal and state franchise laws, preparing franchise and distribution related documents, the purchase and sale of franchisor companies, the purchase and sale of franchise units, franchisee relationship matters, and advising franchisors on antitrust, price discrimination, supplier, and trade regulation issues, as well as all aspects of franchise dispute resolution. John also has significant experience in other aspects of commercial transactions and business planning.

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Julie Lusthaus	Lusthaus Law	Harrison, NY	ZEE ZOR	T
Trish Macaskill	Akerman LLP	Denver, CO	ZOR	T
Kevin Maher	Baker McKenzie	Dallas, TX	ZOR	T
Gina Malandrino	Cheng Cohen LLC	Chicago, IL	ZOR	T
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# When the lawyers wheel and deal

By Beth Ewen

It was February 22 and David Paris of Paris Ackerman was sweating through the last-minute details of his latest deal, the sale of 64 Rent-A-Center stores awaiting final approvals after two years of work.

But his anxiety wasn't out of typical concern for a client, even though the firm has provided legal services for "hundreds if not thousands" of deals for more than 15 years.

This deal was personal, meaning it came with a large wire transfer of sale proceeds directly to Paris and his law firm partner Mike Ackerman. They are principals in a four-person partnership with Vik Patel and Sanjay Patel, franchisees of three brands now and on the hunt for more.

"It's surreal. We were able to sell it for what we would call a market multiple, and still achieve a life-changing return for all of us," Paris said. "From starting out as franchise attorneys, and then to reach this level of success is pretty remarkable. We're still 45."

That's too young to cut back, both as partners in deals "with our friends in the industry," but also at the firm.

"Maybe at some point in time, we can focus just on clients who are nice to us," he joked, then quickly changed his wording. "This gives us the benefit of being a little bit more discerning."

Rebecca Valo worked for Canadian law firm Cassels, in Toronto, for years before going in-house as an attorney for Yum Brands.

"My time at Yum was amazing," she said, but she was "a team of one" there, meaning the only lawyer, and she missed working across different industries, like at a law firm. "They were knocking at my door" at Cassels, and she came back a year-and-a-half ago.

Her time at Yum comes in handy in her M&A work at Cassels.

"I think it has allowed me to always keep my eye and mind on what the business goals would be in a given M&A deal," she said. Outside attorneys might focus more on legal protections for clients, for example. "When you're inside, you realize it's actu-

ally about growth and meeting targets and building new units and moving the brand forward in a modern way, and all the things that will come along with a capital infusion," she said. Keeping that in mind helps her know "what is truly important and what you can let go from time to time."

Kevin Hein made a big change in September 2020 as the pandemic roared. He was chief development and strategy officer at Alexius, which offered a package of services meant to be affordable for emerging brands. Before that he was a partner at Faegre Baker Daniels in Denver.

"Alexius worked until it didn't, and it didn't when clients needed services beyond what we provided," such as regulatory needs brought on by COVID-19 closures.

Akerman came calling, with more than 700 attorneys in 24 U.S. cities, and recruited Hein to co-chair its franchising and licensing team.

Last year Hein and his team advised mega-franchisee Anil Yadav of Yadav Enterprises on its acquisition of Nick the Greek, a San Francisco-based chain with about 40 restaurants at the time.

"I assembled the team, and we staffed it out of probably five or six different offices. When you're in a big firm, there's a lot of lawyers with great specialties," he said.

Yet Akerman's not among the biggest M&A firms, which "have associates that are almost a thousand dollars an hour. They can't make the economics work for deals under a

hundred million dollars," he said.

"Most franchise deals aren't a billion dollars," he notes, but rather \$10- or \$20 million or for sure under \$250 million. "There is an opportunity for firms like Akerman to come in."

Amy Cheng of Cheng Cohen says her crowning deal last year was NRD Capital's sale of Fuzzy's Taco Shop to Dine Brands Global. The deal was rewarding "from a personal perspective, because we helped NRD acquire the company," in 2016, when

Fuzzy's had 90 units. When Dine bought it had 138 and plans to grow.

"From then on we've served as almost an in-house legal team at Fuzzy's," and worked "side by side with their in-house executives for all these years," she said, including founders Mel Knight and Chuck Bush.

"Mel really kept a lot of the culture at Fuzzy's. I worked with Mel directly very often, and he was an amazing leader, and he looked forward to this transaction and the Fuzzy's

brand to continue on, in good hands."

Cheng routinely works with clients before and after transactions. "Those are my favorite relationships," she said. "It's much more satisfying than if you do the deal and then you say goodbye."

Sometimes those relationships become very personal. Asked how far she'll go to close a deal, she said, "My husband will tell you the craziest thing I've ever done was while in labor having contractions doing a deal. I said, 'Hey, once you give me the epidural, I can do it.' I haven't been able to top that one yet."

Her client said he'll always remember the date their deal closed. Cheng will too—her daughter's birthday. [FT](#)



▲ Rebecca Valo of Cassels



▲ Amy Cheng of Cheng Cohen

**"Most franchise deals aren't a billion dollars" but rather \$10- or \$20 million or under \$250 million.**

— Kevin Hein, Akerman



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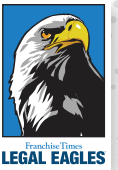
"To see victory only when it is within the ken of the common herd is not the acme of excellence."

— Sun Tzu, *The Art of War*



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Experienced in all facets of franchise law, Matt Kreutzer assists both startup and mature franchisors with developing, protecting, and licensing their franchise and distribution systems. As part of this practice, he counsels companies regarding the laws and regulations pertaining to franchising nationwide, and assists them in creating their contracts, Franchise Disclosure Documents, and other critical operational documents. He also responds to state administrative inquiries and investigations and obtains exemptions and interpretive opinions from regulatory agencies. With his background in franchise litigation, Matt understands the risks inherent in the relationship and works with his clients to limit those risks allowing those franchisors to focus on brand and system growth.

Matt also helps potential franchise buyers understand contracts before signing on the dotted line. If franchise disputes cannot be avoided, Matt assists them in litigation or alternative dispute resolution.

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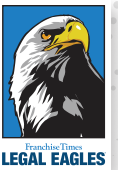
Karl Brandes has assisted franchisors and franchisees as a trial lawyer since 1984 and as a mediator since 1992. His diverse trial lawyer and mediator experience includes state and federal court work in the following areas: petroleum marketing, retail, franchise and other trade regulation; trademark disputes; class actions; environmental; construction for engineer, architect, contractor and developer clients; condominium; ADA accessibility; professional liability for lawyer and engineer clients; non-compete agreement disputes; computer; personal injury, including insurance and self-insured defense; toxic tort; product liability; insurance coverage disputes; and real property, which includes extensive land use work. His experience as a mediator in state (where he is Supreme Court certified in Circuit Civil) and federal court is even more diverse and includes labor and employment disputes. Karl currently serves as the firm's Florida Pro Bono partner.

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Julie Lusthaus has been practicing franchise law for more than 23 years, representing both franchisors and franchisees. Services for franchisors include assisting with the development of franchise programs, corporate structuring, preparation and registration of FDDs, onboarding franchisees, compliance with franchise sales and relationship laws and ongoing operational issues.

Julie also represents single unit, multi-unit and multi brand franchisees as well as master franchisees, guiding them through franchise acquisitions, sales and real estate matters. She has extensive experience assisting sophisticated operators navigating the risks associated with multi-unit and multi-brand development.

Julie is a past member of the Governing Committee of the ABA Forum on Franchising and a past Director of the LADR Division of the ABA Forum on Franchising. She was Program Co-chair for the 2018 ABA Franchise Forum. Julie 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. Julie is also a frequent speaker on franchise issues at events hosted by various organizations including the ABA, Stafford Webinars, the IFA, NYS Bar Association and WCBA.

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Ritchie leads Manning Fulton's franchise practice, providing innovative strategic counsel to franchise systems through all phases of growing and protecting their brands.

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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Erica is a shareholder at Mullin P.C., a full-service commercial law firm located in the Dallas-Fort Worth area. Erica counsels and assists commercial clients in developing new franchise programs, protecting their intellectual property, complying with franchise laws and regulations, and resolving franchise relationship disputes. She also assists individuals evaluate franchise opportunities and assists them with business formation and ownership structuring. Erica also has a thriving real estate practice and frequently represents clients in commercial lease and purchase transactions. Erica received her J.D. from Texas A&M University School of Law in 2018 and her Masters in Dispute Resolution and Conflict Management from Southern Methodist University in 2014.

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# Don't sleep on these notable issues

## What is a legal topic that more people in franchising need to know about?

“The NIL—name, image and likeness—world is exploding in connection with college athletics. Many franchise operations appear anxious to get in on the action but have failed to consider all of the pros and cons including legal ramifications in doing so.”

—Chris Bussert,  
Kilpatrick Townsend and Stockton

“That franchise agreements and development agreements are negotiable. You wouldn't believe how some people, even incredibly sophisticated people, don't take the time to hire competent franchise counsel before they sign franchise agreements and development agreements.”

—Mark Dady,  
Dady & Gardner



“More people should appreciate the limits imposed by our courts on the scope of the duty of good faith. People in franchising (including litigators) often raise allegations of bad faith without connecting those allegations to acts of dishonesty or commercial unreasonableness; and specific contractual duties.”

—Idan Erez,  
Hoffer Adler

“The choices for land control. It is critical that franchisors understand the pros and cons of taking on leases themselves, through affiliates or directly by franchisees and the various options available to them to maximize their interests and minimize their risks.”

—Allan Dick, Sotos

“Last September, NASAA issued a statement of policy regarding the use of franchisee questionnaires in franchise disclosure documents, effective January 1, 2023. Although this is not a rule adopted by the FTC, some states such as California and Maryland have issued opinions regarding the statement of policy, stating that they intend to follow it and implement comments to FDDs consistent with NASAA's policy. Thus, franchisors should be aware of the statement



“Mandatory mediation and arbitration provisions. Although on its face these seem obvious to the franchise attorney, when franchisees come to me with a material issue, they rarely realize that they have to jump through some hoops before they may reach resolution months down the road. I do find these mandatory clauses helpful to both parties, though, since you must exhaust all alternative means to amicably resolve matters before being forced to pop off and file.”

—Kit Higgs,  
Kit Franchise Law

of policy and consult with their legal advisers on whether any changes need to be made to their FDDs.”

—Christina Fugate, Ice Miller

“Franchisees need to understand the impact of leasing when they decide to sell their business. For example, assignment clauses.”

—Michelle Prager,  
Paris Ackerman



“That 23 items and a franchise agreement does not a good FDD make! We are seeing a lot of these ‘creation companies’ who promise to ‘turn you into a franchise’ and they are using poor-quality, outdated FDD templates and then getting them rubberstamped by outside attorneys—oftentimes attorneys who have never even met the franchisor client. The quality of the work product is appalling, and the results can be devastating for brands when they find out the bill of goods they've been sold. If brands are serious about franchising they should be on a first-name basis with their franchise attorney and preferably have them on speed dial, especially in their early years of learning the ins and outs of franchising and its laws/regulations.”

—Drew Chalfant,  
Roda Chalfant Franchise Law

# Attorneys eye ‘Californication’ bills

By Megan Glenn

Several states across the country could follow the lead of California, which passed a law last year with implications for the restaurant industry and raising concerns for franchisors and franchisees.

The Fast Food Accountability and Standards Recovery, or FAST Act, was signed into law in California in September, only to be enjoined early in 2023. Had it been implemented, the legislation would have created a board with the authority to make decisions related to pay, benefits and other aspects of the fast food industry on behalf of the workers.

The big sticking point is the minimum wage, as it would increase to \$22 per hour and go up 3.5 percent per year afterward. Because of the injunction, though, the board hasn’t been created, and the law will be put up for a public referendum vote in the 2024 general election.

Attorney Rochelle Spandorf of Davis Wright Tremaine sees it positioned as a “pocketbook issue.”

“I would not be surprised if the referendum was to defeat the FAST Act,” Spandorf said. “Save Local Restaurants is going to make the pitch that your fast-food tab is going up because this act proposes to increase the minimum wage of fast-food restaurant workers.”

Save Local Restaurants, a coalition led by the International Franchise Association, National Restaurant Association and the U.S. Chamber of Commerce, also argues that the act will damage operators’ ability to hire employees, which would create a ripple effect as they try to compete.

“This council that will apply to set the rules on fair wages and working conditions for fast food workers can make regulations without having to go through the very checks and balances that apply to legislation generally,” Spandorf said. “It’s not going to be transparent to the public what they’re doing, either.”

Spandorf clarified that she’s for workers having better conditions, but the FAST Act

was enacted in a way she finds “objectionable” since it wasn’t done via a union vote.

Since the FAST Act’s introduction, other states have been considering similar bills. Virginia, for one, has House Bill 2478. Lee Plave, an attorney at Reston-based Plave Koch, is not confident in its passing, however.

“I think it has a snowball’s chance in Hades of passing,” he said. “My mother would have used different words, but I’m going to use that.”

Like in California, the Virginia bill would establish a board to set standards for the fast-food industry in the state. Virginia’s political environment, however, is different from California’s, with a Republican governor and Republican-controlled House. Though Plave doesn’t believe the bill will pass, he noted the FAST Act itself has “caused some concern” amongst business owners.

“There’s always tension regarding wages between employees and business owners,” he said.

Minimum wage and safety standards are already set on a federal and state level. In Plave’s opinion, the main challenge isn’t creating these layers of legislation, but actually seeing them through. Dividing opinions and facts when it comes to doing the research would be the biggest challenge to mitigating safety issues and financial needs, he said.

Plave also acknowledged that wages and financial struggles are a real concern. But he doesn’t see the FAST

Act and Virginia’s bill helping the issue.

“Don’t expect business to be the place you solve societal problems,” he said. “It’s not that businesses won’t be part of the solution. It’s that you can’t do it on the backs of

business alone.”

Arizona’s HB 2404, meanwhile, is similar to California’s Franchise Relationship Law, though there are some additions.

“It’s basically the next Californication of Arizona, I would say,” said Dan Warshawsky of Warshawsky Seltzer. His firm, based in Scottsdale, works with franchisors and franchisees.

The bill is designed to protect owners after they purchase a franchise, specifically regarding terminations, contract renewal and transfers. Arizona has no state franchise relationship laws for business format franchises. Warshawsky, who used to live in California, said franchisors should have serious concerns about the bill, as

it could become law thanks to Arizona’s changing political climate.

“I could absolutely see this pass,” he said. “It’s very one-sided, and it’s not really well thought through as far as the impact it could have on franchising.”

He noted one consequence of the FAST Act has been franchisors simply choosing not to franchise in California. The worry for Warshawsky is the same could happen in Arizona, an undesired outcome. He also called out the ability franchisors had to provide relief to franchisees during the pandemic and said if HB 2404 becomes law, franchisors may be hesitant to offer that flexibility in the future.

His advice? Pay attention and stay informed. And of course, bring in skilled legal counsel when appropriate. [FTI](#)



▲ Rochelle Spandorf of Davis Wright Tremaine



▲ Dan Warshawsky of Warshawsky Seltzer

**“I think it has a snowball’s chance in Hades of passing.”**

— Lee Plave,  
Plave Koch, on HB 2478



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Cheryl is the founding shareholder of Mullin P.C., 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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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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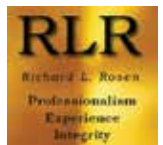
Richard L. Rosen has represented franchisors and franchisees in a wide range of business and legal matters for over 40 years. Mr. Rosen has formed and counseled franchisee associations and franchising entities and has mediated, arbitrated, and litigated on their behavies. His Franchise clients have encompassed virtually all business areas. Mr. Rosen has written and lectured extensively on franchise issues. He is 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 and a member of the CPR Institute for Dispute Resolution Distinguished Panel of Neutrals. Richard is listed the International Who's Who of Franchise Lawyers and International Who's Who of Business Lawyers, Chambers, Super Lawyers, Who's Who in America and recipient of its Lifetime Achievement Award, 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), 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 has been honored by Lawyer Monthly as its Franchise Attorney of the Year in USA. He has received the Global 100 Award as Franchise Attorney of the Year in the USA. Richard and his firm were recently honored as International Franchise Law Firm of the Year by the Global Franchise Organization. In 2018, 2019, 2020, 2021 and 2022 Richard was named one of the 100 Best Attorneys in the World by LegalComprehensive.com.

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Ari Stern zealously advocates for franchise entities and other business clients in high-stakes, sensitive matters throughout the United States and internationally. He specializes in representing franchisors (two-tier and three-tier systems), master franchisees/regional franchisors, franchisees (multi-unit and single unit), and franchisee associations in a wide range of commercial and employment disputes.

Ari's cases often involve claims of unfair and deceptive acts and practices, bad faith, breach of contract, termination/non-renewal, and non-competition. Clients also retain Ari to negotiate and draft agreements, perform internal investigations, advise on risk management, and act as settlement counsel.

Ari is an active member of the American Bar Association - Forum on Franchising. He regularly presents and writes on franchise law issues.

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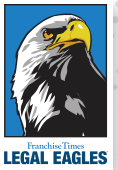
#### Practice Areas:

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- Business Fraud/Unfair Trade Practices Litigation and Arbitration
- Commercial Litigation and Arbitration
- Employment Litigation and Arbitration
- Professional Liability



## Saxton & Stump

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Amanda D. Dempsey, Esq. concentrates her practice on the representation of emerging and middle-market franchise brands. She assists U.S. and international franchisors with all aspects of owning and operating franchise businesses, including the drafting and negotiation of franchise agreements, preparation and registration of franchise disclosure documents, regulatory compliance and dispute resolution.

Amanda also represents franchise clients in mergers and acquisitions and other corporate transactions involving franchise businesses. Amanda has experience handling intellectual property matters as well, including IP asset protections, portfolio management, U.S. and International trademark protection and brand development strategies.

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# About the Legal Eagles project:

This Franchise Times list of star legal professionals in the franchise industry is built with nominations and recommendations from clients, peers and other legal professionals. New Class Legal Eagles are those who are making their debut on the list this year. Hall of Fame Legal Eagles are lawyers who have been named to the list for 10 years. Nominations for the 2024 Legal Eagles open in December.

**Baker McKenzie.**

## Congratulations to our 2023 Legal Eagles!

These Legal Eagles are part of our Chambers and Partners Band 1 Global Market Leaders ranked team, which is proud to advise many of the largest franchise companies in the world on franchising, licensing, distribution, brand expansion and protection, joint ventures, strategic transactions, compliance matters and disputes both domestically and on a global basis.

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# Buyers, sellers be ready to take note

## M&A and consolidation within franchising remain a mega trend; what's your take and how should franchisors/franchisees proceed?

“ Understand who you are acquiring. Make sure due diligence is done to cover potential liabilities for things like worker misclassification or franchisee-employee issues. The deal should not be all about the money. ”

—Marc A. Lieberstein,  
Kilpatrick Townsend

“ There are huge transaction opportunities for franchisors right now. Whether the founders want to retire early and spend some time on a beach or get some cash to fuel their empire-building, the money is out there right now. It may not be around for much longer, so they should take advantage of the current market that heavily favors franchising. ”

—Jonathan Barber, *Franchise.Law*



“ I think it depends on each individual situation and there's no one right answer whether M&A and consolidation is a good thing. We are certainly continuing to see it and closed several transactions last year. But I think whether it's a good thing and should continue depends on the industry, type of product/service being offered, the maturity of the franchise system, and goals of the parties involved. ”

—Christina Fugate, *Ice Miller*

“ From my M&A practice there is no magic to how to proscribe how one should proceed other than with caution, whether as the buyer or seller. It's all about the right time, place and opportunity and making sure the client understands the full terms of the proposed transaction. An M&A transaction can be very costly and the risks may not be realized until a year or so later, if not careful. As they say, the devil is in the details, and the top number isn't always the bottom line number. ”

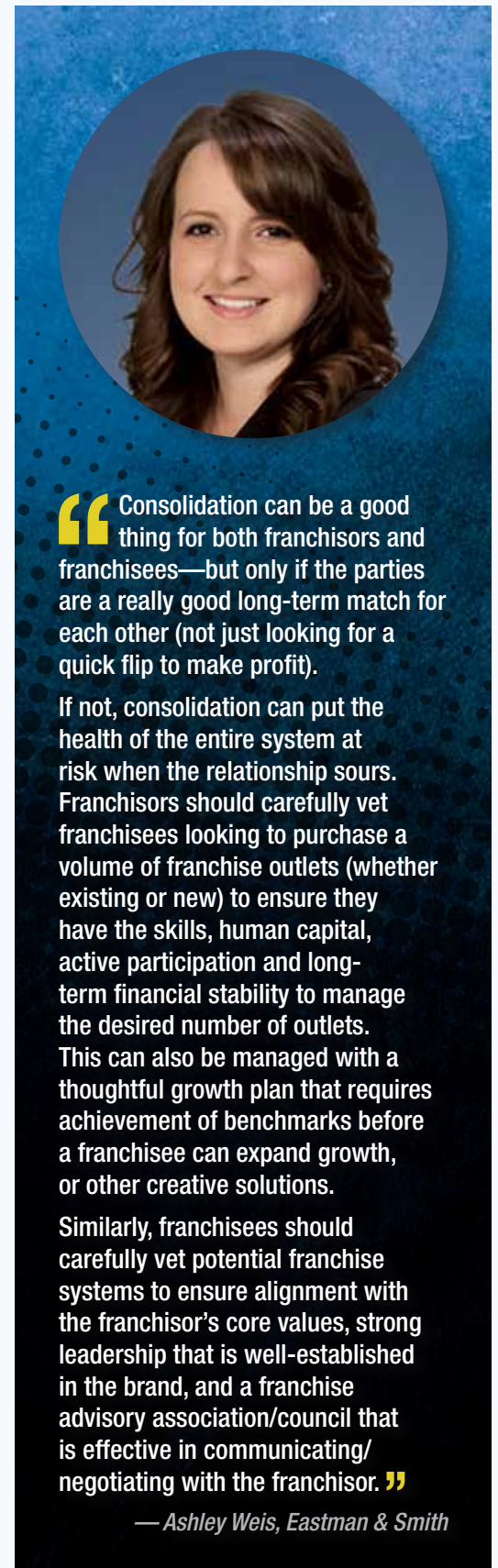
—Harris Chernow,  
Reger Rizzo Darnall

“ Start with the end in mind. Rare is the current franchisor or franchisee who is looking to pass along their business to the next generation in his or her family. They are typically looking to buy, expand and sell. If you are a franchisee, consider the viable exit strategies before you buy into a system. Consult tax, business and legal counsel. If you are a franchisor, create your corporate structure in a way that is tax efficient, provides for ease of sale or incorporating additional investors and spend time and money to develop and maintain a good document management and retrieval system. ”

—Trish MacAskill, *Akerman*

“ Franchisors need to understand that well-capitalized and sophisticated franchisees are not going to accept many of the terms that smaller franchisees are willing (or forced) to accept.

Whether that be the removal of personal guarantees to the narrowing (or elimination) of non-competes, franchisors need to



be ready to work with larger franchisees who want to enter the system. Otherwise, those franchisees will go elsewhere. ”

—Mark Dady, *Dady & Gardner*



## Taft Law

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



Josh is chair of Taft's Franchise and Distribution group. He combines his legal experience, business background, and entrepreneurial skills to help clients grow their businesses with a particular focus on franchising and other licensing opportunities. He is passionate about helping entrepreneurs make smart franchise decisions and prepare for growth and expansion.

Josh and his team have created a specific Franchise Advance Program that helps entrepreneurs assess, convert, and grow through franchising. In addition, he is the creator and host of Franchise Euphoria, a top-rated podcast, and a frequent author and presenter on topics related to franchising.

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- Small Business

# Taft/



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Nicole Liguori Micklich has earned a reputation for successfully representing franchisees at every step of the franchise relationship and in litigation and arbitration with franchisors. Ms. Micklich has represented franchisees in a variety of disputes, including regarding disclosures, compliance issues, royalty payment disputes, other alleged breaches of contract and termination. It is important to Ms. Micklich that her clients' claims are handled efficiently. She regularly represents clients in mediation and has favorably settled numerous cases on behalf of franchisees. Ms. Micklich also advises clients regarding the transfer of franchise agreements and other transactions. Ms. Micklich is a frequent author and presenter on franchise law topics. She co-authored Annual Franchise and Distribution Law Developments 2021 and is a member of the Governing Committee of the American Bar Association Forum on Franchising.

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## West Coast Franchise Law

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Nate Riordan, Founder and Partner of West Coast Franchise Law, operates a highly regarded business and real estate practice serving multi-unit franchisees of first-tier, nationwide brands.

West Coast Franchise Law assists clients in purchasing or selling franchised businesses, real estate sales and acquisitions, leasing, multi-unit development, financing, reviewing franchise documents, negotiating complex multi-year deals with franchisors, and drafting partnership agreements. Nate takes a collaborative approach with his clients, opposing counsel, our staff, and his vendors. Most notably, he and his firm take the time to listen to clients' needs, concerns and goals and understand their businesses and their bigger picture.

Nate was named a 2023 Seattle Super Lawyer, an honor bestowed on only 5% of the lawyers in Washington each year. This is the 5th year Nate has been named a Seattle Super Lawyer for his work in franchise law.

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# WEST COAST FRANCHISE LAW



## Whiteford

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Whiteford is a full-service law firm for businesses with a strong Mid-Atlantic footprint, particularly in Maryland, Virginia, D.C., Delaware, and Pennsylvania; we serve clients regionally, nationally and globally.

David Cahn has more than 25 years of experience providing franchising legal services, often serving as outside general counsel for franchisors and franchisees. For franchisors, his focus includes creating and maintaining franchise disclosure documents and contracts, state registrations, trademark selection, protection and enforcement, and negotiation of agreements with franchisees and other parties. For franchisees, he evaluates franchise opportunities, negotiates with franchisors, and handles business entity formation and management, including agreements between founders and outside investors. Experienced in franchise litigation and arbitration, David often counsels franchisors and franchisees on resolving disputes and claims. He serves on the Membership Committee for the International Franchise Association, and leads IFA's Franchise Business Network for Maryland.

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# Force majeure comes into focus

By Matthew Liedke

The coronavirus pandemic and geopolitical conflicts around the world have made force majeure clauses more important than ever for international franchising, according to legal experts.

In the case of COVID, Alexander Tuneski, an attorney at DLA Piper with 20 years in the franchise space, said many of the agreements he was familiar with already had strong force majeure clauses in them to cover pandemics. The question, Tuneski said, was how they'd work when triggered at such a broad scale.

"International agreements are built to withstand variables," Tuneski said. "Within those agreements, there has been a revisiting of force majeure clauses. Most of them were good, but there is the potential now for looking into whether there's adequate protection if there's unrest or issues that make it difficult to provide services to the franchisee."

Michael Daigle, a partner at Cheng Cohen, also highlighted the importance of force majeure provisions.

"In the majority of the cases, whether it was a multi-unit, direct franchise relationship or a master franchise relationship, development of units was impacted, if not operations themselves," Daigle said. "The process then was similar to what we had to deal with in the U.S. with domestic franchising: looking over the agreement to see if there were force majeure provisions that the franchisee or master franchisee could invoke, and then look at the country-specific restrictions placed on that type of business."

Like in the U.S., Daigle said fitness concepts with operations abroad were heavily impacted during the pandemic.

"The responsibility of the master franchisee is to know what the laws are and how they impact operations of the units," Daigle said. "However, we had to get a lot more involved with those kinds of issues through COVID to help them or the area developers figure out and maneuver the restrictions."

Baker McKenzie attorney Ximena Couret said in China, the pandemic remains a factor in franchise law and "COVID closures are still a very real thing."

"Parties are negotiating very heavily in development deals, and for those deals, COVID is involved. Negotiations are revolving around whether COVID is considered a force majeure event, or if it should be excluded," she continued. "There's a potential in some cases to include pandemics, except for COVID. There's a lot of negotiating on that in Asia, especially in China."

Couret predicts COVID aspects being negotiated into future force majeure clauses will become more commonplace, too, as provisions often evolve after major events.

"When 9/11 happened, force majeure clauses were renegotiated, and they were again after 2008 with the Great Recession," Couret said. "It's continuing today. They're taking in the lessons learned from COVID."

More recent international events, such as supply chain shortages and Russia's ongoing war in Ukraine, have also meant reviewing force majeure sections.

"With the situation with Russia and Ukraine, you also have to revisit things and make sure issues are being addressed, to the point where they even can be addressed in situations like this," Tuneski said. "There's been a lot of understanding on both sides of recent situations, and a lot of efforts have

been made to accommodate local master franchisees to address the lack of a revenue stream or inability to get products."

"Early on, there was a Russia backlash and we had to deal with a lot of brands having to shut down affiliate-owned or

company-owned units, or their franchisees or master franchisees in Russia to create that distance between the brand," Daigle said. "That was probably the biggest impact."

In many of those cases, Daigle said the structure of the deals has been critical.

"We have to work with the master franchisee to either stop or de-brand the operations, but the master franchisees have an interest in not having that happen because their revenue is derived from those operations," said Daigle. "So, in some cases, we just had to look at if there were provisions in the agreement to leverage ways to enforce rights."

As international lawyers navigate these issues in existing juris-

dictions, Couret said they may have to deal with another one in the future.

"There's a digital transformation happening and it's a big trend," Couret said. "Everyone's going online, and now there are several attorneys coming in who focus on cyber security and ransom attacks. They're also working with franchisees and franchisors on who owns important data, and who's safeguarding it."

Couret said that the metaverse, a completely digital space, could even have its own jurisdiction.

"It will be interesting to see what the jurisdiction is going to look like," Couret said. "International law has jurisdictions and the metaverse could be like another jurisdiction. There's still so much yet to figure out, how territories will be decided and how disputes will be resolved."

Couret said some companies are already putting forward prototypes of metaverse experiences, too.

"McDonald's announced they would like to have a combined experience where a customer can go into the shop in the metaverse and have the physical order delivered," Couret said. [FT](#)



▲ Michael Daigle of Cheng Cohen



▲ Ximena Couret of Baker McKenzie



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# Interesting franchise cases abound

## What has been your most interesting case or transaction lately and how did you work through it?

“ Judith LaFleur and John Lovegrove et al vs. Regis Corporation and Supercuts, Inc., as reported in CCH Business Franchise Guide, which we tried on the merits in late 2021. We defeated all of the respondents’ six-figure counterclaims and recovered a seven-figure award, including interest, which was fully paid by early 2022, in an arbitration administered by the American Arbitration Association. ”

—J. Michael Dady, Dady & Gardner

“ Representing a successful franchisee fighting off a new franchisor who wanted to update and change everything in the operator’s units. This was despite the fact that this franchisee was the most successful of the franchisor’s owners. We pushed back, prepared fair and reasonable amendments and encouraged the franchisee to communicate with the franchisor. It worked. ”

—Marc A. Lieberstein, Kilpatrick Townsend

“ I was able to get a franchisee out of their franchise agreement, keep the location and just de-identify. You start with seeing if the franchisor messed up during the franchise selling process. Did the franchisor make an illegal financial performance

representation? Did the franchisor commit fraud or misrepresentation? Was there any undisclosed litigation or bankruptcy? Did the franchisor breach its obligations under the franchise agreement? After this a letter is sent to the franchisor, raising the issues and threatening litigation. Then we work toward a resolution satisfactory to both parties. ”

—Keith Kanouse, Kanouse & Walker

“ My firm represented the franchisee buyer in connection with a multi-unit acquisition that also involved a real estate portfolio. It was extremely difficult to coordinate the two transactions and we had to stay extremely organized. Communication with all parties and setting expectations was the key to working through every issue. ”

—Michael Ackerman, Paris Ackerman

## Congratulations to our 2023 Legal Eagle Honorees



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Akerman helps franchisors, multi-unit franchisees, and franchise suppliers achieve their most important business objectives throughout the Americas and around the world. We collaborate with the world’s most successful members of the franchise community to navigate change, seize opportunities, and help drive innovation and growth.

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“ Seeking rescission for a franchisee who was not given an FDD. Sounds mundane, but the attorney on the other side was an insurance defense lawyer who appeared fixated on litigating this dispute, notwithstanding the pointlessness of it. I got the judge to order mediation, filed a complaint against the franchisor with the FTC and then bluffed the insurance defense lawyer into thinking the FTC might do bad things to his client, leading to a rescission. ”

—Michael Rosenthal,  
Taylor English Duma

“ I am acting for a franchisor against a number of former franchisees who appear to have colluded (i) not to renew their franchise agreements; and (ii) set up competing businesses before their franchise agreements had expired. I am working through it by pursuing litigation against those franchisees on behalf of my client. ”

—Idan Erez, Hoffer Adler

“ We had to address a most serious matter with a franchisor of a martial arts training concept geared to children when one of their franchisees was accused of sexually molesting a child on repeated occasions. We have a lot of experience in crisis management and knew what we had to do at once. We had to swiftly investigate the alleged misconduct, communicate with law enforcement, terminate the franchise at once, deal with the media and communicate with parents of students who attended the training center. ”

—David Kaufmann,  
Kaufmann, Gildin & Robbins

“ My most interesting recent transaction is a relatively small deal that has dragged out for close to 12 months due to the underlying performance of the business significantly changing quarter to quarter from LOI to purchase agreement to closing. Because of this, buyer and seller have been

forced to reevaluate the transaction at various points and make adjustments so that it still made economic sense for both sides. While this is a painful way to get to a closing, it has been relatively common this past year that each side has needed to be flexible and at times creative to keep deals alive. ”

—Brad Cashman,  
Monroe Moxness Berg

“ Although I handle a lot of litigation matters, I really enjoy counseling clients about how to analyze and minimize risk or resolve disputes before they ripen into litigation. I am also presiding over arbitrations as an American Arbitration Association arbitrator. It is fascinating—and educational—to be on the other side of the proverbial bench. It is a real window for the analysis of effective advocacy (or lack thereof). ”

—Bethany Appleby, DLA Piper

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# The metaverse, lease battles & more

By Laura Michaels

**R**ocio Deitz credits a TGI Fridays in her native Peru for sparking her interest in franchise law. Deitz, an attorney at Baker McKenzie, recalled how during a visit home before she started law school, she saw a “huge line for a TGI Fridays” in Arequipa, with a multiple days’ wait for a reservation. Her interest piqued, she began researching the business model.

“I fell in love with franchising and went to school for franchise law,” she said. “It was in the cards. It was meant to be.”

Deitz worked as in-house legal counsel at Pizza Hut before joining Baker McKenzie’s Dallas office in August 2021 and this year is one of 24 attorneys making their Franchise Times Legal Eagle debut. As she considered the next frontier for franchising, it was the metaverse that came to mind.

Just as Microsoft, Alibaba and ByteDance, the parent company of TikTok, have all made significant investments in virtual and augmented reality, franchises such as Wendy’s, Panera and McDonald’s are exploring opportunities to interact with their VR headset-wearing customers. In the Wendyverse, for example, the virtual restaurant world created by Wendy’s, users can play cheeseburger shuffleboard or ride the lazy river around Spicy Nugg Island—and get a promo code to redeem at a real Wendy’s restaurant.

“As counsel for the franchisor, that makes me think, whoa, if there are locations in the metaverse, how is that going to be regulated?” Deitz mused, as a string of other questions followed. “How will the franchise agreement have to evolve for this virtual environment? How will royalties be handled?”

Large franchisors are beginning to look at their franchise disclosure documents, said Deitz, and she is suggesting that franchise agreements include language to cover alternative venues a franchisor can open.

“It’s opening this whole new world,” she said, and franchisors need to be prepared, “rather than cry your sorrows out later because you didn’t protect your brand.”



▲ Rocio Deitz of Baker McKenzie

In her practice at Carmen D. Caruso Law Firm in Chicago, Xiaoyin Cao handles a variety of litigation and transactional work for both franchisors and franchisees. Working with franchisees, “we’ve seen so many of the pitfalls,” she said, and she draws on that experience to help franchisors appreciate the operator perspective.

When conflicts arise, said Cao, it’s often because there’s a communication problem. “The franchisee mentality is, I work with the company, I do my best. I won’t look for a lawyer or arbitrator unless I’m at the end of my rope,” she said. “A lot of times when they arrive at our door, they’re like a patient with a knife in their chest at the ER.”

Cao called out Item 20 information and the influx of private equity owners as sources leading to disputes in recent years. Item 20 of the FDD, which lays out the number of outlets, terminations, transfers, openings, closings and more, likely got a shakeup as a result of the coronavirus pandemic, but not all franchisors handle outlet information equally. Some, said Cao, still list locations that failed but haven’t officially been terminated. “To me, that’s questionable,” she said.

“Some of my franchisee clients, they think the franchisor tricked them about the health of the system,” she continued. The franchisor “might list several hundred locations, but a lot of them are inactive.”

On the private equity front, many firms see the franchise as “just an investment in their portfolio and they don’t care about the individual franchisee,” Cao said. Some firms may make amendments to the franchise agreement that set out more restrictive terms, for example, and franchisees need to understand those possibilities,

she said.

For Natalie Restivo, an associate at Greenspoon Marder, a new policy adopted by the North American Securities Administrators Association has her attention as she watches how state securities

regulators apply the standards for the proper use of questionnaires and acknowledgments in franchise offerings. Many franchisors use acknowledgments and questionnaires in the franchise sales process, she noted, to identify problematic sales practices, for example. NASAA, however, took the stance that they are used by “unscrupulous franchisors ... to try to limit their potential liability to franchisees,” according to the organization.

The new policy prohibits eleven specific statements, including: that the prospective franchisee is qualified or suited to own and operate the franchise; that neither franchisor nor franchise seller has made any representation, including any financial performance representation, outside of or different from the FDD; and that the franchisor bears no liability or responsibility for franchisee’s success or failure.

“I appreciate the reasoning behind it,” said Restivo, whose practice focuses on transactional work for start-up and emerging franchisors. Franchisors, she continued, have used these questionnaires in litigation to combat claims of fraud in financial performance representations, and in their point of view, “they should be able to use this as a filter in their sales process.”

Restivo is counseling her clients to adopt the policy as they update and renew their FDDs. “We don’t know if it’s going to be picked up” by the Federal Trade Commission, she said, but regulators in California, Maryland and Washington have already said they’ll adhere to it.

“How the states respond will be the most interesting, and do they strike down any workarounds,” she said.



▲ Xiaoyin Cao of Carmen D. Caruso Law Firm

*Top Attorneys continued on 56*

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### Hear from the Hall of Famers

Hair salons, restaurants and now a rent-to-own furniture franchise. Karen Abrams has years of experience as a franchisee, and “it has completely shaped everything I do with my practice,” she said. A partner at Paris Ackerman and head of the firm’s commercial real estate leasing practice, Abrams said she brings passion and a tenant’s perspective to her work.

“I’m a tenant, too. I’ve experienced the stress of a default and the joy of an opening,” she said, and she knows the impact lease negotiations can have on the success of a location. “I’m not typically swayed by a lot of the arguments from landlords that, oh you’re only leasing 1,500 square feet” and somehow that makes the lease terms less important. “To the franchisee, it’s everything.”

Abrams is among the 12 new inductees into the Legal Eagles Hall of Fame, a designation awarded to attorneys who have each been on the list for 10 years. She noted

while during the height of the pandemic “we could ask for pretty much anything we wanted” related to lease terms, that flexibility is largely gone.

“From a leasing standpoint, it’s as if COVID never happened,” she said. She has been able to successfully include language that addresses supply chain-related opening delays, but that doesn’t mean tenants can get out of paying rent during that time.

Abrams also pushes for terms that give a franchisee the right to transfer a lease to another franchisee in the system without consent of the landlord. Those negotiations require the landlord to have faith in the franchisor that they’ve done their due diligence on the operator taking over the franchise.

“It’s an uphill battle, but it’s a battle I’m always willing to fight,” she said. “And I’m successful maybe 50 percent of the time.”

She also offered this standing advice: Understand the LOI. Even if the letter of intent is not binding, it’s much harder to renegotiate terms after the fact, she said, and franchisees need to know what kind of guarantees they’re giving.

“Make the broker sit down with you. Make the broker earn their commission,” she said.

Will Woods, who leads Baker McKenzie’s franchise, distribution and global brand expansion team, focuses largely on international

work and said he’s been seeing steady activity even in the face of pandemic-related disruptions.



▲ Karen Abrams of Paris Ackerman

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The hotel industry in particular has moved largely to expansion via franchising versus brand-managed properties.

“It’s driven by hotel brands wanting to expand more rapidly and the fee structure that franchising affords,” he said. Many of the large hotel brands “would not be where they are in terms of development and geographic reach without franchising.”

International development comes with its own set of unique challenges, something franchise brands with locations in Russia experienced following Russia’s invasion of Ukraine last year. Woods worked with many companies on their withdrawal from Russia and said that experience will likely inform how brands handle unrest abroad in the future.

“I think companies will, frankly, be more willing to exit markets where there’s a geopolitical concern, now that there’s a template,” he said. **FT**



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