



# The Franchise Lawyer

American Bar Association • Forum on Franchising

Vol. 14 No. 3 | Summer 2011

## THE FRANCHISE LAWYER

### Editor-in-Chief

Max Schott, II (2013)  
Gray Plant Mooty  
Minneapolis, MN  
[Max.Schott@gpmlaw.com](mailto:Max.Schott@gpmlaw.com)

### Associate Editors

Glenn J. Plattner (2011)  
Bryan Cave  
Santa Monica, CA

Kristy L. Zastrow (2012)  
Dady & Gardner  
Minneapolis, MN

Beata Krakus (2013)  
Greensfelder,  
Hemker & Gale  
Chicago, IL

### Forum on Franchising

American Bar Association  
321 N. Clark Street  
Chicago, IL 60654

### [Message from the Chair](#)

I knew this day would come and, admittedly, I have had a growing sense of mixed emotions as it approached. Today, I write my final Chair's Message as the current Chair of the Forum on Franchising. I am elated, have a certain sense of melancholy and, most overwhelmingly, feel a deep sense of gratitude. [Read more...](#)

### [The ABA Forum on Franchising 2011 Annual Meeting](#)

You do not want to miss the 2011 Annual Forum in Baltimore October 19-21, 2011! Choose from a wide variety of excellent workshops geared toward everyone from beginning franchise lawyers to more seasoned franchise practitioners. Early Bird registration is now open! Also, new to this year's Forum, you will be able to access program materials via a web-based application and other downloadable apps for your iPhone, iPad, Blackberry and Android phones. [Read more...](#)

### [Annual Forum Community Service Event](#)

This year's ABA Forum on Franchising Community Service Event, hosted by the Forum's Women's Caucus, Diversity Caucus and Corporate Counsel Division, will take place Saturday, October 22. Come join your friends and colleagues in helping Baltimore's Moveable Feast prepare nutritious, free meals for people in need. [Read more...](#)

### [Recognize Your Outstanding Colleagues in Franchising!](#)

Ron Gardner, Forum Chair, and Joe Fittante, Forum Chair-Elect, seek your nominations for the following awards which will be presented at the Annual Forum in October: Lewis G. Rudnick Award, Chair's Award for Substantial Written Work or Presentation, Chair's Future Leader Award and Chair's Explorers Award. [Read more...](#)

### [Nominating Committee Report from Ron Gardner, Forum Chair](#)

Under the leadership of Edward Wood Dunham, Immediate Past Chair of the Forum, the Nominating Committee has made nominations for members of the Governing Committee for terms commencing in August 2012. [Read more...](#)

### [Membership Survey: Don't Miss Your Chance to Win a New iPad 2 and Have Your Opinions Heard!](#)

The Forum on Franchising is conducting a survey of its members in anticipation of our upcoming long range planning meeting. If you haven't already done so, please go to the Forum website and complete the survey. While you're welcome to complete it anonymously, if you provide us with your name and contact information, you will be entered into a drawing for the iPad 2. [Read more...](#)

## [Supreme Court Approves Eliminating Class Actions Through Arbitration Clauses](#)

In the recent *AT&T Mobility v. Concepcion* case, the United States Supreme Court enforced an arbitration clause with a class action waiver. The Supreme Court determined that the Federal Arbitration Act ("FAA") prohibits courts from conditioning the enforceability of arbitration agreements on the availability of classwide arbitration procedures. Instead, to comply with the purposes of the FAA, courts should generally enforce arbitration agreements according to their terms, even when the terms require individual (not class) arbitration.

[Read more...](#)

## [Steering Franchisors Through the Mobile Food Truck Trend](#)

Over the past several years, mobile food trucks have made a big comeback, albeit in a new format. While this recent trend was started by gourmet foodie entrepreneurs in Seattle, Los Angeles and New York City, it has quickly expanded throughout the United States and Canada and transitioned from small business owners to large multinational franchisors. As a result, franchise lawyers have started to receive more and more requests from restaurant franchisor clients wondering how they may be able to incorporate this trend into their current franchise offering. [Read more...](#)

## [Possible Ramifications on Franchising of the Supreme Court's Expansion of Employer Liability for the Biases of Non-Decision Makers](#)

The United States Supreme Court, in *Staub v. Proctor Hospital*, held that an employer may be liable for the discriminatory motives of mid-level supervisors, if their unlawful bias could have influenced an unbiased manager making the adverse employment decision. While *Staub* was decided under the Uniformed Services Employment and Reemployment Rights Act and is not likely to affect a franchisor's liability under Title VII and state discrimination laws, it may very well have a significant impact on Section 1981 claims of racial discrimination brought by a franchisee against a franchisor. [Read more...](#)

## [NASAA Model Exemption Project](#)

The NASAA Franchise and Business Opportunity Project Group is soliciting comments until August 1, 2011, on a proposal for Model Exemptions relating to state franchise registration and disclosure laws. [Read more...](#)

## [Attention: California Franchise and Distribution Lawyers](#)

Raise the bar! Take the first step to enhancing your profile and expanding your opportunities by taking the upcoming specialist exam in October and becoming a Certified Franchise and Distribution Law Specialist. The examination is open to lawyers who have been admitted to practice in California for at least three years.

[Read more...](#)

## [Find the ABA Forum on Franchising on Facebook](#)

The ABA Forum on Franchising is on Facebook! Become a fan of our page and stay plugged in to all the news and upcoming events of the Forum. [Read more...](#)

## [New Books from the Forum on Franchising](#)

### [Franchise Litigation Handbook](#)

Dennis LaFiura and C. Griffith Towle, Editors

### [Annual Franchise and Distribution Law Developments 2010](#)

Bethany L. Appleby and William K. Whitner

### [International Franchise Sales Laws - 2010 Supplement](#)

Andrew P. Loewinger and Michael K. Lindsey, Editors


[Back to Top](#)

---

*The Franchise Lawyer* is published by the American Bar Association Forum on Franchising, 321 North Clark Street, Chicago, IL 60654-7598. Requests for permission to reprint should be sent to the attention of Manager, Copyrights and Licensing, via email at [copyright@abanet.org](mailto:copyright@abanet.org) or via fax to 312-988-6030.

The opinions expressed in the articles presented in *The Franchise Lawyer* are those of the authors and shall not be construed to represent the policies of the American Bar Association or the Forum on Franchising. Copyright 2011 The American Bar Association. ISBN: 1938-3231

Your e-mail address will only be used within the ABA and its entities. We do not sell or rent e-mail addresses to



anyone outside the ABA.

[Update your profile](#) | [Unsubscribe](#) | [Privacy Policy](#)

American Bar Association | 321 N Clark | Chicago, IL 60654 | 1-800-285-2221

## INSIDE THIS EDITION

[Message from the Chair](#)

[The ABA Forum on Franchising 2011 Annual Meeting](#)

[Annual Forum Community Service Event](#)

[Recognize Your Outstanding Colleagues in Franchising!](#)

[Nominating Committee Report from Ron Gardner, Forum Chair](#)

[Membership Survey: Don't Miss Your Chance to Win a New iPad 2 and Have Your Opinions Heard!](#)

[Supreme Court Approves Eliminating Class Actions Through Arbitration Clauses](#)

[Steering Franchisors Through the Mobile Food Truck Trend](#)

[Possible Ramifications on Franchising of the Supreme Court's Expansion of Employer Liability for the Biases of Non-Decision Makers](#)

[NASAA Model Exemption Project](#)

[Attention: California](#)



### Message from the Chair

By **Ronald K. Gardner**  
Forum Chair

I knew this day would come and, admittedly, I have had a growing sense of mixed emotions as it approached. Today, I write my final Chair's Message as the current Chair of the Forum on Franchising.

Over the last several months, as we have begun the transition to our Chair-Elect, Joe Fittante, many people have asked me how I feel and whether or not I am going to miss being the Chair of this spectacular organization. As I have tried, often times in vain, to explain my emotions about this transition, I have been forced to examine what the opportunity has meant to me and to at least try and put a label on those mixed emotions. I have found it difficult to choose the right words to describe these emotions. I suppose the best I can say is that I am elated, have a certain sense of melancholy and, most overwhelmingly, feel a deep sense of gratitude, all at the same time.

When I think about all of the accomplishments that we have made in the last several years, I am elated. Starting long before I had the honor of serving as the Chair, the Forum began making significant efforts to expand its reach and further its reputation as the preeminent organization dedicated to the study and education of issues surrounding this unique area of the law.

Since the time I joined the Governing Committee, the insightful members of the Governing Committee, under the leadership of such giants of the franchise community as John Dienelt, Susan Grueneberg, Steve Goldman, Dennis Wieczorek and Jack Dunham, and with the added wise and insightful input of those on the Past Chair's Committee, including Lee Abrams, Rupert Barkoff, Andy Selden, Bret Lowell, Shelley Spandorf and Rick Asbill -- all of whom are so graciously giving of their time when called upon for help -- we have expanded our offerings, including the number of workshops at our Annual Forum, the introduction of teleseminars, the creation of "Fundamentals on the Road" and the publication of more books than I can count. We have expended significant time and effort in working to increase the number of young members who come to our organization and have, we believe, finally found a formula that makes it possible for these members to become active participants over the long term. We have grappled with, and continue to tackle, the challenge of increasing the diversity of our organization. Using the Women's Caucus approach as a model, we have instituted a Diversity Caucus, which has really taken off in the last couple of years.

I am also elated as I look toward the future. Planning for upcoming Forums is well under way, with contracts signed for Annual Meetings in Los Angeles, Orlando, Seattle and New Orleans. I feel certain that under the leadership of Joe Fittante, the Annual Meetings, as well as the Forum as a whole, are poised to continue to grow and, I dare say, exceed the extraordinarily high expectations that we all place on them.

Of course, walking away from having such an integral part in the day-to-day operations of an organization

[Franchise and Distribution Lawyers](#)

[Find the ABA Forum on Franchising on Facebook](#)

[New Books from the Forum on Franchising](#)

## **THE FRANCHISE LAWYER**

### **Editor-in-Chief**

Max Schott, II (2013)  
Gray Plant Mooty  
Minneapolis, MN  
[Max.Schott@gpmlaw.com](mailto:Max.Schott@gpmlaw.com)

### **Associate Editors**

Glenn J. Plattner (2011)  
Bryan Cave  
Santa Monica, CA

Kristy L. Zastrow (2012)  
Dady & Gardner  
Minneapolis, MN

Beata Krakus (2013)  
Greensfelder,  
Hemker & Gale  
Chicago, IL

### **Forum on Franchising**

American Bar Association  
321 N. Clark Street  
Chicago, IL 60654

that is so important does leave me with a sense of melancholy. While I am certainly more than ready to pass the torch and will stand ready, as my predecessors have done for me, to assist Joe in whatever capacity he may ask, there is some sadness in letting go of something that has been such an enormous part of my life over the last couple of years. I truly love this organization, embrace its values and have given everything I have in order to continue to sustain the tradition that those who came before me worked so hard to create. I only hope that people will look back on my tenure as Chair and find, despite the challenges that we faced, including an enormous loss in our financial reserves due to the completely unforeseen debacle in our stockholdings in the initial phases of my role as Chair, that I was a good, wise and fair steward of our resources and our reputation. Time, of course, will tell.

As I mentioned, however, my predominant emotion, as I look toward the future, is one of gratitude. I am so thankful for the opportunity to have led the American Bar Association's Forum on Franchising. I am thankful for those who believed in me early in my tenure on the Governing Committee and gave me increasing opportunities. I am thankful to my partner in many of my adventures on the Forum and now my very good friend, Dennis Wiczorek, for his faith and belief in me. I am thankful to my close friend and immediate predecessor, Jack Dunham, who taught me so much about leadership, responsibility and the importance of decisive action. I am thankful for the deep friendship that I am developing with my successor, Joe Fittante. Just as I learned at the knees of Dennis and Jack, I will continue to strive to be a mentor and helpful resource to Joe as he takes the reins.

[Back to Top](#)

While I have made what I believe to be many lifetime friends among those who have served on the Governing Committee, I am particularly thankful for the friendships that I have forged with Harris Chernow and Deb Coldwell. Harris and I joined the Forum in the same year, had the same view about many things, walked the pathway to leadership together and have been fast friends all along the way. His attention to detail and ability to diplomatically question our direction have contributed immeasurably to many of the wise decisions we have made over the years. I also am extremely indebted to him for his amazing service as our Finance Chair throughout my tenure as the Chair of the Forum. We made, I will say, a pretty good team.

Unlike Harris, Deb is my opposite in almost all respects and, yet, we have become great friends. We have challenged each other on decisions, philosophies and potential program ideas. Through it all, I believe we have brought out the best in each other while forging a wonderful friendship. To Harris, Deb and all others with whom I have had the opportunity to serve on the Governing Committee, thank you.

I am in deep gratitude to my partners, current and former (including my mentor, Michael Dady), all of whom made significant sacrifices to allow me the freedom to spend the time necessary to be the Chair of the Forum -- often to their financial detriment. Between the time diverted from billable matters to the actual out-of-pocket expenditures made to allow me to travel and otherwise discharge my duties, I could not have asked for more support and, frankly, for better friends.

I am indebted to the staff here at Dady & Gardner and, most importantly, to the assistants who have helped me during my tenure on the Governing Committee, including Pat Gits, Jen Heifner, Darcy Hene and Sandee Fields. While you may have never heard their names before, I can assure you that everything I have done has been made better because of their work.

I feel an enormous sense of gratitude to Kelly Rodenberg and those who have assisted her in helping me discharge my duties. I know that we say quite regularly, but perhaps still not enough, how important Kelly is to the function of the Forum on Franchising. Kelly and I have grown up together in this organization, and I want to again let you know how much she means to the day-to-day operations of the Forum. She is good natured, well-organized and very fun to be around. Thank you, Kelly, for everything you have done, and here is to a lifetime of friendship that we can continue to share.

I want to thank my wife, Becky, and my children, Zach and Devyn, along with Zach's wife, Lucia, for the deep support they have provided me over this last decade, as I have been away from home for uncountable hours because of the demands of the Forum. Their unwavering support, devotion and love have made my service possible. I love you all very much and am looking forward to having a little bit more time to spend together.

Finally, I want to thank all of you, the members of the Forum, one last time, for giving me the opportunity of a lifetime. While we do not always see eye-to-eye on policy, the law or how we should approach things, the level of collegiality, support and camaraderie among members of the Forum are things that I will always treasure. Thanks for giving a franchisee lawyer from a small firm the opportunity to lead this group. Our civility, humanity and the "meritocratic" nature of our group sets us apart from many, many other organizations and,

for that, I will forever feel a sense of gratitude.

I look forward to thanking you again in Baltimore, where I will be settling into my new role as a Past Chair!

[Back to Top](#)

---

*The Franchise Lawyer* is published by the American Bar Association Forum on Franchising, 321 North Clark Street, Chicago, IL 60654-7598. Requests for permission to reprint should be sent to the attention of Manager, Copyrights and Licensing, via email at [copyright@abanet.org](mailto:copyright@abanet.org) or via fax to 312-988-6030.

The opinions expressed in the articles presented in *The Franchise Lawyer* are those of the authors and shall not be construed to represent the policies of the American Bar Association or the Forum on Franchising. Copyright 2011 The American Bar Association. ISBN: 1938-3231

American Bar Association | 321 N Clark | Chicago, IL 60654 | 1-800-285-2221



# The Franchise Lawyer

American Bar Association • Forum on Franchising

Vol. 14 No. 3 | Summer 2011

## INSIDE THIS EDITION

[Message from the Chair](#)

[The ABA Forum on Franchising 2011 Annual Meeting](#)

[Annual Forum Community Service Event](#)

[Recognize Your Outstanding Colleagues in Franchising!](#)

[Nominating Committee Report from Ron Gardner, Forum Chair](#)

[Membership Survey: Don't Miss Your Chance to Win a New iPad 2 and Have Your Opinions Heard!](#)

[Supreme Court Approves Eliminating Class Actions Through Arbitration Clauses](#)

[Steering Franchisors Through the Mobile Food Truck Trend](#)

[Possible Ramifications on Franchising of the Supreme Court's Expansion of Employer Liability for the Biases of Non-Decision Makers](#)

[NASAA Model Exemption Project](#)

[Attention: California](#)

## FLYING THE FLAG OF FRANCHISING

### The ABA Forum on Franchising 2011 Annual Meeting REGISTRATION IS NOW OPEN!

### JOIN YOUR COLLEAGUES IN AMERICA'S CHARM CITY: BALTIMORE!

- Attend one of three Wednesday intensives: *The Fundamentals of Franchising*; *Best Practices for Managing Your Franchise Disclosure and Registration Practice*; and *Anatomy of a Franchise Litigation Case*.
- Choose from a wide variety of excellent workshops geared toward everyone from beginning franchise lawyers to more seasoned franchise practitioners.
- Learn to speed read your adversaries and colleagues alike in our plenary: *Speed Reading People: Techniques to Improve Communications and Enhance Outcomes*.
- Visit historic Baltimore. This year's program is set against the stunning views of Baltimore Harbor with a wide variety of shopping, restaurants and attractions available to attendees, including the National Aquarium, Federal Hill, Fort McHenry, the Baltimore Zoo, Camden Yards and Fells Point, all within a short walk or water taxi ride of the Marriott Waterfront.
- Network with in-house and outside franchise counsel and regulators.
- Join us Saturday morning (October 22) for our community service event at Movable Feast, an organization that prepares nutritious, free meals for people in need, or for our day trip to Annapolis, where we will visit the U.S. Naval Academy and explore the beautiful Annapolis Waterfront and local historic marketplace.

**Register Online Now at [www.americanbar.org/groups/franchising/events\\_cle.html](http://www.americanbar.org/groups/franchising/events_cle.html)** to secure the early-bird registration rate and a room at the Marriott Waterfront.

### Rates will increase after July 31, 2011

Questions? Contact [kim.nelson@americanbar.org](mailto:kim.nelson@americanbar.org)

[www.americanbar.org/groups/franchising](http://www.americanbar.org/groups/franchising)

**NEW APPS FOR BALTIMORE!** For the first time at this year's Forum, you will have access to program materials via a web-based application and other downloadable apps for your iPhone, iPad, Blackberry and Android phones. You will be able to create your own personalized event schedule, review speaker biographies, see the roster of fellow attendees and read program materials on your mobile device, eliminating the need to select and print papers or to carry your laptop from workshop to workshop. The Forum Mobile App will launch in October. Check our Facebook page and your email for instructions on how to access our new App!

[Franchise and Distribution  
Lawyers](#)

[Find the ABA Forum on  
Franchising on Facebook](#)

[New Books from the Forum  
on Franchising](#)

---

## **THE FRANCHISE LAWYER**

### **Editor-in-Chief**

Max Schott, II (2013)  
Gray Plant Mooty  
Minneapolis, MN  
[Max.Schott@gpmlaw.com](mailto:Max.Schott@gpmlaw.com)

### **Associate Editors**

Glenn J. Plattner (2011)  
Bryan Cave  
Santa Monica, CA

Kristy L. Zastrow (2012)  
Dady & Gardner  
Minneapolis, MN

Beata Krakus (2013)  
Greensfelder,  
Hemker & Gale  
Chicago, IL

---

### **Forum on Franchising**

American Bar Association  
321 N. Clark Street  
Chicago, IL 60654

[Back to Top](#)

---

*The Franchise Lawyer* is published by the American Bar Association Forum on Franchising, 321 North Clark Street, Chicago, IL 60654-7598. Requests for permission to reprint should be sent to the attention of Manager, Copyrights and Licensing, via email at [copyright@abanet.org](mailto:copyright@abanet.org) or via fax to 312-988-6030.

The opinions expressed in the articles presented in *The Franchise Lawyer* are those of the authors and shall not be construed to represent the policies of the American Bar Association or the Forum on Franchising. Copyright 2011 The American Bar Association. ISBN: 1938-3231

American Bar Association | 321 N Clark | Chicago, IL 60654 | 1-800-285-2221



# The Franchise Lawyer

American Bar Association • Forum on Franchising

Vol. 14 No. 3 | Summer 2011

## INSIDE THIS EDITION

[Message from the Chair](#)

[The ABA Forum on Franchising 2011 Annual Meeting](#)

[Annual Forum Community Service Event](#)

[Recognize Your Outstanding Colleagues in Franchising!](#)

[Nominating Committee Report from Ron Gardner, Forum Chair](#)

[Membership Survey: Don't Miss Your Chance to Win a New iPad 2 and Have Your Opinions Heard!](#)

[Supreme Court Approves Eliminating Class Actions Through Arbitration Clauses](#)

[Steering Franchisors Through the Mobile Food Truck Trend](#)

[Possible Ramifications on Franchising of the Supreme Court's Expansion of Employer Liability for the Biases of Non-Decision Makers](#)

[NASAA Model Exemption Project](#)

[Attention: California](#)

## 2011 ABA Forum on Franchising Community Service Event

### JOIN US!

The Forum's Women's Caucus, Diversity Caucus and Corporate Counsel Division are excited to continue the community service tradition that began eight years ago. The 9th Annual Community Service Event will take place on Saturday, October 22, 2011, from 9:30 a.m. to 1:00 p.m.

This year, Forum members will have the opportunity to help Baltimore's Moveable Feast prepare nutritious, free meals for people in need.

For over 20 years, Moveable Feast has been providing healthy meals to people suffering from HIV/AIDS, cancer or other life-threatening illnesses. Moveable Feast relies on volunteers like us to prep and pack meals for the upcoming week. The event promises to be a meaningful, rewarding and fun experience for everyone, from those who "can't boil water" to master chefs! Moveable Feast is located right in Baltimore, and transportation will be provided by the Forum.

We hope and encourage all Forum members to volunteer, although space will be limited. For those of you who cannot attend, but want to help, please consider making a tax deductible donation to this worthwhile cause, on behalf of your firm or company, yourself or on behalf of someone you know who has suffered from a similar life-threatening illness. You will be able to drop off a check (made payable to Moveable Feast) or cash at the ABA Registration Desk, and we will provide you with the information you will need for your tax return.

[Back to Top](#)

---

*The Franchise Lawyer* is published by the American Bar Association Forum on Franchising, 321 North Clark Street, Chicago, IL 60654-7598. Requests for permission to reprint should be sent to the attention of Manager, Copyrights and Licensing, via email at [copyright@abanet.org](mailto:copyright@abanet.org) or via fax to 312-988-6030.

The opinions expressed in the articles presented in *The Franchise Lawyer* are those of the authors and shall not be construed to represent the policies of the American Bar Association or the Forum on Franchising. Copyright 2011 The American Bar Association. ISBN: 1938-3231

American Bar Association | 321 N Clark | Chicago, IL 60654 | 1-800-285-2221

[Franchise and Distribution  
Lawyers](#)

[Find the ABA Forum on  
Franchising on Facebook](#)

[New Books from the Forum  
on Franchising](#)

---

## ***THE FRANCHISE LAWYER***

### **Editor-in-Chief**

Max Schott, II (2013)  
Gray Plant Mooty  
Minneapolis, MN  
[Max.Schott@gpmlaw.com](mailto:Max.Schott@gpmlaw.com)

### **Associate Editors**

Glenn J. Plattner (2011)  
Bryan Cave  
Santa Monica, CA

Kristy L. Zastrow (2012)  
Dady & Gardner  
Minneapolis, MN

Beata Krakus (2013)  
Greensfelder,  
Hemker & Gale  
Chicago, IL

---

### **Forum on Franchising**

American Bar Association  
321 N. Clark Street  
Chicago, IL 60654



# The Franchise Lawyer

American Bar Association • Forum on Franchising

Vol. 14 No. 3 | Summer 2011

## INSIDE THIS EDITION

[Message from the Chair](#)

[The ABA Forum on Franchising 2011 Annual Meeting](#)

[Annual Forum Community Service Event](#)

[Recognize Your Outstanding Colleagues in Franchising!](#)

[Nominating Committee Report from Ron Gardner, Forum Chair](#)

[Membership Survey: Don't Miss Your Chance to Win a New iPad 2 and Have Your Opinions Heard!](#)

[Supreme Court Approves Eliminating Class Actions Through Arbitration Clauses](#)

[Steering Franchisors Through the Mobile Food Truck Trend](#)

[Possible Ramifications on Franchising of the Supreme Court's Expansion of Employer Liability for the Biases of Non-Decision Makers](#)

[NASAA Model Exemption Project](#)

[Attention: California](#)

## Recognize Your Outstanding Colleagues in Franchising!

### *Lewis G. Rudnick Award*

This award will honor members of the Forum who, over the course of distinguished careers as franchise lawyers, have made substantial contributions to the development of the Forum and to franchise law as a discipline -- by publishing scholarly articles; writing or editing texts; speaking at franchise law meetings; serving the Forum as an officer, committee chair or member, or journal editor; and/or recognized accomplishments as a practicing franchise lawyer -- while comporting themselves in accordance with Lew Rudnick's high standards of professionalism, decency and collegiality. The award has been presented to John R.F. Baer, Rupert Barkoff and Andrew Selden.

### *Chair's Award for Substantial Written Work or Presentation*

This award will recognize a young and/or diverse lawyer who has published a scholarly article in the *Franchise Law Journal* or *The Franchise Lawyer*, or prepared a paper and presented a workshop at a Forum annual meeting. Factors considered will include complexity of subject matter, competency of delivery, feedback from audience or readers, feedback from editors or program directors and the relative experience of the author/presenter.

### *Chair's Future Leader Award*

This award will go to a young and/or diverse Forum member who has demonstrated a substantial commitment to the Forum by undertaking significant leadership efforts, such as mentoring other Forum members or law students interested in pursuing careers in franchise law; working on membership marketing or other outreach efforts; assisting with special projects undertaken by the Forum Governing Committee or a Forum Division; or assisting with the Forum's annual meeting.

### *Chair's Explorers Award*

This award is designed for newcomers to the Forum -- a relatively new Forum member, an ABA member interested in joining the Forum, or a law student currently enrolled in an ABA-accredited law school and a member of the ABA Law Student Division -- who have demonstrated an interest in pursuing a career in franchise law. Nominees will be asked to identify any activities that demonstrate their commitment, including prior attendance at franchise related conferences, contributions to the Forum, goals for future involvement in the Forum and any recommendations for Forum governance.

Any Forum member who is or has been a Governing Committee member or *ad hoc* member (e.g., Division Director, YLD Representative, editor-in-chief of the *Franchise Law Journal* or *The Franchise Lawyer*) is ineligible to receive a Chair's Award.

Please send your nominations for all awards by September 1 to the Forum Chair-Elect, Joe Fittante at [jfittante@larkinhoffman.com](mailto:jfittante@larkinhoffman.com). Joe Fittante and Ron Gardner will choose the recipients, subject to the approval

[Franchise and Distribution  
Lawyers](#)

[Find the ABA Forum on  
Franchising on Facebook](#)

[New Books from the Forum  
on Franchising](#)

---

## **THE FRANCHISE LAWYER**

### **Editor-in-Chief**

Max Schott, II (2013)  
Gray Plant Mooty  
Minneapolis, MN  
[Max.Schott@gpmlaw.com](mailto:Max.Schott@gpmlaw.com)

### **Associate Editors**

Glenn J. Plattner (2011)  
Bryan Cave  
Santa Monica, CA

Kristy L. Zastrow (2012)  
Dady & Gardner  
Minneapolis, MN

Beata Krakus (2013)  
Greensfelder,  
Hemker & Gale  
Chicago, IL

---

### **[Forum on Franchising](#)**

American Bar Association  
321 N. Clark Street  
Chicago, IL 60654

of the Forum Governing Committee, and the awards will be presented at the 34th Annual Forum on Franchising this October in Baltimore, Maryland.

[Back to Top](#)

---

*The Franchise Lawyer* is published by the American Bar Association Forum on Franchising, 321 North Clark Street, Chicago, IL 60654-7598. Requests for permission to reprint should be sent to the attention of Manager, Copyrights and Licensing, via email at [copyright@abanet.org](mailto:copyright@abanet.org) or via fax to 312-988-6030.

The opinions expressed in the articles presented in *The Franchise Lawyer* are those of the authors and shall not be construed to represent the policies of the American Bar Association or the Forum on Franchising. Copyright 2011 The American Bar Association. ISBN: 1938-3231

American Bar Association | 321 N Clark | Chicago, IL 60654 | 1-800-285-2221



# The Franchise Lawyer

American Bar Association • Forum on Franchising

Vol. 14 No. 3 | Summer 2011

## INSIDE THIS EDITION

[Message from the Chair](#)

[The ABA Forum on Franchising 2011 Annual Meeting](#)

[Annual Forum Community Service Event](#)

[Recognize Your Outstanding Colleagues in Franchising!](#)

[Nominating Committee Report from Ron Gardner, Forum Chair](#)

[Membership Survey: Don't Miss Your Chance to Win a New iPad 2 and Have Your Opinions Heard!](#)

[Supreme Court Approves Eliminating Class Actions Through Arbitration Clauses](#)

[Steering Franchisors Through the Mobile Food Truck Trend](#)

[Possible Ramifications on Franchising of the Supreme Court's Expansion of Employer Liability for the Biases of Non-Decision Makers](#)

[NASAA Model Exemption Project](#)

[Attention: California](#)

## Nomination Report

**By Ronald K. Gardner**  
Forum Chair

I am pleased to let you know that Edward Wood Dunham, Chair of the Nominating Committee, has reported the results of the Committee's deliberations.

The nominees are:

Governing Committee (three-year terms, commencing August 2012)

**Deborah S. Coldwell**  
Haynes and Boone, LLP  
Dallas, TX

**Natalma M. McKnew**  
Smith Moore Leatherwood, LLP  
Greenville, SC

**Karen B. Satterlee**  
Hilton Worldwide, Inc.  
McLean, VA

**William K. Woods**  
Baker Botts LLP  
Dallas, TX

Forum members will vote on these nominations during our annual business meeting on Friday, October 21, 2011, in Baltimore, Maryland.

[Back to Top](#)

---

*The Franchise Lawyer* is published by the American Bar Association Forum on Franchising, 321 North Clark Street, Chicago, IL 60654-7598. Requests for permission to reprint should be sent to the attention of Manager, Copyrights and Licensing, via email at [copyright@abanet.org](mailto:copyright@abanet.org) or via fax to 312-988-6030.

The opinions expressed in the articles presented in *The Franchise Lawyer* are those of the authors and shall not be construed to represent the policies of the American Bar Association or the Forum on Franchising. Copyright 2011 The American Bar Association. ISBN: 1938-3231

[Franchise and Distribution  
Lawyers](#)

[Find the ABA Forum on  
Franchising on Facebook](#)

[New Books from the Forum  
on Franchising](#)

---

## **THE FRANCHISE LAWYER**

### **Editor-in-Chief**

Max Schott, II (2013)  
Gray Plant Mooty  
Minneapolis, MN  
[Max.Schott@gpmlaw.com](mailto:Max.Schott@gpmlaw.com)

### **Associate Editors**

Glenn J. Plattner (2011)  
Bryan Cave  
Santa Monica, CA

Kristy L. Zastrow (2012)  
Dady & Gardner  
Minneapolis, MN

Beata Krakus (2013)  
Greensfelder,  
Hemker & Gale  
Chicago, IL

---

### **Forum on Franchising**

American Bar Association  
321 N. Clark Street  
Chicago, IL 60654

American Bar Association | 321 N Clark | Chicago, IL 60654 | 1-800-285-2221



# The Franchise Lawyer

American Bar Association • Forum on Franchising

Vol. 14 No. 3 | Summer 2011

## INSIDE THIS EDITION

[Message from the Chair](#)

[The ABA Forum on Franchising 2011 Annual Meeting](#)

[Annual Forum Community Service Event](#)

[Recognize Your Outstanding Colleagues in Franchising!](#)

[Nominating Committee Report from Ron Gardner, Forum Chair](#)

[Membership Survey: Don't Miss Your Chance to Win a New iPad 2 and Have Your Opinions Heard!](#)

[Supreme Court Approves Eliminating Class Actions Through Arbitration Clauses](#)

[Steering Franchisors Through the Mobile Food Truck Trend](#)

[Possible Ramifications on Franchising of the Supreme Court's Expansion of Employer Liability for the Biases of Non-Decision Makers](#)

[NASAA Model Exemption Project](#)

[Attention: California](#)

## Membership Survey: Don't Miss Your Chance to Win a New iPad 2 and Have Your Opinions Heard!

The Forum on Franchising is conducting a survey of its members in anticipation of our upcoming long range planning meeting. Your opinion is important to us and we need to hear from you to learn how we can continue to grow the benefits of the Forum for its members and ensure the ongoing success of the Forum.

If you haven't already done so, please go to the Forum website at [www.americanbar.org/groups/franchising](http://www.americanbar.org/groups/franchising) and click on the link to our survey. While you're welcome to complete the survey anonymously, if you provide us with your name and contact information, you will be entered into a drawing for the iPad 2.

The survey is open now and will be available through August 15. Go to the Forum's website now and let your opinions be heard!

[Back to Top](#)

---

*The Franchise Lawyer* is published by the American Bar Association Forum on Franchising, 321 North Clark Street, Chicago, IL 60654-7598. Requests for permission to reprint should be sent to the attention of Manager, Copyrights and Licensing, via email at [copyright@abanet.org](mailto:copyright@abanet.org) or via fax to 312-988-6030.

The opinions expressed in the articles presented in *The Franchise Lawyer* are those of the authors and shall not be construed to represent the policies of the American Bar Association or the Forum on Franchising. Copyright 2011 The American Bar Association. ISBN: 1938-3231

American Bar Association | 321 N Clark | Chicago, IL 60654 | 1-800-285-2221

[Franchise and Distribution  
Lawyers](#)

[Find the ABA Forum on  
Franchising on Facebook](#)

[New Books from the Forum  
on Franchising](#)

---

***THE FRANCHISE  
LAWYER***

**Editor-in-Chief**

Max Schott, II (2013)  
Gray Plant Mooty  
Minneapolis, MN  
[Max.Schott@gpmlaw.com](mailto:Max.Schott@gpmlaw.com)

**Associate Editors**

Glenn J. Plattner (2011)  
Bryan Cave  
Santa Monica, CA

Kristy L. Zastrow (2012)  
Dady & Gardner  
Minneapolis, MN

Beata Krakus (2013)  
Greensfelder,  
Hemker & Gale  
Chicago, IL

---

**Forum on Franchising**

American Bar Association  
321 N. Clark Street  
Chicago, IL 60654

## INSIDE THIS EDITION

[Message from the Chair](#)

[The ABA Forum on Franchising 2011 Annual Meeting](#)

[Annual Forum Community Service Event](#)

[Recognize Your Outstanding Colleagues in Franchising!](#)

[Nominating Committee Report from Ron Gardner, Forum Chair](#)

[Membership Survey: Don't Miss Your Chance to Win a New iPad 2 and Have Your Opinions Heard!](#)

[Supreme Court Approves Eliminating Class Actions Through Arbitration Clauses](#)

[Steering Franchisors Through the Mobile Food Truck Trend](#)

[Possible Ramifications on Franchising of the Supreme Court's Expansion of Employer Liability for the Biases of Non-Decision Makers](#)

[NASAA Model Exemption Project](#)

[Attention: California](#)



## Supreme Court Approves Eliminating Class Actions Through Arbitration Clauses

By Karen C. Marchiano\*  
SNR Denton

In *AT&T Mobility v. Concepcion*, 131 S. Ct. 1740 (2011), a 5-4 decision issued April 27, 2011, the United States Supreme Court gave franchisors a tool to help eliminate franchisee class actions: an arbitration clause with a class action waiver.

In *Concepcion*, a consumer contract dispute, the Supreme Court enforced an arbitration clause with a class action waiver. The Supreme Court determined that the Federal Arbitration Act ("FAA"), 9 U.S.C. §§ 1-16 (2006), prohibits courts from conditioning the enforceability of arbitration agreements on the availability of classwide arbitration procedures. Instead, to comply with the purposes of the FAA, courts should generally enforce arbitration agreements according to their terms, even when the terms require individual (not class) arbitration. *Concepcion* was the third installment of the trilogy of Supreme Court decisions enforcing arbitration clauses as drafted: *Rent-A-Center, West, Inc. v. Jackson*, 130 S. Ct. 2772 (2010), *Stolt-Nielsen S.A. v. AnimalFeeds Inc.*, 130 S. Ct. 1758 (2010), and *Concepcion*.

*Concepcion* was a significant reversal of existing California state precedent that made most class arbitration waivers in consumer contracts unconscionable. *Concepcion* held that the FAA preempted the California Supreme Court's decision under *Discover Bank* that class action waivers in arbitration agreements were unconscionable and unenforceable under California law "[w]hen the waiver is found in a consumer contract of adhesion in a setting in which disputes between the contracting parties predictably involve small amounts of damages, and when it is alleged that the party with the superior bargaining power has carried out a scheme to deliberately cheat large numbers of consumers out of individually small sums of money, [such that] the waiver becomes in practice the exemption of the party 'from responsibility for [its] own fraud, or willful injury to the person or property of another.'" *Discover Bank v. Superior Court*, 36 Cal. 4th 148, 162 (2005).

Commentators immediately declared *Concepcion* a "death blow" to consumer class actions. Unless Congress takes action, *Concepcion* may deserve that bold description, at least with respect to class actions between parties with contractual relationships. As of the drafting of this article (July 5, 2011), all eyes are on (1) the proposed Arbitration Fairness Act of 2011 (H.R. 1873 and S. 987) and (2) the Bureau of Consumer Financial Protection (and any actions it takes pursuant to Section 1028 of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act") (Pub. Law 111-203, H.R. 4173)). However, while one or both of these might significantly limit *Concepcion's* effect on consumer disputes, employment disputes and civil rights disputes, neither the currently proposed Arbitration Fairness Act of 2011 nor Section 1028 of the Dodd-Frank Act explicitly targets franchise disputes. Unlike versions of the Arbitration Fairness Act proposed in earlier sessions of Congress, the current proposed Arbitration Fairness Act of 2011 does not explicitly apply to franchise disputes. Similarly, Section 1028 of the Dodd-Frank Act at least facially does not appear to apply to

[Franchise and Distribution Lawyers](#)

[Find the ABA Forum on Franchising on Facebook](#)

[New Books from the Forum on Franchising](#)

## THE FRANCHISE LAWYER

### Editor-in-Chief

Max Schott, II (2013)  
Gray Plant Mooty  
Minneapolis, MN  
[Max.Schott@gpmlaw.com](mailto:Max.Schott@gpmlaw.com)

### Associate Editors

Glenn J. Plattner (2011)  
Bryan Cave  
Santa Monica, CA

Kristy L. Zastrow (2012)  
Dady & Gardner  
Minneapolis, MN

Beata Krakus (2013)  
Greensfelder,  
Hemker & Gale  
Chicago, IL

[Forum on Franchising](#)  
American Bar Association  
321 N. Clark Street  
Chicago, IL 60654

franchise relationships.

In the absence of immediate Congressional action limiting the effect of *Concepcion*, franchisors and franchisees should consider the following three immediate implications of *Concepcion*.

First, *Concepcion* changes the calculus for whether to include an arbitration clause in a franchise agreement. In light of *Concepcion*, franchisors who are concerned about class action exposure should consider an arbitration clause which requires arbitration on an individual basis and bars class actions/arbitrations. Franchisors with existing arbitration clauses that are silent on the class issue should look to *Stolt-Nielsen*, 130 S. Ct. 1758, where the Supreme Court held that parties could not be compelled to arbitrate on a classwide basis where they had not contractually agreed to do so -- silence is not consent to class arbitration.

Second, *Concepcion* may provide an opportunity to compel arbitration in ongoing class actions, including actions that have been proceeding for some time. Numerous litigants are asserting that *Concepcion* was a change in the law, providing a hook for compelling arbitration now. For example, in *In re California Title Ins. Antitrust Litigation*, No. 08-01341, 2011 WL 2559633 (N.D. Cal. Jun 27, 2011), the defendants compelled arbitration in an ongoing matter where discovery had already commenced, asserting that their pre-*Concepcion* conduct had not waived their right to compel arbitration because *Concepcion* changed the law.

[Back to Top](#)

Third, even outside the class arbitration waiver context, *Concepcion* reduces the likelihood of success of unconscionability challenges to arbitration clauses. Because *Concepcion* emphasizes enforcing arbitration clauses as written (even when that leads to results that are undesirable from a public policy perspective), *Concepcion* weakens unconscionability claims generally. Although *Concepcion* explicitly acknowledges that unconscionability, as well as fraud, duress and generally applicable contract defenses, remain valid defenses, it is difficult to understand in what contexts such defenses will succeed following *Concepcion*.

*Concepcion* invalidates state-law rules that stand as an obstacle to the accomplishment of the FAA's objective of enforcement of arbitration agreements according to their terms. In *Concepcion*, the Supreme Court held that requiring classwide arbitration interferes with fundamental attributes of arbitration and thus creates a scheme inconsistent with the FAA. However, the same reasoning could be applied to other aspects of arbitration that are often attacked as unconscionable. Arguably, refusing to enforce arbitration clauses that contain traditionally thought of unconscionable language could "stand as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress," which are "to ensure the enforcement of arbitration agreements according to their terms." 131 S. Ct. at 1748, 1753.


Courts are already beginning to consider how *Concepcion* applies to unconscionability issues outside of the class waiver context. For example, in *Bernal v. Burnett*, No. 10-cv-01917, 2011 WL 2182903 (D. Colo. June 6, 2011), the Colorado district court compelled arbitration and rejected the argument that the adhesive nature of the contracts made the arbitration clauses unconscionable. *Bernal* noted that "there is no doubt that *Concepcion* was a serious blow to consumer class actions and likely foreclosed the possibility of any recovery for many wronged individuals." *Id.* at \*7. Quoting *Concepcion* for the proposition, "States cannot require a procedure that is inconsistent with the FAA, even if it is desirable for unrelated reasons," *Bernal* held that it could not be persuaded by the fact that ordering the parties to arbitration could impact plaintiffs' ability to recover. *Id.* Similarly, in *Arellano v. T-Mobile USA, Inc.*, No. C 10-05663, 2011 WL 1842712 (N.D. Cal. May 16, 2011), the Northern District of California compelled arbitration and recognized that under *Concepcion* states cannot refuse to enforce arbitration agreements based on public policy.

*Concepcion* is less than three months old. Franchise law practitioners will have to continue to watch Congress, the Bureau of Consumer Financial Protection and the courts as they react to this pro-arbitration decision.

\* Karen Marchiano would like to acknowledge Joseph Goode (Kravit, Hovel & Krawczyk SC) and Mary McMonagle (CertaPro Painters, Ltd.), her co-panelists on the "Arbitration in 2011" panel at the 2011 International Franchise Association Legal Symposium, who had many lively discussions with her about the *Concepcion* decision.

[Back to Top](#)

*The Franchise Lawyer* is published by the American Bar Association Forum on Franchising, 321 North Clark Street, Chicago, IL 60654-7598. Requests for permission to reprint should be sent to the attention of Manager, Copyrights and Licensing, via email at [copyright@abanet.org](mailto:copyright@abanet.org) or via fax to 312-988-6030.



The opinions expressed in the articles presented in *The Franchise Lawyer* are those of the authors and shall not be construed to represent the policies of the American Bar Association or the Forum on Franchising. Copyright 2011 The American Bar Association. ISBN: 1938-3231

American Bar Association | 321 N Clark | Chicago, IL 60654 | 1-800-285-2221

## INSIDE THIS EDITION

[Message from the Chair](#)

[The ABA Forum on Franchising 2011 Annual Meeting](#)

[Annual Forum Community Service Event](#)

[Recognize Your Outstanding Colleagues in Franchising!](#)

[Nominating Committee Report from Ron Gardner, Forum Chair](#)

[Membership Survey: Don't Miss Your Chance to Win a New iPad 2 and Have Your Opinions Heard!](#)

[Supreme Court Approves Eliminating Class Actions Through Arbitration Clauses](#)

[Steering Franchisors Through the Mobile Food Truck Trend](#)

[Possible Ramifications on Franchising of the Supreme Court's Expansion of Employer Liability for the Biases of Non-Decision Makers](#)

[NASAA Model Exemption Project](#)

[Attention: California](#)



### Steering Franchisors Through the Mobile Food Truck Trend

By Nicole C. Ibbotson

Morris, Manning & Martin, LLP



By Larry Weinberg

Cassels Brock & Blackwell LLP

Over the past several years, mobile food trucks have made a big comeback, albeit in a new format. Long gone are the days of the silver metal "roach coaches" offering cold sandwiches, hot dogs, fried food and watered down coffee. Today's food trucks are bright, bold and sassy, and offer such delicacies as Korean BBQ, carne asada tacos, Indian roti wraps and specialty cupcakes, along with branded fare. This mobile food trend started several years ago by gourmet foodie entrepreneurs in Seattle, Los Angeles and New York City, but has quickly expanded throughout the United States

and Canada and transitioned from small business owners to large multinational franchisors. More recently, franchise lawyers have started to receive requests from restaurant franchisor clients wondering how to incorporate this trend into their current franchise offerings.

First, franchisors who wish to incorporate mobile food trucks into their franchise system need to consider the business issues and determine what kind of food truck franchise they wish to offer. Will the food truck sell only frozen or prepackaged food or will it act more like a restaurant-on-wheels? Will the food truck target business and school zones (e.g., office complexes, college campuses, construction sites and military bases), or will it be limited to catering or temporary events where groups gather (e.g., fairs, sporting events and concerts)? Will the food truck be operated year-round or on a seasonal basis?

Second, franchisors need to determine whether their mobile food trucks will operate as a "separate but equal" franchise offering or as an add-on license to existing restaurant franchises, similar to catering services or satellite units. If a "separate but equal" franchise concept, franchisees will purchase a food truck franchise separately from a restaurant franchise. There may be separate franchise agreements or the restaurant franchise agreement may be modified to include the food truck franchise option. If an add-on license model is used instead, the food truck franchise will be treated more like a catering, kiosk, satellite or other non-traditional offering. The existing franchisee would execute a food truck franchise addendum similar to a satellite addendum whereby it would be permitted to operate a food truck in conjunction with the franchised restaurant. This option may be preferable if the food truck will only be operated on a seasonal basis or only at special events. Franchisors may find that their treatment of food truck franchises varies depending on where the franchisee is located, since the area within which the truck will operate will dictate the weather and its seasonality, exclusivity restrictions, customer accessibility, permit and licensing requirements, and other local sales limitations. Most notably, local zoning laws can make it very difficult for food trucks to operate by restricting or even prohibiting them from parking and opening for business on city streets or other places.

---

**THE FRANCHISE LAWYER**

**Editor-in-Chief**

Max Schott, II (2013)  
Gray Plant Mooty  
Minneapolis, MN  
[Max.Schott@gpmlaw.com](mailto:Max.Schott@gpmlaw.com)

**Associate Editors**

Glenn J. Plattner (2011)  
Bryan Cave  
Santa Monica, CA

Kristy L. Zastrow (2012)  
Dady & Gardner  
Minneapolis, MN

Beata Krakus (2013)  
Greensfelder,  
Hemker & Gale  
Chicago, IL

---

[Forum on Franchising](#)  
American Bar Association  
321 N. Clark Street  
Chicago, IL 60654

Finally, for any food truck franchise offering, franchisors need to consider a myriad of issues, any or all of which may result in a modified or new form of franchise agreement and franchise disclosure document. Of course, any material changes to the franchise documents must be properly documented and disclosed pursuant to applicable franchise laws. U.S. and Canadian case law on food truck and catering franchises, while sparse, may apply on occasion to issues such as territorial exclusivity and non-compete provisions. At a minimum, franchisors should evaluate the following:

**Initial Investment / Franchise Fees.** One of the commonly cited benefits of a food truck franchise is the lower initial investment, which could for instance be only 30-40% of the investment for a bricks and mortar restaurant franchise. Given the recent recession, reportedly this has been one of the main contributors to the rise in popularity of food trucks. Franchisees do not need as much capital to start a food truck business, since an equipment-fitted truck and commissary (a facility where food, supplies and the truck are stored) are less expensive to acquire than a restaurant with a kitchen and dining area, visible signage and a real property lease. In times when small business loans are hard to come by, this makes for an attractive alternative franchise entry.

Operating food trucks may help franchisees eventually transition to a restaurant franchise since it allows them the opportunity to try out the franchise concept with less risk, access the market quickly, gain insight into where a good site may be prior to committing to a lease, and build up records, data and experience that a lender will find attractive prior to requesting a loan.

Because of the lower initial investment, franchisees may expect to see a lower initial franchise fee, even if, practically speaking, the franchisor is spending the same amount in recruiting, training and assisting the franchisee. Perhaps the franchisor needs to spend even more on these items, as the food truck model of doing business is newer and not as well-tested. So while lowering the initial franchise fee may be an effective recruiting strategy for a newer channel of distribution, there may be little incentive to reduce initial fees. And, certainly, franchisors should not adjust royalties or advertising fees without first evaluating the food truck franchise revenue structure. Because of the relative novelty of the food truck franchise model, the franchisor may need flexibility in the franchise agreement to adjust royalties and advertising fees after its initial food truck franchises are up and running.

[Back to Top](#)

**Territory / Competition.** Franchisors must carefully consider the territory and competition implications in offering food truck franchises. This has the potential to be the thorniest and most legally complicated issue. It also is the most difficult issue upon which to provide specific advice, as there are many possible scenarios and combinations to consider. In particular, systems wishing to add this channel will likely have existing franchisees, with varying forms of franchise agreement, that provide for very different franchisor and franchisee rights. Franchisees may have been granted wholly or partially exclusive territories, while franchisors may or may not have reserved the explicit right to engage or franchise others to engage in the operation of a food truck in close proximity to or in the territory of the "bricks and mortar" units. While mobility is one of the unique benefits for food trucks, there is potential for creating inter-system competition if new franchise models within the system are not carefully structured or existing practices and agreements are not well understood.

In most instances, franchisors will want to have some control over acceptable route plans within the territory. It may be wise for a franchisor to approve an initial route and then contemplate in advance special events or occasions where the franchisee may choose to deviate from such route. The approval process must be flexible enough, however, to allow the franchisee to cope with weather, traffic and event complications.

**Permits / Local Regulations.** One of the most important considerations is the actual ability to stop and operate a food truck in particular locations. Franchisors and franchisees must take into account local regulations and zoning ordinances when developing the route plan and determining the territory, and they must perform due diligence to determine what restrictions exist as to operations (parking, timing, location, proximity to other restaurants, permissible food items, etc.) and what permits and/or licenses are required to operate a food truck and the barriers to obtaining those permits/licenses. For example, New York City caps the number of issued permits (there is reportedly a 10-15 year waiting list) and, recently, a New York State Supreme Court judge, in a non-final disposition, reinforced food truck bans at metered parking spaces, causing a mass exodus of food trucks from Midtown Manhattan. See *Monroy v. City of New York, et. al.*, No. 400357-2011 (N.Y. Sup. Ct. filed Mar. 4, 2011). In Toronto, a jigsaw puzzle of regulations limit what food carts or catering trucks may sell (generally only pre-packaged foods), in addition to strict parking rules. Sacramento has a 30-minute parking limit, and Miami Beach currently prohibits food trucks altogether.

**Timing / Opening.** One of the benefits of food truck franchises may be a shorter development and opening period. While some restaurants may take over a year to open, food trucks could be up and running in a much shorter time period. Franchisors should consider whether the timing requirements for opening should be shortened in the franchise agreement, giving appropriate weight to the time it may take to get local permits and other licenses that are novel for food truck businesses, and that regulatory agencies may not be used to administering such permits and licenses yet.

**Trademarks / Branding / Décor.** Franchisors should consider whether to use their existing trademarks and service marks for the food truck franchise program, or whether to modify or add new trademarks or service marks that highlight the mobile aspect of the food truck (e.g., adding "to go" or "express"). Because the food truck acts as a moving billboard for the franchise brand, franchisors should consider what branding and décor of the truck best promotes the entire franchise system. The franchise agreement should contain appropriate controls such that the franchisor has ultimate approval of and the right to request changes to the appearance of the truck.

**Menu / Other Offerings.** Because of space limitations in a truck, franchisors may need to abbreviate the menu offering for food truck franchisees. It may be advisable to prepare more items in advance, eliminate items that cannot easily be transported or prepared in the truck, or modify food items or delivery systems to accommodate the "take out" aspect of the business. For example, one food truck operator modified its restaurant's signature egg dish by serving it as a transportable breakfast burrito. Consideration also should be given as to whether the franchisee needs to rent or build a commissary in order to properly operate the food truck franchise.

**Quality Control / Audits.** It is important for franchisors to maintain quality control over their food truck franchisees to avoid health code violations and potential reputational damage to the franchise brand. Audit and inspection provisions in existing franchise agreements may need to be modified to specifically allow a franchisor to inspect the truck and commissary. Franchisors should consider GPS auditing controls, which provide great visibility into compliance with acceptable trade routes. Franchisors also should reserve the right to inspect inventory and franchisee records as food trucks tend to deal more with cash purchases which may be more difficult to audit.

[Back to Top](#)

**Operational Requirements.** Franchisors may impose different operational requirements for food truck franchisees than they do for restaurant franchisees. For example, restaurants are typically open year-round and have steady operating hours and business days. However, franchisors may want to offer seasonal food truck franchises depending on the location of the franchisee. During cold winter months or rainy seasons, there are fewer outside events and potential customers are less likely to venture outside to patron a food truck. Franchisors may also want to revisit operating hour requirements, since many food trucks have great success operating in nightclub or bar areas targeting late night crowds.

**Advertising / Social Media.** Depending on whether franchisors treat food truck franchises as a separate or add-on concept, advertising fund contributions may vary. Some franchisors may want to require food truck franchisees to pay the same percentage of revenues as restaurant franchises and contribute their ad fees to the same fund. Other franchisors may want to create a separate food truck advertising program and fund that focuses more on social media and online advertising campaigns, rather than the traditional billboard, radio and TV campaigns. In addition, franchisors may want to consider giving existing restaurant franchisees some relief from ad contribution requirements if they own a food truck, since they will be acting as moving billboards.

Food truck owners are using social media sites and services such as Twitter, Facebook and Foursquare to create a following of loyal customers and to advertise truck routes and daily deals. If a franchisor's franchise agreement does not already address social media, the franchisor should amend it to include protections over ownership, permitted use and post-termination cancellation and/or relinquishment of webpages, accounts and usernames. Franchisors should also maintain control of electronic communications (blogs, tweets and other social media postings) and electronic coupon offerings (e.g., Groupon, ScoutMob, etc.).

**Insurance.** Recently, insurance companies have started to get creative with insurance offerings by developing targeted food truck insurance plans that include commercial automobile, inland marine, consumer food poisoning and other specialty insurance. Franchisors may want to impose different insurance requirements under the food truck franchise agreement or food truck addendum.

It is not clear whether food trucks are just a new trend or whether this business model is here to stay.

Because of the complexity of local regulations and zoning ordinances, it is difficult to quickly roll out food truck businesses in the United States and Canada. However, judging from recent food truck offerings, it is clear that some franchisors think mobile food trucks are more than just a fad.

[Back to Top](#)

*The Franchise Lawyer* is published by the American Bar Association Forum on Franchising, 321 North Clark Street, Chicago, IL 60654-7598. Requests for permission to reprint should be sent to the attention of Manager, Copyrights and Licensing, via email at [copyright@abanet.org](mailto:copyright@abanet.org) or via fax to 312-988-6030.

The opinions expressed in the articles presented in *The Franchise Lawyer* are those of the authors and shall not be construed to represent the policies of the American Bar Association or the Forum on Franchising. Copyright 2011 The American Bar Association. ISBN: 1938-3231

American Bar Association | 321 N Clark | Chicago, IL 60654 | 1-800-285-2221

## INSIDE THIS EDITION

[Message from the Chair](#)

[The ABA Forum on Franchising 2011 Annual Meeting](#)

[Annual Forum Community Service Event](#)

[Recognize Your Outstanding Colleagues in Franchising!](#)

[Nominating Committee Report from Ron Gardner, Forum Chair](#)

[Membership Survey: Don't Miss Your Chance to Win a New iPad 2 and Have Your Opinions Heard!](#)

[Supreme Court Approves Eliminating Class Actions Through Arbitration Clauses](#)

[Steering Franchisors Through the Mobile Food Truck Trend](#)

[Possible Ramifications on Franchising of the Supreme Court's Expansion of Employer Liability for the Biases of Non-Decision Makers](#)

[NASAA Model Exemption Project](#)

[Attention: California](#)



### Possible Ramifications on Franchising of the Supreme Court's Expansion of Employer Liability for the Biases of Non-Decision Makers

By Daniel Kaplan

Caruso Kaplan LLC

On March 1, 2011, the United States Supreme Court, in *Staub v. Proctor Hospital*, 131 S. Ct. 1186 (2011), held that an employer may be liable for the discriminatory motives of mid-level supervisors if their unlawful bias could have influenced an unbiased manager making the adverse employment decision. Although the *Staub* decision was decided under the Uniformed Services Employment and Reemployment Rights Act, 28 U.S.C. § 4311 ("USERRA"), this article analyzes what ramifications *Staub* may have on a franchisor's potential liability under Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e, et seq. ("Title VII"), 42 U.S.C. § 1981 ("Section 1981"), and state franchise discrimination laws. While *Staub* is not likely to affect a franchisor's liability under Title VII and state discrimination laws, it may very well have a significant impact on Section 1981 claims of racial discrimination brought by a franchisee against a franchisor.

#### The *Staub* Case

*Staub* was a member of the United States Army Reserve while employed as an angiography technician at Proctor Hospital. As a member of the Reserves, he was required to attend drills one weekend per month and to train full time for two to three weeks a year. Two supervisors, including *Staub's* immediate supervisor, were alleged to be openly hostile to *Staub's* military obligations. *Staub's* immediate supervisor allegedly scheduled *Staub* for additional shifts without notice so that he would "pa[y] back the department for everyone else having to bend over backwards to cover [his] schedule for the Reserves." *Staub* at 1189. *Staub's* immediate supervisor also supposedly informed a co-worker that *Staub's* "military duty had been a strain on th[e] department" and asked the co-worker to help "get rid of him." *Id.*

In January 2004, *Staub's* supervisor issued *Staub* a "Corrective Action" disciplinary warning for purportedly violating a company rule requiring him to stay in his work area whenever he was not working with a patient. The Corrective Action also included a directive requiring *Staub* to report to his supervisors when he had no patients and the angio cases were completed. *Staub* claimed the justifications for the Corrective Action were false for two reasons. First, the company rule invoked by his supervisor did not exist. Second, if such rule did exist, *Staub* did not violate it.

In April 2004, a co-worker of *Staub* complained to Proctor's vice president of human resources and Proctor's chief operating officer regarding *Staub's* alleged frequent unavailability and abruptness. A few weeks later, one of the supervisors, believed to be hostile to *Staub's* military commitments, informed the vice president of human resources that *Staub* had again left his desk without informing a supervisor in violation of the earlier Corrective Action. The vice president of human resources, relying on this recent accusation and after

[Franchise and Distribution Lawyers](#)

[Find the ABA Forum on Franchising on Facebook](#)

[New Books from the Forum on Franchising](#)

## THE FRANCHISE LAWYER

### Editor-in-Chief

Max Schott, II (2013)  
Gray Plant Mooty  
Minneapolis, MN  
[Max.Schott@gpmlaw.com](mailto:Max.Schott@gpmlaw.com)

### Associate Editors

Glenn J. Plattner (2011)  
Bryan Cave  
Santa Monica, CA

Kristy L. Zastrow (2012)  
Dady & Gardner  
Minneapolis, MN

Beata Krakus (2013)  
Greensfelder,  
Hemker & Gale  
Chicago, IL

### Forum on Franchising

American Bar Association  
321 N. Clark Street  
Chicago, IL 60654

speaking to another employee and reviewing Staub's personnel file, decided to terminate Staub's employment. The termination notice stated that Staub had ignored the directive issued in the earlier Corrective Action.

Staub challenged his termination through Proctor's grievance process, asserting that his immediate supervisor fabricated the allegations underlying the Corrective Action due to hostility toward his military obligations. The vice president of human resources did not follow up with Staub's immediate supervisor about this assertion and stood by her decision.

Staub then sued Proctor under USERRA alleging that his termination was motivated by hostility to his obligations as a military reservist. An employer violates USERRA if the employee's military status is "a motivating factor" in the employer's denial of "initial employment, reemployment, retention in employment, promotion, or any benefit of employment," unless the employer can prove that the action would have been taken in the absence of such membership. *Id.* at 1190-91 (citing 38 U.S.C. § 4311(c)). Staub's contention was not that the vice president of human resources had any hostility to his military membership, but that the supervisors did, and that their actions influenced the ultimate employment decision. The jury in the federal district court case determined that Proctor's decision was motivated by Staub's military status, and it awarded him \$57,640. *Id.* at 1190. The Seventh Circuit reversed, holding that Proctor was entitled to judgment as a matter of law. *Id.* (citing *Staub v. Proctor Hospital*, 560 F.3d 647 (7th Cir. 2009)).

[Back to Top](#)

The Seventh Circuit observed that Staub had brought a "cat's paw" case, meaning that he sought to hold his employer liable for the animus of a supervisor who was not charged with making the ultimate employment decision. *Id.* (citing *Staub*, 560 F.3d at 659). Under Seventh Circuit precedent, a "cat's paw" case could not succeed unless the non-decision maker exercised such "singular influence" over the decision maker that the decision to terminate was the product of "blind reliance." *Id.* In Staub's case, however, the vice president of human resources looked beyond what Staub's supervisors said, relying in part on her conversation with a co-worker and a review of Staub's personnel file.

The Supreme Court reversed. The Court's analysis begins by noting that the central difficulty is construing the phrase "motivating factor in the employer's action." The Court rejected the application of general agency principles to ascertain liability as providing no clear guidance. Specifically, the supervisors could not be liable under USERRA because their acts of discriminatory animus -- the making of the reports -- were not a denial of "initial employment, reemployment, retention in employment, promotion, or any benefit of employment," as required under USERRA. *Id.* at 1191. The Restatement of Agency also suggests that the malicious mental state of one agent (either of the supervisors) generally cannot be combined with the harmful action of another agent (the vice president of human resources) to hold the principal (Proctor) liable for a tort that requires both. *Id.* (citing Restatement (Second) Agency §275, Illustration 4 (1958)). Some cases involving federal torts apply this rule, and others do not.

The Supreme Court further noted that cases addressing whether discrimination was a "factor" or a "causal factor" are inapplicable because USERRA requires that military status be a "motivating factor" in the adverse employment action. *Id.* at 1192. The "cat's paw" analysis is inappropriate because "singular influence" and "blind reliance" are too high a burden, given that the statute requires that discrimination merely be a "motivating factor." *Id.* The Court then articulated the analysis to be used to assess liability and held that if a supervisor performs an act motivated by antimilitary animus that is *intended* by the supervisor to cause an adverse employment action, and if that act is a *proximate cause* of the ultimate employment action, the employer is liable under USERRA. *Id.* at 1194. Proximate cause only requires "some direct relations between the injury asserted and the injurious conduct alleged" and excludes only those "link[s] that are too remote, purely contingent or indirect." *Id.* at 1192. The employer may be liable, however, only when the supervisor acts within the scope of his or her employment, or when the supervisor acts outside the scope of his or her employment, but liability is imputed to the employer under traditional agency principles.

### Implications for Franchising

When a franchisor terminates a franchise relationship, the key issue often is whether there is "good cause" as that term is defined under the applicable contract provisions or franchise laws. If the franchisee believes that a termination was based in part on unlawful discrimination, the franchisee may consider bringing claims under Title VII, Section 1981, or state franchise anti-discrimination statutes or regulations.

Title VII prohibits employment discrimination "because of . . . race, color, religion, sex, or national origin" and provides that such discrimination is established when one of those factors "was a motivating factor for any

employment practice, even though other factors also motivated the practice." 42 U.S.C. § 2000e-2(a), (m). It is likely that the standard for determining liability established by *Staub* will be extended to Title VII cases. The Supreme Court in its analysis and reasoning cited the statutory similarity of the purpose and language in Title VII and USERRA. See *Staub* at 1191. As to franchisor liability, however, this may not be too impactful because Title VII is an employment statute, which does not apply directly to the franchisor/franchisee relationship. Rather, franchisor liability under Title VII typically arises under joint employer or vicarious liability scenarios for the acts of the franchisor's franchisees.

The *Staub* decision may, however, have a significant impact related to Section 1981 claims of racial discrimination. Section 1981 is a statute that was first adopted in the Reconstruction-era for the purpose of providing all people, including freed slaves, with the same rights as white people in the making, enforcing, performing, modifying and terminating of contracts. Unlike Title VII, it applies directly to franchise contracts. See, e.g., *Elkhatib v. Dunkin Donuts, Inc.*, 493 F.3d 827 (7th Cir. 2007). Section 1981 claims are often considered more attractive than Title VII actions (which also cover race) because there is a longer statute of limitations (four years versus one year), there is no requirement to file a charge with the Equal Employment Opportunity Commission or administrative agencies before bringing a claim, there is no requirement for a minimum number of employees, and there is no limit on compensatory and punitive damages. See Laurie Wardell and Michael K. Fridkin, *Title VII and Section 1981: A Guide for Appointed Attorneys in the Northern District of Illinois*, CHICAGO LAWYERS' COMMITTEE FOR CIVIL RIGHTS UNDER LAW (March 2006).

Section 1981 franchise claims, however, have been difficult to prove, particularly when, as often [Back to Top](#) is the case, the person making the adverse franchise decision -- such as a termination -- is not the same person that reported the defaults. Even though courts and arbitrators may allow "a mosaic of evidence" to establish racial bias, plaintiffs still often have the high burden of showing that the decision maker without, the discriminatory animus, was acting upon "blind reliance" or the "singular influence" of the biased employee. See *Kennedy v. Schoenberg, Fischer & Newman, Ltd.*, 140 F.3d 716, 724-25 (7th Cir. 1998). As such, even when a default notice is issued because of racial animus, a franchisor often avoids liability by merely conducting some type of independent investigation.


It is not a given, however, that the *Staub* decision will be extended to Section 1981 because of the absence of the "motivating factor" language in Section 1981. Nevertheless, the argument for its extension exists because the Supreme Court in *Staub* recognized the harshness of the "cat's paw" analysis in which discrimination may go un-redressed. Moreover, proximate cause could exist in a Section 1981 case, like in USERRA and Title VII, if the discriminatory bias of the reporter of the alleged franchise violation caused the franchisor to take an action based on discriminatory animus that was intended to cause, and did in fact cause, an adverse action against the franchisee. Arguably, it would influence the decision if there had been no meaningful independent investigation to ascertain the appropriateness of the action.

It is less likely, however, that the *Staub* analysis will be extended to state franchise discrimination statutes and regulations. The *Staub* decision is not precedent under state law. Moreover, franchise discrimination statutes and regulations are intended to protect franchisees from being treated differently from similarly situated franchisees. They are not specifically intended to protect franchisees against racial or gender bias. The analysis for determining liability does not depend on determining "motivating factors" or "proximate cause" under tort principles articulated by the Supreme Court. Rather, franchisors avoid liability, and likely will continue to do so under state franchise laws, if they present a "rational business decision" for treating franchisees differently or articulate why the franchisees are not similarly situated.

### **What Should Franchisors and Franchisees Do?**

Attorneys would be well served to inform their franchisor and franchisee clients that the bar for bringing franchise discrimination claims, at least related to those based on racial bias, might have been lowered considerably. Attorneys should also advise their franchisor clients that claims for racial bias may be significantly more difficult to dispose of on motions to dismiss or summary judgment. It is now more important than ever that decision makers conduct meaningful independent reviews, with an eye toward possible discrimination, before any franchisee is terminated.

[Back to Top](#)



The opinions expressed in the articles presented in *The Franchise Lawyer* are those of the authors and shall not be construed to represent the policies of the American Bar Association or the Forum on Franchising. Copyright 2011 The American Bar Association. ISBN: 1938-3231

American Bar Association | 321 N Clark | Chicago, IL 60654 | 1-800-285-2221



# The Franchise Lawyer

American Bar Association • Forum on Franchising

Vol. 14 No. 3 | Summer 2011

## INSIDE THIS EDITION

[Message from the Chair](#)

[The ABA Forum on Franchising 2011 Annual Meeting](#)

[Annual Forum Community Service Event](#)

[Recognize Your Outstanding Colleagues in Franchising!](#)

[Nominating Committee Report from Ron Gardner, Forum Chair](#)

[Membership Survey: Don't Miss Your Chance to Win a New iPad 2 and Have Your Opinions Heard!](#)

[Supreme Court Approves Eliminating Class Actions Through Arbitration Clauses](#)

[Steering Franchisors Through the Mobile Food Truck Trend](#)

[Possible Ramifications on Franchising of the Supreme Court's Expansion of Employer Liability for the Biases of Non-Decision Makers](#)

[NASAA Model Exemption Project](#)

[Attention: California](#)

## NASAA Model Exemption Project

The NASAA Franchise and Business Opportunity Project Group is soliciting comments on a proposal for Model Exemptions relating to state franchise registration and disclosure laws. You can access the proposal at [www.nasaa.org/issues\\_answers/regulatory\\_activity/14627.cfm](http://www.nasaa.org/issues_answers/regulatory_activity/14627.cfm).

Or, you can go to [www.nasaa.org](http://www.nasaa.org), click on the tabs for "issues and answers," then "regulatory activity," and then "NASAA Proposals."

The comment period is open until August 1, 2011.

[Back to Top](#)

---

*The Franchise Lawyer* is published by the American Bar Association Forum on Franchising, 321 North Clark Street, Chicago, IL 60654-7598. Requests for permission to reprint should be sent to the attention of Manager, Copyrights and Licensing, via email at [copyright@abanet.org](mailto:copyright@abanet.org) or via fax to 312-988-6030.

The opinions expressed in the articles presented in *The Franchise Lawyer* are those of the authors and shall not be construed to represent the policies of the American Bar Association or the Forum on Franchising. Copyright 2011 The American Bar Association. ISBN: 1938-3231

American Bar Association | 321 N Clark | Chicago, IL 60654 | 1-800-285-2221

[Franchise and Distribution  
Lawyers](#)

[Find the ABA Forum on  
Franchising on Facebook](#)

[New Books from the Forum  
on Franchising](#)

---

## ***THE FRANCHISE LAWYER***

### **Editor-in-Chief**

Max Schott, II (2013)  
Gray Plant Mooty  
Minneapolis, MN  
[Max.Schott@gpmlaw.com](mailto:Max.Schott@gpmlaw.com)

### **Associate Editors**

Glenn J. Plattner (2011)  
Bryan Cave  
Santa Monica, CA

Kristy L. Zastrow (2012)  
Dady & Gardner  
Minneapolis, MN

Beata Krakus (2013)  
Greensfelder,  
Hemker & Gale  
Chicago, IL

---

### **Forum on Franchising**

American Bar Association  
321 N. Clark Street  
Chicago, IL 60654



# The Franchise Lawyer

American Bar Association • Forum on Franchising

Vol. 14 No. 3 | Summer 2011

## INSIDE THIS EDITION

[Message from the Chair](#)

[The ABA Forum on Franchising 2011 Annual Meeting](#)

[Annual Forum Community Service Event](#)

[Recognize Your Outstanding Colleagues in Franchising!](#)

[Nominating Committee Report from Ron Gardner, Forum Chair](#)

[Membership Survey: Don't Miss Your Chance to Win a New iPad 2 and Have Your Opinions Heard!](#)

[Supreme Court Approves Eliminating Class Actions Through Arbitration Clauses](#)

[Steering Franchisors Through the Mobile Food Truck Trend](#)

[Possible Ramifications on Franchising of the Supreme Court's Expansion of Employer Liability for the Biases of Non-Decision Makers](#)

[NASAA Model Exemption Project](#)

[Attention: California](#)

## ATTENTION: CALIFORNIA FRANCHISE AND DISTRIBUTION LAWYERS Upcoming California Franchise Specialist Exam

Raise the bar! Take the first step to enhancing your profile and expanding your opportunities by becoming a Certified Franchise and Distribution Law Specialist by taking the specialist exam! The examination is open to lawyers who have been admitted to practice in California for at least three years.

**Exam Date:** October 25, 2011

**Application Deadline:** September 26, 2011

**Exam venues:** Pasadena and Oakland, California

For more information about the exam or full details of the requirements for becoming a Certified Franchise and Distribution Law Specialist, visit [www.californiaspecialist.org](http://www.californiaspecialist.org) or call 415-538-2120.

[Back to Top](#)

---

*The Franchise Lawyer* is published by the American Bar Association Forum on Franchising, 321 North Clark Street, Chicago, IL 60654-7598. Requests for permission to reprint should be sent to the attention of Manager, Copyrights and Licensing, via email at [copyright@abanet.org](mailto:copyright@abanet.org) or via fax to 312-988-6030.

The opinions expressed in the articles presented in *The Franchise Lawyer* are those of the authors and shall not be construed to represent the policies of the American Bar Association or the Forum on Franchising. Copyright 2011 The American Bar Association. ISBN: 1938-3231

American Bar Association | 321 N Clark | Chicago, IL 60654 | 1-800-285-2221

[Franchise and Distribution  
Lawyers](#)

[Find the ABA Forum on  
Franchising on Facebook](#)

[New Books from the Forum  
on Franchising](#)

---

## ***THE FRANCHISE LAWYER***

### **Editor-in-Chief**

Max Schott, II (2013)  
Gray Plant Mooty  
Minneapolis, MN  
[Max.Schott@gpmlaw.com](mailto:Max.Schott@gpmlaw.com)

### **Associate Editors**

Glenn J. Plattner (2011)  
Bryan Cave  
Santa Monica, CA

Kristy L. Zastrow (2012)  
Dady & Gardner  
Minneapolis, MN

Beata Krakus (2013)  
Greensfelder,  
Hemker & Gale  
Chicago, IL

---

### **Forum on Franchising**

American Bar Association  
321 N. Clark Street  
Chicago, IL 60654



# The Franchise Lawyer

American Bar Association • Forum on Franchising

Vol. 14 No. 3 | Summer 2011

## INSIDE THIS EDITION

[Message from the Chair](#)

[The ABA Forum on Franchising 2011 Annual Meeting](#)

[Annual Forum Community Service Event](#)

[Recognize Your Outstanding Colleagues in Franchising!](#)

[Nominating Committee Report from Ron Gardner, Forum Chair](#)

[Membership Survey: Don't Miss Your Chance to Win a New iPad 2 and Have Your Opinions Heard!](#)

[Supreme Court Approves Eliminating Class Actions Through Arbitration Clauses](#)

[Steering Franchisors Through the Mobile Food Truck Trend](#)

[Possible Ramifications on Franchising of the Supreme Court's Expansion of Employer Liability for the Biases of Non-Decision Makers](#)

[NASAA Model Exemption Project](#)

[Attention: California](#)



## The Forum on Franchising is on Facebook

The ABA Forum on Franchising is on Facebook! Become a fan of our page by clicking on the "**Find us on Facebook**" button and stay plugged in to all the news and upcoming events of the Forum.

If you don't have a Facebook account, you can set one up [here](#). We hope to see you on our page!

[Back to Top](#)

*The Franchise Lawyer* is published by the American Bar Association Forum on Franchising, 321 North Clark Street, Chicago, IL 60654-7598. Requests for permission to reprint should be sent to the attention of Manager, Copyrights and Licensing, via email at [copyright@abanet.org](mailto:copyright@abanet.org) or via fax to 312-988-6030.

The opinions expressed in the articles presented in *The Franchise Lawyer* are those of the authors and shall not be construed to represent the policies of the American Bar Association or the Forum on Franchising. Copyright 2011 The American Bar Association. ISBN: 1938-3231

American Bar Association | 321 N Clark | Chicago, IL 60654 | 1-800-285-2221

[Franchise and Distribution  
Lawyers](#)

[Find the ABA Forum on  
Franchising on Facebook](#)

[New Books from the Forum  
on Franchising](#)

---

**THE FRANCHISE  
LAWYER**

**Editor-in-Chief**

Max Schott, II (2013)  
Gray Plant Mooty  
Minneapolis, MN  
[Max.Schott@gpmlaw.com](mailto:Max.Schott@gpmlaw.com)

**Associate Editors**

Glenn J. Plattner (2011)  
Bryan Cave  
Santa Monica, CA

Kristy L. Zastrow (2012)  
Dady & Gardner  
Minneapolis, MN

Beata Krakus (2013)  
Greensfelder,  
Hemker & Gale  
Chicago, IL

---

[Forum on Franchising](#)  
American Bar Association  
321 N. Clark Street  
Chicago, IL 60654



# The Franchise Lawyer

American Bar Association • Forum on Franchising

Vol. 14 No. 3 | Summer 2011

## INSIDE THIS EDITION

[Message from the Chair](#)

[The ABA Forum on Franchising 2011 Annual Meeting](#)

[Annual Forum Community Service Event](#)

[Recognize Your Outstanding Colleagues in Franchising!](#)

[Nominating Committee Report from Ron Gardner, Forum Chair](#)

[Membership Survey: Don't Miss Your Chance to Win a New iPad 2 and Have Your Opinions Heard!](#)

[Supreme Court Approves Eliminating Class Actions Through Arbitration Clauses](#)

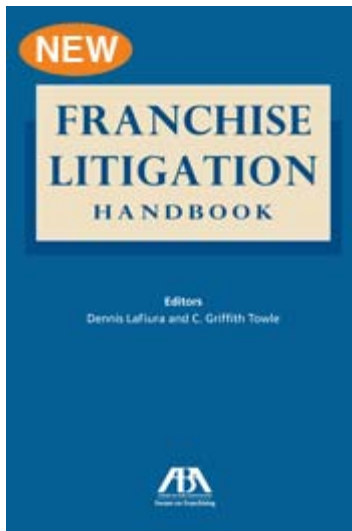
[Steering Franchisors Through the Mobile Food Truck Trend](#)

[Possible Ramifications on Franchising of the Supreme Court's Expansion of Employer Liability for the Biases of Non-Decision Makers](#)

[NASAA Model Exemption Project](#)

[Attention: California](#)

## Books from the Forum on Franchising



Product Code: 5620132  
Forum Member Price: \$110.00  
Regular Price: \$135.00

### [Franchise Litigation Handbook](#)

**Dennis LaFiura and C. Griffith Towle, Editors**

This practical, "how-to" guide takes the essence of a franchise dispute and makes the most difficult franchise litigation seem less complex. For those new to the field of franchising, this book will be a useful starting place for identifying the basic, recurring issues in franchise litigation. And for both new and experienced practitioners, this book is intended to provide insights into many of the more difficult and still-emerging issues that you are likely to encounter as disputes between franchisors and franchisees continue to proliferate. 2010, 344 pages, 6 x 9, paper

For more information or to place an order, click [here](#).

### [Annual Franchise and Distribution Law Developments 2010](#)

**Bethany L. Appleby and William K Whitner**

Written by two seasoned professionals, this book includes extensively researched case law from August 2009 to August 2010. Compiled into an easy-to-use reference, this book will cut timely research out of your day by putting the latest review and analysis on franchise and distribution law at your fingertips. 2010, 454 pages, 6 x 9, paper

For more information or to place an order, click [here](#).

[Franchise and Distribution Lawyers](#)

[Find the ABA Forum on Franchising on Facebook](#)

[New Books from the Forum on Franchising](#)

---

## THE FRANCHISE LAWYER

Editor-in-Chief  
Max Schott, II (2013)  
Gray Plant Mooty  
Minneapolis, MN  
[Max.Schott@gpmlaw.com](mailto:Max.Schott@gpmlaw.com)

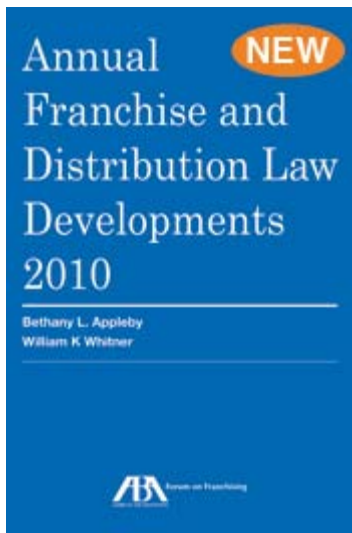
Associate Editors  
Glenn J. Plattner (2011)  
Bryan Cave  
Santa Monica, CA

Kristy L. Zastrow (2012)  
Dady & Gardner  
Minneapolis, MN

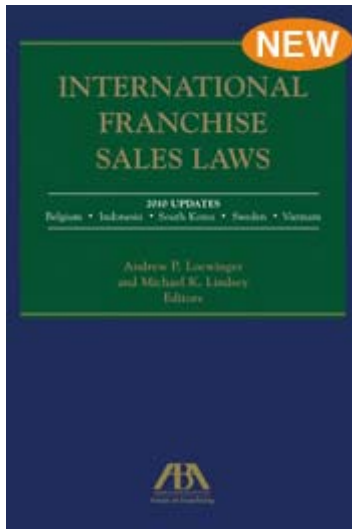
Beata Krakus (2013)  
Greensfelder,  
Hemker & Gale  
Chicago, IL

---

[Forum on Franchising](#)  
American Bar Association  
321 N. Clark Street  
Chicago, IL 60654  
312-988-5666



Product Code: 5620133  
Forum Member Price: \$95.00  
Regular Price: \$110.00



Product Code: 5620119S2  
Forum Member Price: \$40.00  
Regular Price: \$60.00

## [International Franchise Sales Laws - 2010 Supplement](#) Andrew P. Loewinger and Michael K. Lindsey, Editors

This new supplement to International Franchise Sales Laws addresses disclosure requirements in Belgium, Indonesia, South Korea, Sweden and Vietnam. For each jurisdiction, two authors licensed to practice in the jurisdiction address the jurisdiction's disclosure requirements in a uniform format. Each country chapter is organized to provide a comprehensive discussion of each of the applicable laws and also a practical and easy-to-use reference for counsel to comply with those laws. 2010, 184 pages, loose-leaf

For more information or to place an order, click [here](#).

[Back to Top](#)

---

*The Franchise Lawyer* is published by the American Bar Association Forum on Franchising, 321 North Clark Street, Chicago, IL 60654-7598. Requests for permission to reprint should be sent to the attention of Manager, Copyrights and Licensing, via email at [copyright@abanet.org](mailto:copyright@abanet.org) or via fax to 312-988-6030.

The opinions expressed in the articles presented in *The Franchise Lawyer* are those of the authors and shall not be construed to represent the policies of the American Bar Association or the Forum on Franchising. Copyright 2011 The American Bar Association. ISBN: 1938-3231

American Bar Association | 321 N Clark | Chicago, IL 60654 | 1-800-285-2221

