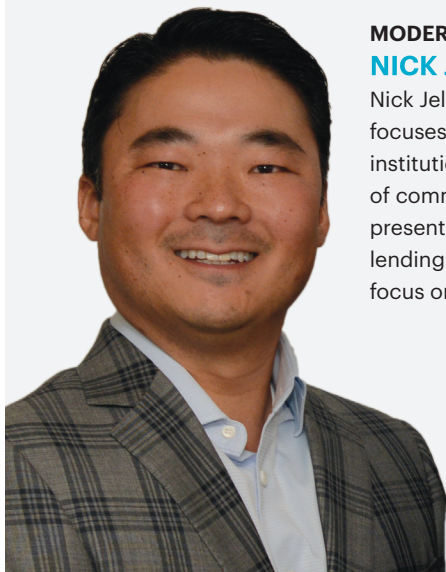


ADVERTISING SUPPLEMENT TO THE MINNEAPOLIS/ST. PAUL BUSINESS JOURNAL

OPEN TABLE of EXPERTS FRANCHISING



MODERATOR

NICK JELLUM • ANASTASI JELLUM

Nick Jellum is president of Anastasi Jellum, where he focuses his practice on advising the firm's financial institution clients throughout the country on all aspects of commercial loan transactions. Jellum frequently presents and lectures on a wide range of commercial lending issues and topics nationally, with a specific focus on franchise lending.

PANELIST

LIZ DILLON • GRAY PLANT MOOTY

Liz Dillon is principal, business development catalyst committee at Gray Plant Mooty. She counsels franchisors on expanding and maintaining their franchise systems. She assists start-up franchisors to develop and position their franchise systems for growth domestically and internationally. She manages the franchise registration process for more than 45 brands every year and has worked with over 20 start-up franchisors. She brings extensive knowledge and experience in preparing and registering disclosure documents, as well as franchise, development and supply agreements.



PANELIST

TODD LIFSON • LURIE

Todd Lifson is a partner in Lurie's assurance and advisory services. He specializes in business consulting for audit, tax and M&A. He has experience with privately held mid-market and publicly held businesses in a broad range of industries. He joined Lurie in May 2001. His background includes two years working with the Financial Accounting Standards Board's Emerging Issues Task Force and serving as project manager for the development of an SEC manual. Additionally, he co-authored the retail accounting and auditing section of Montgomery's Auditing: 11th Edition, and two training courses: introduction to retail and retail fundamentals.

PANELIST

JOE FITTANTE • LARKIN HOFFMAN

Joe Fittante is a shareholder at Larkin Hoffman and a member of the firm's franchise and distribution practice group. He advises franchisors on various topics, including structuring the franchise relationship, registration and disclosure, dealing with state and federal regulators, and terminating franchise relationships. He has published works in the American Bar Association Franchise Law Journal, The Franchise Lawyer and other publications. He served as chairman of the American Bar Association Forum on Franchising from 2011 to 2013 and was on the forum's governing committee from 2007 to 2015.



SPONSORED BY





From left: Nick Jellum, Anastasi Jellum; Todd Lifson, Lurie; Joe Fittante, Larkin Hoffman; Liz Dillon, Gray Plant Mooty

NANCY KUEHN

BY ELIZABETH MILLARD
CONTRIBUTING WRITER

The *Minneapolis/St. Paul Business Journal* held a panel discussion recently, featuring three expert panelists to explore topics about the issues surrounding franchising. Panelists included Joe Fittante, a shareholder at Larkin Hoffman; Liz Dillon, a principal at Gray Plant Mooty; and Todd Lifson, a partner at Lurie. Nick Jellum, a shareholder at Anastasi Jellum, served as moderator.

Jellum: Let's start with a basic understanding of franchising. What's a good, basic description?

DILLON: It is a method for expanding a business. Franchising is when a person or company has a business concept, and licenses the right to use the system they've developed and their marks to other businesses in exchange for a fee.

Jellum: What are the basics of those terms, "franchisees" and "franchisors"? What are the roles?

FITTANTE: The franchisor is the par-

ty that sells or grants the franchise to the franchisee. The franchisee is the party who operates the franchised business independently from the franchisor. Traditional franchises that people think of are Burger King, McDonald's and Radisson hotels. The franchisor provides assistance to the franchisee on how to operate the business. In exchange, the franchisee is required to meet certain standards in the operation of the franchised business and make certain payments to the franchisor.

LIFSON: I'd also add that in its purest form franchising is a system of distribution. It's a method to get a product or service to a significant number of consumers by sharing the risks and rewards of growing and developing a business among franchisors and franchisees.

Jellum: You've mentioned some common brands that are well known, but what other types of businesses or industries lend themselves to franchising?

LIFSON: The most notable are the food businesses – full-service restaurants, quick-service restaurants or fast casual – Denny's, McDonald's and Panera Bread,

respectively. However there are a number of service businesses, as well. Take Massage Envy, for example. Who would have predicted a little over a decade ago this company would have over a 1,000 franchised locations and has created an entirely new category of business?

DILLON: Definitely. There are a lot of service businesses, like companies that do cleaning services or lawn care. There are also some very high-profile franchises in the fitness industry, and smaller franchises in pet services, like grooming and pet daycare. If you go to franchise tradeshow, you'd be amazed at the breadth of franchise opportunities.

Jellum: If someone has an existing business and is considering moving into franchising, what should they be thinking about?

FITTANTE: One of the initial questions I ask clients is if they have any locations currently open and operating. I think it's really important that you have a tried-and-tested system. There's no legal requirement that a franchisor must have a location open and operating, but in my experience, those franchisors who have

tested the system are the ones who have the most success. The business must also be easily replicable. I also ask clients if they are comfortable wearing many hats. When you become a franchisor, you also become a teacher, a police officer and a cheerleader. You have to be able to teach franchisees how to operate their business. Franchisors must wear the hat of a police officer because franchisees will sometimes want to operate outside of the system, and you have to be able to rein them in. The franchisor must also be a strong advocate for its franchisees to help them get through the types of difficulties that arise when starting a business, ergo the cheerleader.

DILLON: As Joe mentioned, the ability to replicate the business is important. Not every business has a system that can be replaced somewhere else. If someone comes to me and asks about starting a franchise, I ask if they've looked at the unit economics. What are the margins? Have they drilled down and done a full financial analysis? The franchisee has to be able to make money once they pay the franchisor its royalty fee. The only way a franchisor can be successful is if its franchisees are successful.



**For ORS, EES and everything in between.
There's one choice for accounting.**

CPAs and Advisors
612.377.4404 • LurieLLP.com



LURIE
EST. 1940



Todd Lifson, Lurie



Nick Jellum, Anastasi Jellum

NANCY KUEHN

LIFSON: I look at it from the standpoint that if you feel you created a business that could have multiple locations and could be reasonably replicated, you have a decision to make. Do you build a franchise system or do you build it yourself within a corporate structure? Some franchisors use hybrid models that include franchised units, as well as corporate stores. The interesting part is that both models have opportunities, as well as challenges. You may lack the capital or financing ability to actually build out corporate locations, so in that case, it may be advantageous to go down the franchising route. There are a number of factors to consider. It is a very fact-specific decision; there is no blanket answer on which option is better, they are just different.

FITTANTE: Another thing that is important for those considering franchising is to consider how the franchisor will continually add value. Otherwise, after a franchisee is taught the system, they may begin to question why they are continuing to pay royalties. I refer to this as the franchisor's "secret sauce." It can be many different things, from advice to new products to support services.

Jellum: With all of those thoughts in mind, do you feel that franchising is still the preferred method for individuals or corporations to grow their brands?

DILLON: I strongly believe in franchising. I don't think any of us would be in this business if we didn't. But I do think there's been a lot of negative press lately about the end of franchising. It is an interesting regulatory environment right now that provides franchisors and franchisees with some uncertainty, but I think that the risks can be managed effectively. If you look at the numbers, franchising is still growing at a healthy pace. It's an excellent option for companies that might have a few corporate-owned stores and want to grow, but are not in a position to do it on their own. Franchising gives them a way to grow and expand.

LIFSON: One thing I would like to clarify is that you said franchising is "the preferred method" for starting a business. As I have previously mentioned, I think there are a number of factors to consider in deciding on starting a business, particularly a franchising system. It definitely has a lot of merits in the right industry, and with the right set of circumstances it truly can make a lot of sense. However, there are other circumstances where it does not. It is important to seek the input of an experienced franchising professional with help in concluding on this decision. That being said, the model is highly leverageable and can accelerate distribution of a product or service with minimal capital.

DILLON: In looking at some recent trends, there's a lot of activity in M&A and a lot of private equity firms are acquiring franchise systems. I also think potential franchisees are getting a little more sophisticated, which puts pressure on a franchisor to also be more sophisticated, and to be in a position to deliver.

LIFSON: That's a great point. There is a bit of an evolution in franchising that has been occurring over the past few years – the increased presence of private equity. Strong franchising brands can attract private equity with well-run operations that have long track records of relatively predictable cash flows.

Jellum: Let's switch gears and talk about franchisees. If someone wants to start a franchise, what kinds of due diligence should they conduct first?

FITTANTE: Obtain a copy of the franchisor's franchise disclosure document. Review Item 2, which discloses experience of the franchisor's executives, and Item 3, which discloses litigation. Contact some of the franchisees in the system to inquire about their experience. Also, contact those who have left the system and ask why. A potential franchisee can do all of this due diligence without spending money on a lawyer. After doing this due diligence, a potential franchisee should hire a

lawyer to review the franchise disclosure document.

LIFSON: Those are very critical points. The list of franchisees, in particular, is very underutilized and yet it is a great tool. This listing gives you direct access to the viewpoints of the people who are currently in the system, as well as those who have left the system. You can get unbelievable insight.

Jellum: What are the common pitfalls that come with early-stage franchises?

LIFSON: One common pitfall is that entrepreneurs have formalized their business plan. In my experience, entrepreneurs who have a written plan have a higher probability of maintaining focus on the critical items that contribute to success. Another item that may be a bit cliché, but is relatively common is that entrepreneurs often spend too much time "working in the business" and not enough time "working on the business." The classic example is the entrepreneur who spends time performing bookkeeping instead of outsourcing this non-core element of building a business. The last one I will mention is that people thinking about entering the franchising industry are often afraid of using mentors or turning to professionals with expertise in the franchising industry. Don't underestimate the long-term value of that resource.

Jellum: Let's say that there are disputes or disagreements after a franchise location is opened. What advice do you have to deal with disputes or disagreements that arise after a franchise is opened?

DILLON: If it looks like a franchisor is heading toward litigation with a franchisee, my first question is: Have you picked up the phone to talk to each other? When lawyers are involved, it escalates the potential dispute. Sometimes just making that initial call and exploring a business resolution can avoid litigation. For example, maybe the franchisee is willing to sell

TABLE of EXPERTS

For information on future Table of Experts, please contact Kathy Robideau at 612-288-2134 or krobideau@bizjournals.com.

Wealth Managers
Publication date: 2/12/16

M&A
Publication date: 2/19/16

Senior Living
Publication date: 3/4/16

International Business
Publication date: 3/25/16

Government Policies
Publication date: 4/15/16

Private Equity
Publication date: 4/22/16

SBA
Publication date: 5/6/16

Workforce
Publication date: 5/27/16

Design/Build
Publication date: 6/10/16

IP/Patent
Publication date: 8/12/16

Transportation
Publication date: 8/19/16

Residency Tax
Publication date: 9/2/16

Startups
Publication date: 9/9/16

Family-owned Business
Publication date: 9/23/16

Manufacturing
Publication date: 10/21/16

Health Care Insurers
Publication date: 10/28/16

Education
Publication date: 11/4/16

Franchising
Publication date: 12/9/16

Nonprofits
Publication date: 12/16/16

its business and exit the system, and that may solve the issue.

FITTANTE: Absolutely, I agree that you want to find a way where the disgruntled franchisee can exit the system without litigation. You always want to find ways to resolve the dispute before you get to a point where it's hard to walk it back. If you're a franchisor, it's part of growing your business to find ways to resolve disputes, because they'll always come up to some degree.

Jellum: We talked earlier about some general trends, and let's dig deeper into that topic. What are you seeing in terms of hot franchise concepts?

FITTANTE: I think senior care is one area where you will see more and more franchised concepts. This is being driven by the aging of baby boomers. In the restaurant segment, we are seeing more and more fast-casual concepts. There is also an increase in children's educational service concepts. The last area we are seeing more franchise concepts is in the health and beauty area. Todd mentioned Massage Envy. That is an example of a service that used to be a luxury, but is now being marketed as a health benefit. I think we'll definitely see more concepts like that.

DILLON: I agree that medical and health franchises will continue to grow. With an aging population that needs more medical services, people will see business opportunities there, and there could be quite a

bit of innovation in that space.

Jellum: We can't discuss trends in franchising without also talking about globalization. How do you feel that globalization is affecting franchising?

DILLON: We have seen a significant increase in international expansion. It makes sense that franchisors think outside their borders as the world is getting smaller. It doesn't seem like such a big leap anymore to start a franchise in China or Dubai. Before going international, franchisors should make sure that they're strategic about the opportunities and looking for franchisees that are a great fit. With international locations, you're dealing with a different set of issues than you do domestically, such as the cultural fit for your products and services, whether your trademark will be registered or be understood in that country, if the economy in that country is growing or shrinking, and if you'll get taxed in a way you didn't expect. There are a lot of considerations, and it can be difficult to navigate, but if you can get your IP protected and you have a strategic plan, it can be a great move to go international.

Jellum: What should people keep in mind with the globalization of franchising when it comes to accounting and finance?

LIFSON: I'd say it's reasonably complicated when you're setting up an interna-

tional operation or subsidiary. You should be discussing this with your accountant to ensure you are maximizing tax structuring opportunities, as well as mitigating certain types of internal control risk. You need to make the correct decisions from the onset. This is not an area you want to rush into. Some franchise systems make mistakes because they get an exciting offer from a potential franchisee in another country and they want to jump on it. It is far better to take some time to understand all the factors that can occur with an international operation.

Jellum: How is technology changing the world of franchising?

DILLON: I don't know of any franchise system that isn't exploring more robust technology, and looking for what's next. That comes with a degree of risk, since it requires investment, but it also provides a potentially higher level of customer interaction, and franchisors need to make sure that the technology being put in place is supporting their franchisees appropriately and protects the system. Franchisors need to take a close look at issues like vendor contracts, privacy policies and good data breach response plans. There's a lot at play.

FITTANTE: Yes, I think with technology, franchisors must be cautiously aggressive. Most franchisees want the cutting-edge technological tools, but franchisors need to be careful about how these tools are being used and must vet the risks and

the benefits to their system of their use. Before implementing a new technology in its franchise system, a franchisor should consider first implementing it at its corporate stores to work out the bugs.

Jellum: Let's get some final thoughts on the future of franchising. What's ahead?

DILLON: I think the future of franchising is very bright. We talked about some of the challenges, but there are also so many successes. Franchises employ a lot of people, and many franchisors and franchisees have found a way to make a robust living through this model. I think we're going to continue to see it expand in the future.

FITTANTE: There's an old saying, "May you live in interesting times," and that's really apt for franchising. I think franchisors need to stay the course, even though there's some negativity in the industry right now. That kind of sentiment comes and goes, and the fact is that franchising has been around for a long time, and it will continue to endure for a long time. It's a major driver for our economy, and that will continue.

LIFSON: I agree. The model in its purest form delivers significant value for both franchisors and franchisees. It allows entrepreneurs to achieve their dreams of owning businesses, and although it's true that there are certainly a number of industry challenges, many believe that there are just as many, if not more, beneficial opportunities to franchising.

An Honor Worth Noting



Joe Fittante
Minneapolis Franchise Law
Lawyer of the Year

We are honored that many of our attorneys have been selected by our peers for inclusion in the 2016 edition of *The Best Lawyers in America*®. Special congratulations to Joseph Fittante who is the 2016 Franchise Law "Lawyer of the Year."

2016 BEST LAWYERS IN AMERICA®

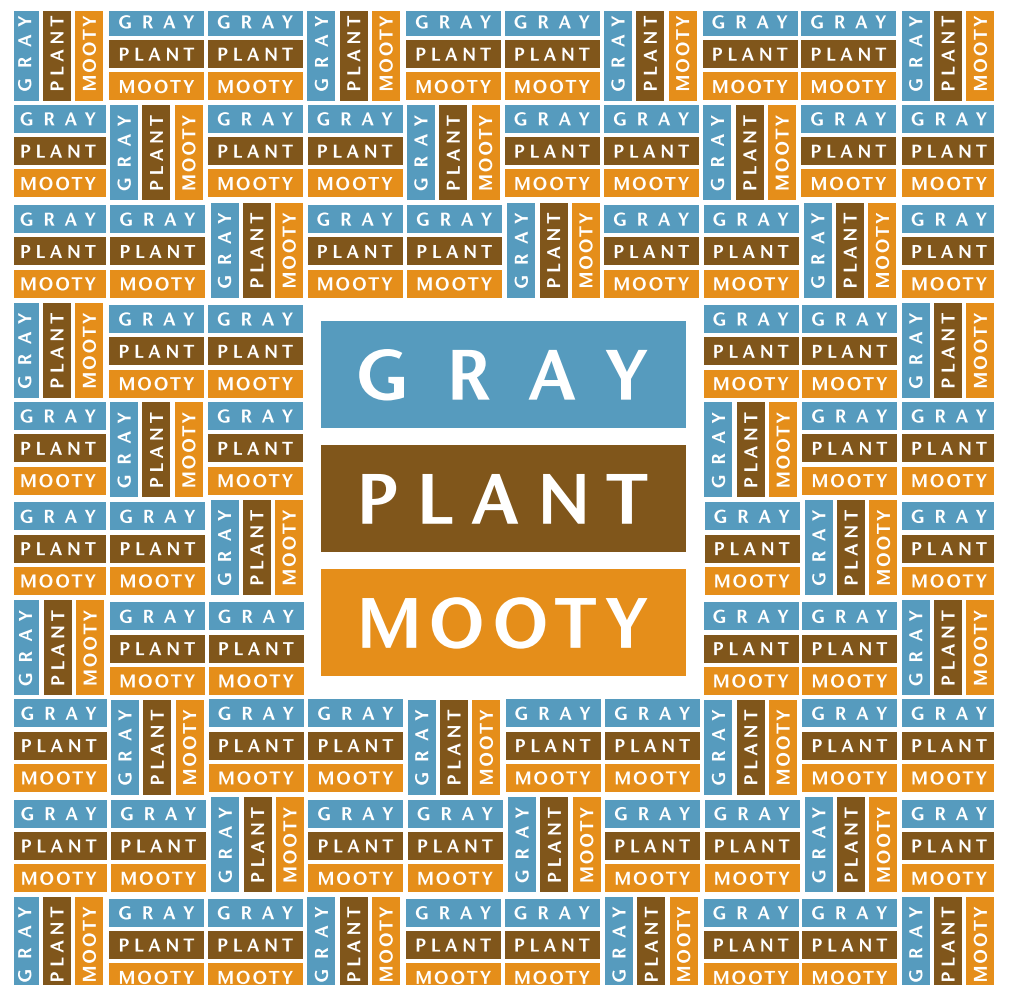
Our 2016 Best Lawyers:

Peter Coyle, Land Use & Zoning
Joe Fittante, Franchise Law
William Griffith, Land Use & Zoning and Municipal Law
David Hammargen, Construction Law

Peder Larson, Environmental Law
Paul Linstroth, Tax Law
Charles Modell, Franchise Law
James Susag, Franchise Law
William Thornton, International Arbitration

**Larkin
Hoffman**
ATTORNEYS

@larkinhoffman.com
952.835.3800
@larkinlawfirm



The pattern is clear—GPM gets franchise law.

At Gray Plant Mooty, our 34 member franchise team provides our clients with a superior level of expertise in all areas of international and domestic franchising.

When it comes to knowing their businesses, delivering world class results and representing them in an increasingly complex legal environment – we get it.