



# Judicial Update

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# Judicial Update

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## GENERAL SESSION: JUDICIAL UPDATE

### ► SPEAKING:

Keeping Up with Current AI Issues & Uses - Oh My!: **Zev Eigen J.D., Ph.D.**

What's New in Mexico and Central America?: **Jorge Mondragon**

Why Should a Transactional Lawyer Care About Litigation?: **Megan Center, CFE**

Franchise related Vicarious Liability – Wait, What?: **Heather Perkins**

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# What's Up?!

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- 1. Franchise Related Vicarious Liability – Wait, What?**
  - 2. What's New in Mexico and Central America?**
  - 3. Why Should a Transaction Lawyer Care About Litigation?**
  - 4. Keeping Up with Current AI Issues and Uses – Oh My!**
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# Franchise Related Vicarious Liability – Wait, What?

Heather Perkins

Partner, Faegre Drinker Biddle & Reath LLP

## Vicarious Liability – a Quick Refresher

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**Actual Agency:** Right to control day-to-day operations

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**Apparent Agency:** Third party reasonably believes franchisee is franchisor's agent

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**Direct Liability:** Franchisor assumes and then breaches a direct duty to the third party

# Actual Agency — Similar Facts, Different Outcomes

## **Coryell v. Morris**, 330 A.3d 1270, 1284 (Pa. Super. Ct. 2025)

- Franchisee had “practically no discretion” in daily operations.
- Domino’s control extended to training, cash handling, customer complaints.
- Jury found vicarious liability.

## **Durham v. Domino’s**, 2024 WL 1122350, at \*8 (Ky. Ct. App. Mar. 15, 2024)

- Applied narrower Papa John’s test: control must relate directly to deliveries.
- Summary judgment granted to franchisor.





# Reconciling *Coryell* and *Durham*

## Jurisdiction matters

- Pennsylvania court adopted broader approach to operational control.
- Kentucky law requires specific control over the harm-causing activity.

## Framing matters

- General operational control vs. specific delivery-related control.
- Key Lesson: Liability depends on how control is framed.

# Direct Liability

## **Massage Heights Franchising v. Hagman**, 679 S.W.3d 298, 305 (Tex. App. 2023)

- Found direct negligence, not just vicarious liability.
- Key facts: prescribed masseuse interactions, service delivery methods, required background checks but provided no guidance on what was acceptable.
- Duty arose because control related directly to customer safety.

## *rev'd* **Massage Heights Franchising v. Hagman**, 2025 WL 1271296 (Tex. May 2, 2025)

- Found no negligence or negligent undertaking by franchisor but affirmed as to other defendants.
- No control over the thing that caused the injury: hiring of the therapist. Relied on independent contractor language
- No day to day control. Franchisor provided guidance, but it did not mandate hiring decisions
- No negligent undertaking via safety suggestions



# Big Picture Takeaways

## Control = Risk:

- Beyond labels, practical control matters.

## Focus of Control:

- Brand standards = safer.
- Operational control = higher liability risk.

## Jurisdiction & Framing are Key:

- Story of control often determines the outcome.



# Risk Mitigation - Key Contract Terms

- Independent contractor and no agency clauses.
- Narrow step-in rights: limit to emergencies and brand protection.
- Franchisee control over employment and daily ops.
- Mandate franchisee compliance with laws.
- Distinguish between recommendations and requirements.

# Risk Mitigation - Operational Practices

- Focus standards on final product or service, not daily methods.
- Avoid micromanaging internal franchisee operations.
- Don't use corporate-store manuals for franchisees.
- Train franchisee managers, not frontline employees.

# Risk Mitigation - System Standards

- Distinguish 'recommendations' vs 'requirements'.
- Require only what you intend to monitor and enforce.
- Use objective inspections focused on outcomes.
- Avoid periodic communications suggesting control.



# What's New in Mexico and Central America?

Jorge Mondragón – Pérez-Llorca

# Mexico & Central America: Franchise & Contractual Considerations

1. **Civil Law System (opposed to Common Law System).**
  - Strict application of the law.
  - Legal sources: laws, customs, jurisprudence, legal doctrine, general principles.
  
2. **Franchise Regulation.**
  - Mexico: Limited specific franchise regulations.
  - Central America: Lack of dedicated franchise legal frameworks.
  
3. **Contractual Freedom.**
  - Significant autonomy of the parties in commercial agreements.
  - Well-drafted agreements are crucial to avoid complex relationships and potential controversies.

# Mexico: Judicial Reform (Pt. 1)

Mexico faces a landscape of profound changes in its legal system. The judicial reform introduces measures with significant impacts, such as:

## ***1. The total restructuring of the judicial system at both, federal and local levels.***

- Reduced number of Justices in the Supreme Court of Justice.
- Terms of office are shortened.
- Establishment of a Court of Judicial Discipline or Disciplinary Tribunal.
- Establishment of a Judicial Administration Body.

## ***2. Changes in the Mechanisms for Challenging and Defending Constitutional Rights.***

- Prohibition to grant injunctive relief (stay) against laws with general effects through a constitutional trial (*amparo*).
- *Amparo* rulings that resolve the unconstitutionality of general laws will only benefit the petitioning party in the trial.



# Mexico: Judicial Reform (Pt. 2)

## *3. Implementing direct citizen elections for all judicial officers.*

- Justices of the Supreme Court, Circuit Appeal Judges and District Judges will be elected by the citizens, through direct vote.
- At the Federal level, there are approximately 737 District Judges (Judges) and 910 Circuit Appeal Judges (Appeal Judges). All of these positions will be up for election between June 2025 and June 2027.
- The requirements to be elected are: (x) a minimum grade point average, and (y) depending on the officer, certain experience.
- The electoral process will be managed by the National Electoral Institute.

# Mexico's Judicial Reform: Impact in Franchises

## A) Dispute resolution.

- Need to consider other dispute resolution mechanisms in contractual relations; arbitration.

## B) Pre-Litigation Settlements.

- Prioritize solving breaches through amicable settlement:
  - (i) renegotiate terms of the agreement, or
  - (ii) early termination of the agreement.
- Most cases do not escalate in litigation or arbitration.

# Mexico: Amendments to Applicable Laws.

## Federal Law for the Protection of Industrial Property

**USMCA:** new Federal Law for the Protection of Industrial Property (“**FLPIP**”).

- **Trade secrets.**

--Inclusion of confidentiality clauses; description of illegal “misappropriation” of a trade secret.

- **Liquidated Damages.**

-Liquidated damages clause if a trade secret misappropriation occurs.

- **Franchise Disclosure Document.**

-Not delivering the FDD may cause payment of fines and closing of the establishment.



# Mexico: Amendments to Applicable Laws.

## Thesis of Jurisprudence IX-J-SS-70 – Technical Assistance vs. Business Profit.

- Technical assistance payments do not qualify as business profits. Withholding of 25%.
- Fee descriptions to prevent incorrect tax withholdings by franchisees:
  1. Trademark License: License to use a trademark in a territory.
  2. Technical Assistance: Non-patentable knowledge services that do not involve the transfer of confidential information.
  3. Know-How: Techniques, information, theories, and data, considered:
    - (i) secret,
    - (ii) substantial, and
    - (iii) identifiable.

# Mexico: Amendments to Applicable Laws.

## Anticorruption

U.S. government designation of Specially Designated Global Terrorists and Foreign Terrorist Organizations (FTOs) that have as consequence:

- Extraterritorial application.
- Criminal liability for companies.
- Sanctions on financial institutions linked to FTOs.
- Increase in costs due to audits, security, and risk detection technology.
- Reputational risk.

## **Mexico: What to take into consideration derived from these amendments to applicable law?**

1. The correct references to the FLPIP.
2. Inclusion of misappropriation of trade secrets and liquidated damages provisions.
3. Description of the fees being paid under a franchise agreement for purposes of franchisee's tax withholding.
4. Adequate representations from the franchisee and franchisee's owners to avoid any anticorruption action by the US government.

Country	Franchise Legal Framework
<b>Costa Rica.</b>	<ul style="list-style-type: none"><li>-New legislation: 'Law for Regulating and Promoting Franchises. <u>Not enacted yet.</u></li><li>-Key provisions: (i) mandatory delivery of a franchise disclosure document, (ii) a minimum franchise term of five years, and (iii) tax benefits and incentives to encourage franchised business development.</li></ul>
<b>Costa Rica, Guatemala, Honduras and Nicaragua</b>	<ul style="list-style-type: none"><li>-No specific legislation regulating franchises.</li><li>-Lack of regulation provides flexibility to the parties.</li><li>-Interpretation of contracts or the fulfillment of obligations, are generally resolved through arbitration proceedings.</li><li>-The Courts in most Central American countries have shown a favorable attitude towards the enforcement of international arbitral awards.</li></ul>



# Conclusions

- Mexico and countries in Central America in general offer legal systems conducive to franchise investments.
- Franchise disputes are mainly resolved through pre-litigation or pre-arbitration settlements.
- It is essential having detailed contracts containing specific and descriptive provisions.
- Care in choosing choice of law and choice of forum clauses for dispute resolutions.
- Arbitration should be considered a preferred method for dispute resolutions.

# Why Should a Transaction Lawyer Care About Litigation?

Megan Center, CFE  
Partner, Quarles & Brady LLP

# Key Lessons for Transactional Lawyers

- Summary of Practical Lessons (Jurisdiction, Good Faith, etc.)
- Importance of defensible, tailored drafting
- Role of transactional counsel in litigation preparedness

# Case 1: Cambria v. M&M Creative Laminants

- Background & Facts
- Legal Issue – Extraterritorial application of MFA
- Court Analysis – Key Minnesota contacts
- Holding & Reasoning
- Drafting Takeaways – Governing law, nexus evaluation



## Case 2: In re Pinnacle Foods

- Background & Bankruptcy Context
- Legal Issue – Lanham Act + Hypothetical Test
- Court’s Holding – Franchisor control upheld
- Legal Reasoning
- Drafting Tips – Anti-assignment, Lanham Act references

# Case 3: Oakland Family Restaurants v. Dairy Queen

- Facts – Legacy agreements and modernization
- Legal Issue – Consent & “good cause” under MFIL
- Court’s Reasoning
- Holding – Good faith & standardization upheld
- Drafting Tips – Modernization provisions, MFIL awareness

## Case 4: CSLM v. Singh

- Facts – Forum clause in dispute
- Legal Issue – “May” vs “Must”
- Court’s Fairness Analysis
- Holding – Transfer to Indiana
- Drafting Takeaways – Mandatory language, venue waivers

## Case 5: VetCheck v. HTG

- Background – Post-term non-compete
- Court's Analysis – No irreparable harm
- Holding – Injunction denied
- Practical Tips – Acknowledge irreparable harm, document harm, market re-entry plan



# FTC Enforcement Actions

- Overview of Renewed FTC Focus
- Policy on Franchisee Silence Provisions
- Undisclosed Fees + Staff Guidance
- Qargo Coffee Enforcement Action
- Drafting Advice – Transparency, disclosure updates, personnel vetting

# Keeping Up With Current AI Issues and Uses – Oh My!

Zev Eigen, J.D., Ph.D.

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# Thank you!

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