

**What Do You Mean I Don't Own My Franchised Business?**

What Franchisors Should Know About Goodwill Compensation in Condemnation Actions

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California law provides that the owner of a business conducted on property taken by eminent domain is entitled to be compensated for loss of goodwill<sup>1</sup> caused by the taking.<sup>2</sup> But are franchisors business “owners” for purposes of recovery of goodwill compensation? As the California Court of Appeal affirmed in the recent case of *Galardi Group Franchise & Leasing, LLC v. City of El Cajon*,<sup>3</sup> the answer to that question, in many cases, is “no.”

The *Galardi Group* case involved a Wienerschnitzel restaurant in El Cajon, California. Mark D. Bingham (“Bingham”) operated the restaurant for nearly 20 years under franchise agreement with Galardi Group Franchise & Leasing, LLC (“Galardi”). In 2007, the restaurant was forced to close when the City of El Cajon (“City”) acquired the property for a police facility. Although Galardi and Bingham tried to preserve the goodwill of the restaurant by relocating it, they were unsuccessful. In late 2008, Bingham made a written assignment of his goodwill rights to Galardi. Galardi thereafter sued the City for inverse condemnation.

On appeal, Galardi argued that it was entitled to recover goodwill compensation as an owner of the restaurant. The court disagreed, holding that under long-standing California law Galardi was not an “owner” because its franchise agreement contained language inconsistent with ownership. This language included, among other provisions: (1) a specification that Galardi had no right to control the management of the business; (2) a disclaimer of any partnership, joint venture, or agency with Bingham; and (3) a requirement that Bingham indemnify Galardi. Although the court declined to consider Galardi an owner, it suggested that Galardi might nevertheless be entitled to recover goodwill compensation as an assignee of Bingham. The Court of Appeal ultimately remanded the case back to the trial court for further proceedings on that issue.

So, what should franchisors take from the court’s decision? Foremost, if the language of your franchise agreement is inconsistent with traditional notions of ownership, you should not expect to be considered an owner of the franchised business for purposes of recovering goodwill compensation. However, even if it appears unlikely that you would be considered an owner, all is not lost: goodwill compensation may still be recoverable by assignment from the franchisee.

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<sup>1</sup> “Goodwill” consists of “the benefits that accrue to a business as a result of its location, reputation for dependability, skill or quality, and any other circumstances resulting in probable retention of old or acquisition of new patronage.” (Code Civ. Proc. § 1263.510, subd. (b).)

<sup>2</sup> Code Civ. Proc. § 1263.510, subd. (a).

<sup>3</sup> *Galardi Group Franchise & Leasing, LLC v. City of El Cajon* (2011) 196 Cal.App.4th 280.