AS MY FRANCHISOR LAY DYING – FRANCHISEE AND FRANCHISOR OPTIONS IN A STRUGGLING SYSTEM

Gary R. Batenhorst
Cline Williams Wright Johnson & Oldfather, L.L.P.

Nicole Liguori Micklich
Garcia & Milas, P.C.

Les Wharton
Coverall North America, Inc.
Introduction

• Significant change is almost inevitable in today’s environment
• Long-term nature of franchise relationships invite change
• Franchisors and franchisees need to plan for and respond to these changes
• Failure to respond effectively can lead to struggling systems
Origins of Struggling System

• Poor internal franchise infrastructure
• Weak franchisor management skills
• Ineffective communications between franchisor and stakeholders
• Issues with access to adequate capital for franchisor and franchisees
• External factors in marketplace
• Franchisor-franchisee discord
Good Franchisor Infrastructure

- Strong franchise development, training, operations, marketing, R&D and technology groups
- Systems to respond to market disruptions
- Effective franchisor-franchisee communications systems
- Franchisor’s systems should promote culture to effectively respond to changes
- Prospective franchisees should evaluate infrastructure as part of pre-sale due diligence
Times When Systems at Risk to Struggle

- Transition from entrepreneurial to professional management
- New franchisor ownership
- Over-reaction to market disruptions with major product/service changes
- Franchisor requires significant capital expenditures by franchisees
- Franchisor implements new technology
External Causes for System Struggles

• Recessions
• Tight credit
• Tight labor markets
• Commodity prices
• Government regulations
• Industry disruptions
• Changes in the market for the System’s goods/services
Effective Implementation of Changes to Address System Struggles

• Develop solid business case
• Verify franchise agreements permit change
• Effectively communicate case for change
• Test at some company and franchised locations
• Realistically assess test results
Effective Implementation of Change

• Enable/listen to feedback and adjust as needed
• Halt roll out if test results poor
• Realistic time frames for system-wide roll outs
• Be pro-active whenever possible
• Develop effective incentives targeted to desired results
Franchisor Assistance to Struggling Franchises

- Identify struggling franchisees
- Improvements to unit level economics
- Direct financial assistance
- What makes a good assistance agreement
- Involvement of other stakeholders in response to system struggles
Dispute Resolution in Struggling Systems

• Communicate
• Termination only where lesser alternatives fail
• Look for early opportunities to mediate
• Settle early whenever possible
• Evaluate potential contract, covenant of good faith, statutory and other claims
• Important of good releases
• Confidentiality and non-disparagement issues