

## Virginia District Court Enforces Waiver of Trial by Jury and Claim to Punitive Damages Contained in Franchise Agreements

The United States District Court for the Eastern District of Virginia this month upheld franchise agreement provisions waiving the franchisee's right to a jury trial and punitive damages claims. *Dunkin' Franchised Restaurants, Inc., et al. v. Manassas Donut, Inc., et al.*, 2008 WL 110474 (E.D. Va. Jan. 8, 2008). (This was a case handled for the franchisor by Gray Plant Mooty.)

In considering the validity of a jury waiver, the court considered: (1) the parties' negotiations concerning the waiver provisions; (2) the conspicuousness of the provision in the contract; (3) the relative bargaining power of the parties; and (4) whether the waiving party's counsel had the opportunity to review the agreement. The court found that the waiver clause was listed in a conspicuous manner—in two places in the franchise agreements—in capital letters and once in bold font. The court also found that there was sufficient evidence to conclude that one of the shareholders of the franchisee was an attorney and had read the franchise agreements, and that the other shareholder was an experienced franchisee who made the decision not to have his attorney review the agreements before signing them. The court also noted that courts in other franchise cases have upheld similar jury waiver provisions. The court held that these facts supported the conclusion that the franchisee's waiver of the right to a jury trial was both knowing and intentional.

With regard to the waiver of punitive damages, the court found that other courts have upheld similar waivers when they are expressly stated in the franchise agreement. Here, the court determined that, like the waiver of the right to a trial by jury, the waiver was listed in a conspicuous manner in the franchise agreements, leading to the conclusion that defendants knowingly and voluntarily waived any claim for punitive damages.

Finally, the court found no merit to defendants' argument that because their counterclaims seek relief for acts committed by Dunkin' Donuts outside of the contractual relationship between the parties, the waiver provisions within the franchise agreements are inapplicable. Rather, the court found that the language of the waiver clause was broad enough to cover all disputes between the parties, including those disputes arising outside of their contractual relationship. Moreover, the court also found that while defendants' counterclaims were pled as torts, they were more accurately described as contract claims for wrongful termination. Thus, because the counterclaims involve questions of whether Dunkin' Donuts fulfilled its obligations under the franchise agreements, the court found that the waiver provisions apply.