

54th Annual

**IFA**

# CONVENTION

— DRIVING GROWTH *in* CHALLENGING TIMES —

FEBRUARY 22-25, 2014 | NEW ORLEANS CONVENTION CENTER/  
HILTON RIVERSIDE & TOWERS | NEW ORLEANS, LA

# INTERNATIONAL

## Setting Fees and Development Schedules, Enforcing Agreements and Preparing For Changes In Master Franchise Agreements

# Yoshino Nakajima



Yoshino is the Senior Vice President and COO, Global Operations of Home Instead Senior Care. She is responsible for Global Franchise Development and Global Business Development.

Yoshino has first-hand international knowledge gained while introducing and developing a fast-food concept in Poland. Her global franchising expertise has been recognized by the International Franchise Association, where she has co-chaired and is an active member of IFA's organization's International Affairs Committee.

While her focus is on expanding the Home Instead Senior Care network globally, senior care is also very personal for Yoshino. "My work takes me all over the world," she says, "but in my heart I get the greatest satisfaction from helping older people everywhere live safer, happier and more fulfilling lives."



# Srinivas Kumar

Srinivas Kumar was just named CEO of CraftWorks Restaurants and Breweries, Inc., which includes such brands as Gordon Biersch Brewery Restaurants, Rock Bottom Restaurants & Breweries and Old Chicago Pizza & Taproom.

A veteran of the franchise food industry, Srinivas has over 20 years of senior operating experience from Baskin Robbins and Dunkin' Donuts where he held several positions including Chief Brand Officer of Baskin-Robbins Worldwide. He oversaw international expansion and branding efforts. Srinivas most recently served as head of Pearle Vision, a premium optical retail chain and a division of the Luxottica Group.

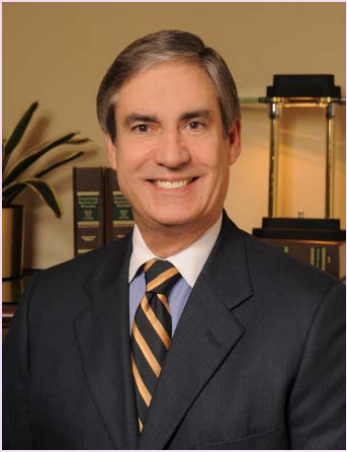
Srinivas is focused, results driven and an innovator with extensive experience with franchisees.



# Fred Marfleet

Fred is the founder of Expense Reduction Analysts (ERA), a global cost management consultancy that helps clients reduce indirect costs based on a no savings - no fee offering.

Born in the UK, Fred completed his tertiary education in Australia and qualified as an Australian CPA. Before founding ERA in 1993, he had developed several businesses and had worked in the investment and finance fields in Australia. ERA is a global consultancy practice operating in more than 30 countries, with more than 750 partners and consultants servicing thousands of clients.



# Carl Zwisler

Carl is a principal in Gray Plant Mooty's Franchise & Distribution Law practice group. He represents companies in structuring, negotiating and enforcing U.S. and international franchise, licensing, and distribution agreements.

With the experience he has gained advising franchisors and master franchisees through every phase of the life cycle of a franchise program, Carl is uniquely qualified to advise international franchisors in starting and improving their international franchising programs.

He is sought out by franchisors and franchise investors from around the world to assist them with cross border issues. Carl is a former IFA General Counsel.



# Goal

Provide perspectives and thoughts about the essential elements of international multi-unit development gained through 90+ years of collective experience



# Terminology

- Master Franchise Agreement
  - Franchisor grants Master Franchisee (subfranchisor) the right:
    - to sell unit franchises (subfranchises) within a defined territory usually at a rate set by a development schedule during a defined period of time for a fee



- Subfranchisee
  - one who contracts with Master Franchisee to open/operate franchised units

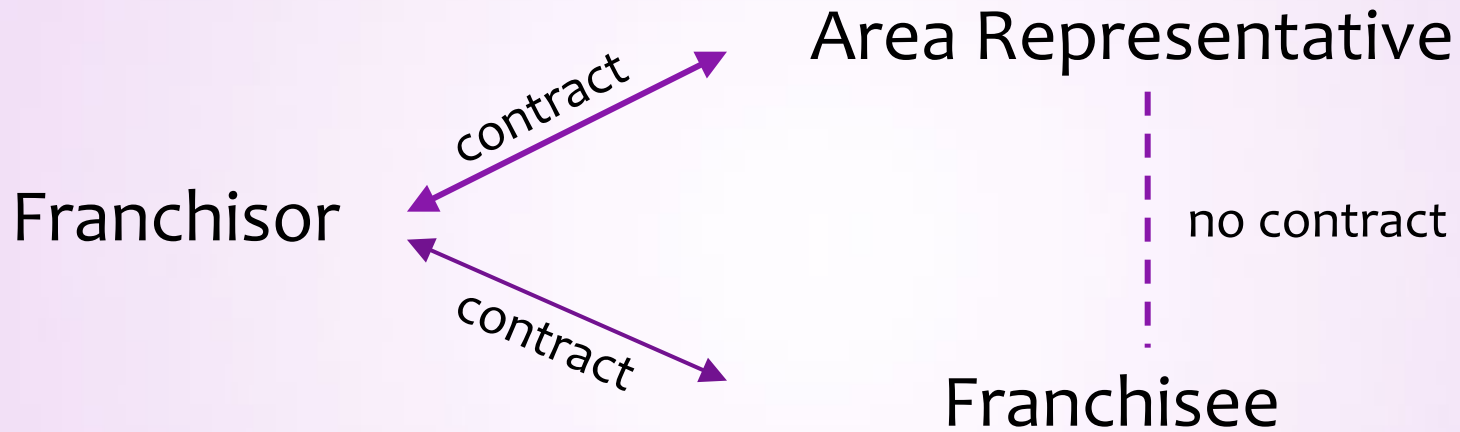


- Area Development Agreement
  - An agreement granting an Area Developer the right to open and operate itself
    - Multiple units
    - Within a territory
    - At a rate set by a development schedule
  - Area Developers sign a Unit Franchise Agreement before opening each outlet
  - Area Developers may not subfranchise

- Area Representative Agreement
  - Area Representative pays Franchisor for the right:
    - to recruit Franchisees who sign Franchise Agreements directly with Franchisor
    - to provide initial and ongoing services to Franchisees in the territory
  - Franchisor pays Area Representative a portion of the fees it receives from Franchisees

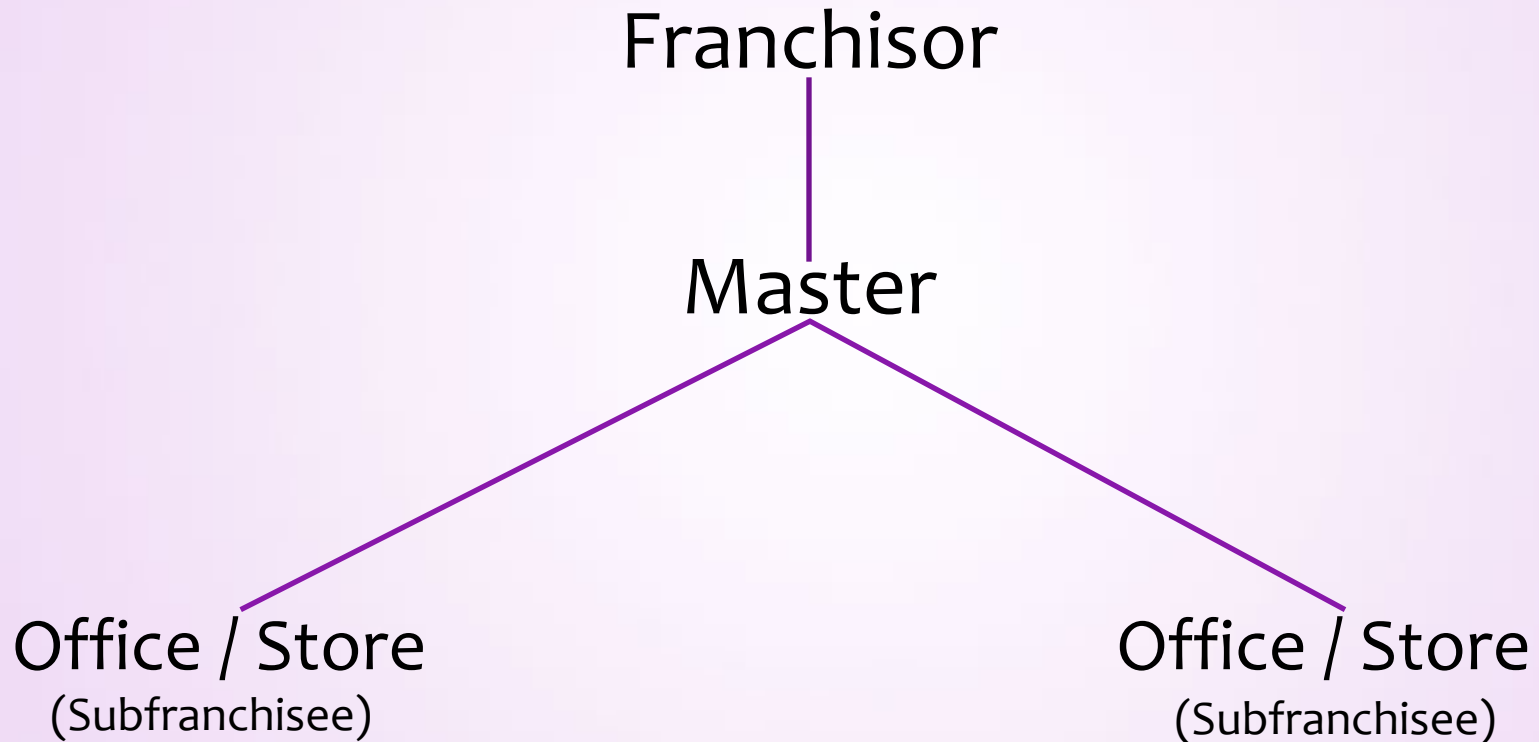
- Area Representative  
(called “Area Developer” by ERA)
  - 2 agreements
  - Area Representative Agreement
  - Unit Franchise Agreement
  - Franchisor contracts with Area Representative
  - Franchisor contracts with Franchisees, but
  - Area Representative has no contract with Franchisees

# Area Representative



# Master Franchising

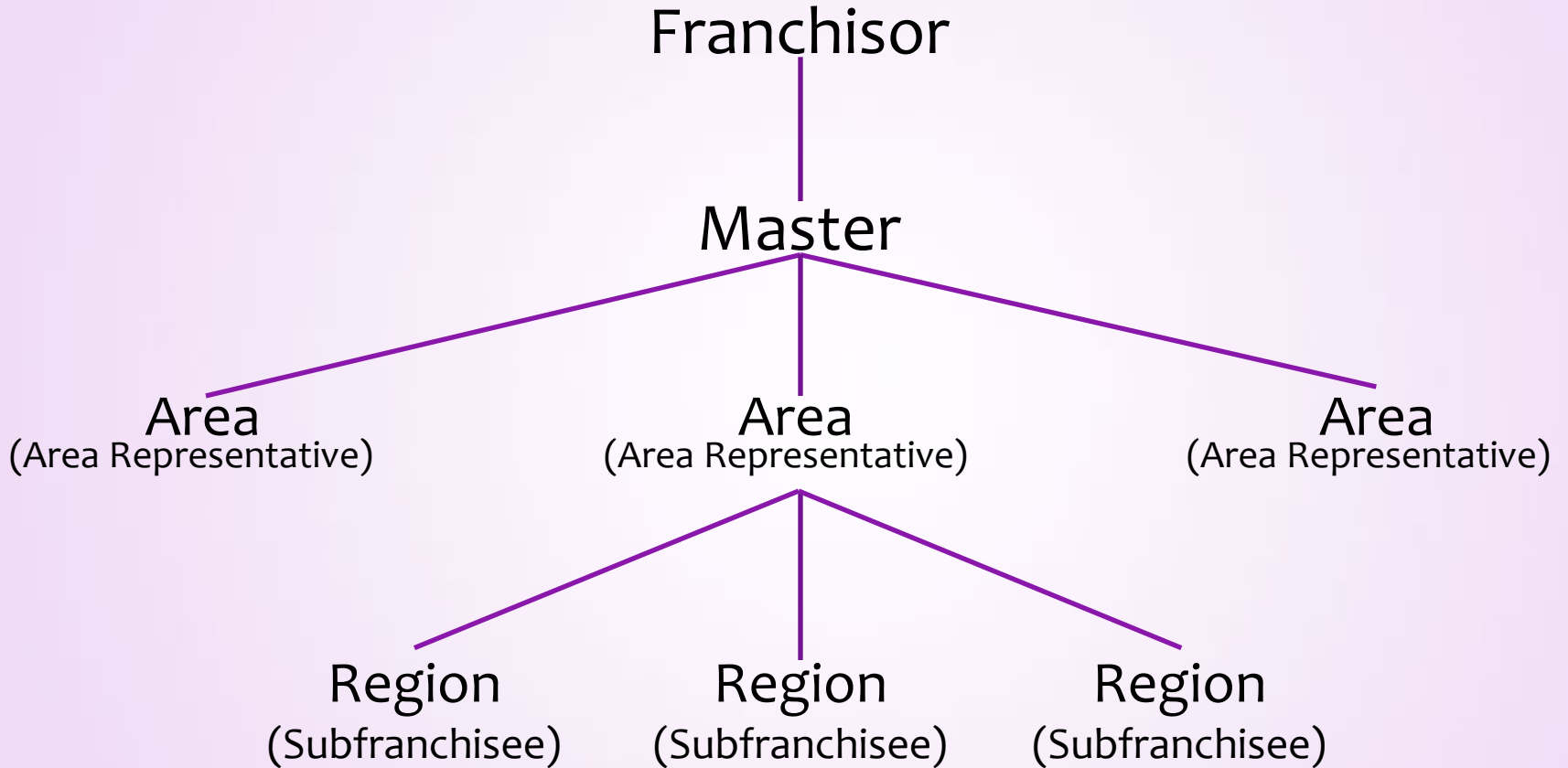
(Srivinas & Yoshino)





# Master Franchising

(Fred)



# Setting Fees

- Factors used to establish the initial/entry fee for a foreign Master Franchisee:
  - Competitors fees
  - Projected profitability of territory
  - Fees charged in other territories
  - What can be collected while allowing Master to be profitable
  - Rule of thumb
  - What franchisor needs to justify investment in the territory

# Adjusting Fees Charged To Subfranchisees

- Alternatives
  - Wait until end of Master Franchise term
  - Require Master to change fees charged when Franchisor requires change

- Set base fee and percent of fees to which franchisor is entitled, e.g.,
  - a. Higher of \$20,000 or 50% of what Master charges, or
  - b. Higher of 3% of subfranchisees' gross sales or 50% of royalty charged by the Master; or
  - c. Franchisor sets base (as is a & b) but may adjust base amounts or percent once each year (if same charges are assessed in Franchisor's home market)

# Development Schedules And Performance Standards



**Franchising**  
Building local businesses,  
one opportunity at a time.



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# 2005 Study Of 142 International Restaurant Master Franchisees

by Arturs Kalnins, Ph.D.

- 6 Master Franchisees met or exceeded their development schedule
- 21 Master Franchisees did not open one unit
- 21 Master Franchisees granted franchises, and went out of business leaving Franchisees in their territories



- 66 Master Franchisees opened units in their territories, all of which were closed by the end of their development terms
- 5 law suits were reported



# Setting A Development Schedule

- Considerations
  - Number of units franchisee proposes
  - Size of territory
  - Development potential of territory
  - Franchisor's transactional costs and opportunity costs
  - Franchisee's development capacity
  - Duration of development schedule
  - Business plans



# Resetting A Development Schedule At End Of Term

- Approaches
  - Parameters
  - Formula
  - Open-ended negotiation
  - Franchisor decides
  - Additional development fee

- Other performance standards



# Enforcing Subfranchise Agreements When Master Does Not Enforce Them

- Terminate the Master Franchise Agreement
- Reserve the right to directly enforce subfranchise agreements (and charge Master a premium for Franchisor's efforts)



# Ending A

## Master Franchise Agreement

- Master Franchise Agreement must grant Franchisor right to deal with potential roles of the Master in the Territory
  - Franchisor to existing subfranchisees
  - Party to options or development rights of subfranchisees and holder of the fees they already have paid and the right to collect what they will owe in the future when they exercise their rights



- Supplier or operator of supply cooperatives
- Purchaser of advertising contracts for the system
- Administrator of advertising funds and future advertising programs
- Landlord, lender and guarantor of subfranchisees' obligations
- Operator of “company-owned units”
- Recruiter of new Franchisees



- The principal representative of the brand in territory, and
- The entity which controls reservations, warranties, client/customer relationships in the territory
- Is negotiation the only strategy?



# The Best Solution

- Select the right Master Franchisee or Area Developer





# Questions?



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# Thank You



**Srinivas Kumar**

CEO

**CraftWorks Restaurants &  
Breweries, Inc.**

8001 Arista Place  
5th Floor

Broomfield, CO 80021

skumar@cwrestaurants.com

(303) 664-4000



**Fred Marfleet**

Chairman and Founder

**Expense Reduction Analysts, Inc.**

Bent Tree Tower II  
16479 N Dallas Pkwy  
Suite 240

Addison, TX 75001

fmarfleet@expensereduction.com

(314) 259-6413



**Yoshino Nakajima**

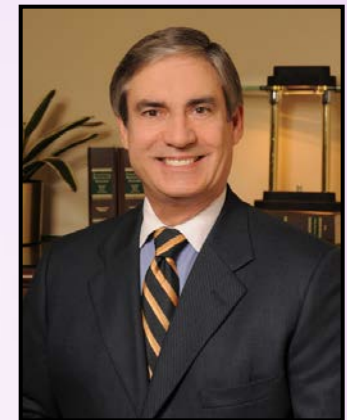
SVP & COO, Global Operations

**Home Instead Care**

13323 California Street  
Omaha, NE 68154

ynakajima@homeinsteadinc.com

(888) 484-5759



**Carl E. Zwisler**

Principal

**Gray Plant Mooty**

The Watergate  
600 New Hampshire Ave, N.W.

Suite 700

Washington, DC 20037

carl.zwisler@gpmlaw.com

(202) 295-2225

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