**Pizza Ranchero, Inc. v. Terry Walsh[[1]](#footnote--1)©**

COMMON FACTS

Pizza Ranchero, Inc. (Pizza) headquartered in Okoboji, Iowa, is the franchisor of a regional system of pizza and chicken restaurants, with 162 units throughout the Midwest. Terry Walsh was a franchisee located in Boone, Iowa. By letter dated January 15, 2009, Pizza terminated Walsh’s franchise because he/she was persistently unwilling over an extended period of time to operate his/her restaurant in compliance with Pizza’s standards. Restaurant inspection reports (both by Pizza personnel and by an independent company) and customer complaints found the restaurant failing to meet franchise standards as to cleanliness, customer demands, and friendliness of the staff.

When the Walsh store was opened in June 2005, it met all projected sales. Sales reached $550,000 in approximately August 2007, when another store was franchised in the University town of Ames, Iowa, approximately 20 miles away.

At the time Walsh was considering purchasing his/her Pizza Ranchero store, the franchise representative provided him/her with a document entitled “Town Selection Criteria.” It set forth three categories: “population, number of high schools, and within 20 miles of a larger city.” Next to each category the rep wrote the following:

Population: 5,000 – 15,000

Number of high schools: at least 1

Within 20 miles of larger city: 50,000

The document also stated that the “ideal Pizza Ranchero restaurant would be located near a college or university.”

Based on the above criteria, Walsh selected Boone, Iowa. It included a population of 5,000 people, it had one high school, and it was near a university town, Ames, Iowa (Iowa State University). More important, the next closest Pizza Ranchero was 50 miles away.

The franchiser rep told Walsh that a Boone location met each of the location criteria. It was in a town of 5,000 people, it had one high school, a college or university was located within 20 miles in a city of approximately 50,000 people, and it was 50 miles from an existing Pizza Ranchero restaurant.

Relying on these representations, Walsh went forward with the purchase. He/She borrowed $130,000 from a local bank, used $112,000 of his/her savings, and borrowed $80,000 from the Small Business Administration. He/She had a store built, equipped and was ready for operations on June 20, 2005. At that time, he/she signed the franchise agreement, which included an exclusive territory which was to be set out in exhibits 1 and 2. However, these exhibits were not attached. He/She was told not to worry about it, they would be forthcoming shortly. When he/she received the exhibits, they provided an exclusive territory of 5 miles radius and not 20 miles.

With the Ames store opening, Walsh’s sales dramatically decreased. He/She claims that Pizza violated the exclusive territory he/she was promised, and Pizza contends that his/her exclusive territory was only 5 miles in radius. Pizza argues that when Walsh signed the franchise agreement, Exhibits 1 and 2 were attached. It further contends that Walsh’s decreased sales were due to the way he/she managed his/her store – it was not clean, customers complained, and the help was not friendly.

Walsh has sued for breach of contract and fraud and seeks $642,798.36 in damages. Pizza defends on the ground that there was no breach in that Walsh’s territory was 5 miles in radius and his/her failure was the way he/she operated the store.

The franchise agreement provides:

LICENSEE AND PRINCIPAL ACKNOWLEDGE THAT (1) THEY ARE ENTERING INTO THIS AGREEMENT AFTER HAVING MADE AN INDEPENDENT INVESTIGATION OF PIZZA’S OPERATION, AND NOT BASED UPON REPRESENTATIONS OR PROMISES TO THEM (INCLUDING, BUT NOT LIMITED TO, ANY PROJECTIONS OR PROMISES) AS TO INCOME OR EARNINGS POTENTIAL OF ANY KIND; AND (2) COMPANY HAS MADE NO REPRESENTATIONS, PROMISES OR STATEMENTS, ORAL OR WRITTEN, TO OR WITH THEM WHICH ARE NOT CONTAINED IN THIS AGREEMENT.

Exhibit 1 attached states:

The territorial rights of Pizza Ranchero in Boone, Iowa are for an area that is 5 miles in any direction from the Pizza Ranchero in Boone, Iowa.

The parties agreed to mediate. Walsh lowered his/her demand to $450,000 and Pizza offered $100,000.

**ADDITIONAL FACTS – TERRY WALSH**

Walsh bought the Pizza Ranchero franchise as an investment. He/She has a full-time job elsewhere, as does his/her wife/husband. At this point, he/she just wants to get out of the business and salvage what he/she can. He/She recognizes that he/she has serious problems in proceeding with the litigation. Because of difficulties he/she was having with his/her help, he/she had a number of customer complaints in the last year. (For the average store there could be no more than 10 to 15). One customer complained:

Needless to say, we were totally disappointed and disgusted by several things. (1) The restaurant was absolutely filthy. There was food all over the floor and the tables were piled high with dirty dishes that no one seemed to be cleaning. (2) The buffet was a joke. There was hardly any pizza on the buffet and the rest of the food appeared to have been sitting there at least since lunchtime if not the day before. We had to wait for over 2 hours to be able to eat because they were not filling the buffet as things emptied.

Another customer complained:

The person who took our order had very dirty hands. They were so dirty that he left dirty fingerprints on both my kids’ plastic glasses. This is not acceptable in a food establishment. Then came the dining area. There was not one cleared table, there was enough food on the floor to feed ten people and the area of eating had not been wiped off probably most of the day.

However, the Iowa Department of Health examined the store at about the same time of the customer complaints and found only minor problems, which were easily corrected.

Again, Walsh just wants out and will turn the keys over to Pizza immediately and walk away if it will just help him/her cover some of his/her debts. At this time he/she has a ten-year lease at a rental of $15,000 per year. He/She would like Pizza to assume this inasmuch as it will probably want to continue operating the store.

He/She owes $212,000 to the bank and SBA. He/She thinks he/she can compromise these loans somewhat because of the difficult times we are facing.

He/She owes $53,000 for personal loans made by others and $80,000 on his/her credit card. The credit card debt includes many personal matters unrelated to the business.

**ADDITIONAL FACTS – PIZZA RANCHERO, INC.**

Pizza recognizes that the twenty mile radius dispute is a problem. Its representative has admitted that he probably misled Walsh into believing that his/her exclusive territory would include Ames, Iowa and Iowa State University. This is why he withheld exhibit 1 until Walsh signed the franchise agreement. He feels bad about misleading him/her, but he/she should have had an attorney helping him/her. This is business. He is willing to testify that exhibit 1 was attached to the franchise agreement when Walsh signed. If a jury held otherwise, Pizza would have a major problem with the new franchisee in Ames.

Pizza feels it has a legitimate reason for terminating Walsh. It sent in its inspectors with instructions to find violations so they could shut the store down. However, it recognizes that the Iowa Department of Health examined the store at about the same time Pizza inspected it and found only minor problems, which were easily corrected. Pizza is concerned that it set Walsh up so it could terminate him/her and avoid problems with opening the new franchise in Ames.

Pizza has instructed its representatives at the mediation to pay whatever it takes to get Walsh to give up the store so that it can take it over. It will assume the rent obligations and hold Terry harmless.

**Taylor George v. Allianz Transportation, Inc. and Casey Heming[[2]](#footnote-0)©**

COMMON FACTS

On August 3, 2008, the plaintiff, Taylor George, was driving his/her minivan and towing a homemade trailer containing many of his/her possessions. Plaintiff was traveling north on Interstate 35, near Mason City, Iowa, when a semi-truck, owned by the defendant Allianz Transportation, Inc. (Allianz) and driven by the defendant Casey Heming, started to pass him/her and struck the rear end of plaintiff’s trailer. The impact pushed his/her car into a spin off the highway, rolling over three times. Plaintiff was wearing his/her seatbelt and survived. He/She was unconscious for several minutes, and when he/she became conscious smelled gasoline. He/She unbelted himself/herself and climbed out of the vehicle, which was upside down.

Plaintiff was taken to a local hospital where he/she was treated for cuts and bruises and soft tissue injuries. He/She was then released several hours later and he/she continued to plaintiff’s destination in northwestern Minnesota in a rental car.

Plaintiff sued for personal injuries and property damages. The damage to his/her vehicle has been settled. The original claim for property damages was $68,183.88, but was later reduced to $31,600.84. As for personal injuries, plaintiff claimed he/she was severely injured. Medical treatment, which included diagnostic testing and physical therapy, amounted to $16,341.50. His/Her first demand was $7,500,000.

Plaintiff, who is 60 years old, has a history of health problems, injuries and personal problems and argues that the accident exacerbated his/her physical and mental problems (the eggshell theory). He/She has suffered two heart attacks, has heart disease, fibromyalgia, sleep apnea, asthma, hypertension, carpal tunnel, cervical degenerative disk disease, myofascial cervical symptoms, lumbar degenerative disk disease, myofascial lumbar symptoms, knee injuries, bilateral knee degenerative joint disease, and bilateral shoulder tendonitis. Plaintiff is grossly overweight and walks with a cane. He/She blames all his/her problems, including those pre-existing, on the accident.

Prior plaintiff’s counsel took a default judgment against Allianz because it did not file an appearance. After a hearing, the judge entered a judgment awarding plaintiff $25,000 for past pain and suffering, $50,000 for future pain and suffering, $36,191.83 for property damage and $16,361.52 for medical expenses. This was set aside when the judge learned that plaintiff’s counsel had been in contact with the insurance carrier insuring Allianz but did not give it notice of the default proceedings. The case was reinstated and plaintiff’s counsel was then fired. The case was transferred to another venue.

Plaintiff’s expectations are quite high because his/her first attorney told him/her the case was worth over $1 million. The insurance carrier feels the case has limited value because its expert, who conducted an independent medical examination (IME), a Dr. Metz, concluded that the only injuries suffered by plaintiff from the accident were abrasions, lacerations, and bruising that have resolved without residuals. At this point, plaintiff has not disclosed an expert who will testify to the contrary.

Before a considerable amount of money is spent in depositions--there are 31 doctors and medical care providers who will have to be deposed--the parties agreed to mediate. Plaintiff reduced his/her demand to $500,000 and defendant offered $20,000.

**ADDITIONAL FACTS – TAYLOR GEORGE**

Taylor George is very angry for several reasons: first, he/she was awarded by a competent judge $127,500 and the insurance company had the nerve to have the court take it away. He/She blames his/her first lawyer for not defeating defendant’s reinstatement motion.

Second, plaintiff can hardly walk now, whereas before the accident he/she was able to go camping and sleep on the ground without difficulty. Now he/she walks with a cane. Although he/she was a sick person before the accident, he/she is much worse now and is getting worse all the time. He/She has no money and has moved in with his/her mother.

Third, he/she has been divorced three times and was traveling to Minnesota to move in with a friend. Since the accident, the friend abandoned him/her because the friend does not want to be stuck with an invalid.

Fourth, plaintiff is lonely and very concerned about having a fatal heart attack.

Fifth, plaintiff believes he/she needs a minimum of $400,000 to afford to live independently. Less than that, he/she might as well roll the dice at a trial, unless his/her counsel can convince him/her otherwise.

**ADDITIONAL FACTS – ATTORNEY**

Counsel has a very difficult client and needs the help of the mediators to get Taylor to be realistic. The problems are many:

First, although the accident was quite traumatic--plaintiff thought he/she was going to die--he/she came out of it quite well, with only abrasions, lacerations, soft tissue injuries, etc. He/She was not even kept overnight at the hospital and continued up to Minnesota the next day in a rented car.

Second, Taylor had many pre-accident problems, which counsel must argue were aggravated by the accident. Defendant’s IME doctor has stated there are no residual effects from the accident. To date, all of Taylor’s doctors have either stated there were no residual effects or they cannot determine what they may be. Defense counsel does not know this, but once the depositions are taken will find this out and offer little to settle the case.

Third, at this point, Taylor will not listen to counsel and will not compromise much below $500,000. Yet, counsel knows the carrier is not going to pay this much. It will probably not pay much above $100,000.

Fourth, counsel asked others in the law firm what the case was worth. Most agreed it was not worth much above $100,000.

Fifth, counsel is going to have to work very hard to get Taylor to compromise; otherwise they could lose everything because plaintiff will not make a good witness.

**ADDITIONAL FACTS – ALLIANZ TRANSPORTATION**

Counsel feels the defendant has a good defense. Dr. Metz’ IME indicates only bruises and lacerations and some soft tissue injuries. Counsel is concerned about several things, however:

First, defendant is a trucker who cut too close to Taylor in trying to pass on I-35. Plaintiff was sent spinning with the vehicle rolling three times. Counsel will have to admit liability.

Second, jurors do not like truckers and in most jurisdictions rule unfavorably when they have caused an accident.

Third, the insurance carrier recognizes that medicals are $16,361.52 and damage to personal property $36,191.81. There will also be an award for past and future pain and suffering.

Fourth, an independent judge has already looked at the case and found that past and future pain and suffering were $35,000 and $50,000 respectively. Although this cannot come into evidence and this was without the benefit of a defense, including cross examination, still it does give some indication of the value of the case.

Fifth, because of the lapse of time, the truck driver cannot be found and therefore cannot testify at trial. He would have said that after the accident, plaintiff was walking around and said he/she was fine. Plaintiff’s counsel does not know that the trucker will not be at the trial.

Sixth, defense counsel recognizes that Taylor has high expectations and perhaps counsel should not attack him/her at the mediation but be as conciliatory as possible.

Seventh, if the case moves forward, it will be expensive to pre-try and try. There are 31 depositions of doctors and health care providers that will have to be taken. This will cost at least $1500 apiece. For these reasons, the carrier’s home office has instructed defense counsel to settle the case for anything up to $200,000.

**Great Northern Bank and Trust Co. v Shaun Bowes[[3]](#footnote-1)©**

COMMON FACTS

Shaun Bowe’s spouse, Pat Bowes (Bowes) committed a major fraud on the Great Northern Bank and Trust Company (GNB) and five other banks. He/She took out a loan of $3.5 million with GNB signing a promissory note secured by an alleged stock account with South Barney Stock Brokers. Bowes represented that there was $8.8 million worth of stock in the account. He/She gave the loan officer a telephone number and email to verify the existence and amount of the account. When the loan officer telephoned, Bowes answered and gave the alleged verification himself/herself. The email was in fact Bowes’ and when inquiry was made he/she again verified the alleged account and the amount. He/She used the same mode of operation in five other banks.

As it turned out there was no South Barney account and the entire transaction was a fraud. After receiving the loan, the funds were disbursed and could not be recovered. Bowes then committed suicide. GNB seeks to recover the $3.5 million. There are no assets in Bowes’ estate.

Shaun gets involved because he/she received the proceeds from several insurance policies taken out by Bowes in his/her name. Because the policy vested, the proceeds of $3.1 million were paid to him/her even though there was a suicide.

GNB has now sued Shaun to recover the proceeds of the insurance policy. The gravamen of its action is that Shaun signed the note and security agreement for the loan and is therefore liable on the loan. Shaun defends on the ground that he/she signed the note and security agreement because Bowes told her/him to do so. He/She did not read the documents or understand what he/she was signing.

The court gave partial summary judgment against GNB on the ground that it violated the federal Equal Credit Opportunity Act (ECOA), 15 U.S.C. ¶ 1691. This statute provides that when a lender requires a married spouse to co-sign a loan agreement when the applicant is qualified individually under the bank’s standard of creditworthiness, there is a violation. See Marine American State Bank v. Lincoln, 433 N.W.2d 709 (Iowa 1988). Shaun is therefore entitled to recover actual damages, punitive damages up to $10,000, and attorney’s fees, which to date are $150,000.

GNB contends that summary judgment is improper because there is a question of fact as to whether Shaun signed the loan agreement as a co-applicant, in which case Shaun would also be liable on the note.

The case is set for trial in three weeks and the parties decided to mediate the matter. At this time, both seek the $3.1 million in insurance proceeds now being held in escrow. GNB has offered to allow Shaun to keep $750,000 of the proceeds and Shaun has countered agreeing to allow GNB to recover $850,000 of the proceeds and he/she will keep the rest.

**SPECIAL FACTS – GNB**

GNB is very concerned about the case because the trial judge granted partial summary judgment on the ECOA counterclaim and defense. The court, which will try the case, has already held there is a violation, and the only issue is damages. GNB sought an interlocutory appeal to the state supreme court, but this was denied.

GNB is willing to give Shaun $1 million of the insurance proceeds and keep $2.1 as a compromise. The determinative issue in the case is whether Shaun is personally liable on the note because he/she participated in the fraud when he/she knowingly or unknowingly signed a security agreement warranting the existence of the South Barney account. Without this fraudulent act there would have been no loan. The trial court has already ruled against the bank and there is no precedent as to what the appellate court might do.

The bank very much wishes to get this matter resolved and will offer up to $1.5 million if absolutely necessary, but would prefer not to have to pay it all up front.

**SPECIAL FACTS – SHAUN BOWES**

Although there appears to be a violation of the ECOA in that Shaun was required to sign the loan agreement when Bowes (her/his spouse) was qualified for the loan under the creditor’s standards of the bank, still he/she also signed the security agreement, which pledged the non-existent South Barney account and stock. The bank can require the spouse’s signature on the security pledged for the loan without violating ECOA. In signing the security pledged for the loan, Shaun warranted that he/she “is the lawful owner of the collateral free and clear of all security interests, liens, encumbrances and claims of others except as disclosed to and accepted by lender in writing prior to execution of this Agreement.”

GNB contends that Shaun knew or should have known that he/she was signing a fraudulent document, without which it would never have made the loan. Thus, having participated in this fraud he/she is personally liable for the damages caused – the loan of $3.1 million.

Shaun desperately wants to get this matter settled – he/she can no longer take the stress of the lawsuit. He/She has asked counsel to do anything possible to get it resolved; however, without the proceeds of the insurance policy, he/she is literally destitute. Therefore, he/she must receive enough to take care of his/her two teenage children. A structured annuity is a possibility.

**Carroll Van Vooren, Assignee of the Claims of Edna E. Van Vooren v.**

**Merrill Finch & Company and Hazel Bradford, its Agent, Springfield**

**Insurance Co. and Jonathan Oster[[4]](#footnote-2)©**

COMMON FACTS

In June 1985, Edna Van Vooren opened an investment account with Hazel Bradford at Merrill Finch & Company. She was 65 years old at the time. Thereafter, she purchased a universal life insurance policy from Springfield Insurance Co. paying a $100,000 lump sum premium payment from her Merrill Finch account.

In 1996, Edna created the Edna E. Van Vooren Irrevocable Trust and appointed Jonathan Oster, her accountant, as trustee. Hazel Bradford and Merrill Finch were not involved in the creation of the trust and did not recommend Jonathan Oster as trustee.

In 1997, Edna told Hazel Bradford she wanted to buy additional life insurance to provide for her children. The latter contacted Burt Franklin, the local agent for Springfield Insurance Co., about Edna’s request. Franklin reviewed Edna’s 1985 policy and proposed that Edna take a $100,000 loan from the 1985 policy to purchase a second policy – a universal variable whole life insurance policy with a death benefit of $500,000. He suggested the variable policy because the cost of life insurance for Edna at 77 years old would otherwise be prohibitive.

In September 1997, Franklin and Springfield Ins. Co. prepared a written proposal for the new variable life policy. Franklin, Bradford, and the trustee Oster were present at Edna’s home where Franklin made the proposal. Pursuant to the terms of the policy, the $100,000 premium was to be invested in high risk securities which would generate 10 percent interest, which would cover the premiums on the new policy. He did not explain, according to Edna, that if the securities went down in value than she would have to make up the difference. They told her that she could forget about the policy as it would take care of itself.

At the time of the purchase, both Edna and her trustee Oster, acknowledged in writing (small print) that the risks of the policy were fully explained to them.

Edna states that she did not understand the risks involved in such a policy, and the trustee Oster asserted that all investment decisions were made by Franklin and Bradford. He was only passively involved as trustee.

During the first three years, the plan worked as intended and interest earned on investments covered premiums. In 2000, when the market crashed, there was inadequate income and the first policy was cannibalized to pay the premiums. By 2004, there was insufficient income to pay premiums and the second policy was about to lapse.

Edna was unaware of the problem encountered inasmuch she was not receiving reports from Springfield Ins. Co. – they were going to the trustee Oster. He admits he was not paying attention and did not send the reports to Edna.

In late 2004, Edna’s son/daughter Carroll contacted Oster, and for the first time found out about the crisis. He/she, on behalf of his/her mother, removed Oster as trustee and had the Springfield policies exchanged for an Empire general policy with a death benefit of $210,000. Thus, the two Springfield policies with death benefits of $420,000 (1985 policy) and $500,000 (1997 policy), were replaced with a single death benefit of $210,000.

Carroll, on behalf of his/her mother, sued Merrill Finch & Company, its agent Hazel Bradford, Springfield Insurance Company, and the trustee Jonathan Oster. Suit was filed in April 2007. Plaintiff alleged (1) misrepresentations as to the nature of the policy Edna’s trust was purchasing, (2) negligence, in that the policy purchased was unsuitable for a person of Edna’s age (85 years old), negligent omissions, in that the defendants did not explain what would happen if the stock market went down and interest was insufficient to pay the premium on the new policy. Against the trustee, plaintiff claimed a breach of fiduciary duty in that he should have stopped Edna from purchasing the policy and should have kept her informed of what was happening in the market in 2000.

The defendants defended on the ground that suit was not brought within the five year statute of limitation – the policy was purchased in 1997 and suit was not brought until 2007.

Discovery is about to commence. The insurance company insuring Merrill Finch & Company and Hazel Bradford has asked to mediate the case. Plaintiff has agreed even though Springfield Insurance Co. and Jonathan Oster, the trustee, have declined to participate. Attending the mediation are Carroll Van Vooren on behalf of Edna and the insurance adjuster representing Merrill Finch & Co. and Hazel Bradford.

Plaintiff has made a demand of $650,000. This is based on the value of the 1985 policy in 2004 of $320,000 and the 1997 policy of $500,000 or $820,000. Deducting the $210,000 for the Empire Insurance policy which Edna now has equals $510,000. Added to this are attorney’s fees and costs levied of $140,000.

**SPECIAL FACTS – CARROLL VAN VOOREN,**

**REPRESENTATIVE OF EDNA VAN VOOREN**

Edna is now 90 years old, in good health, but she is not sure what is going on. Although Carroll feels his/her mother was taken advantage of by Merrill Finch and Springfield Ins. Co., he/she is concerned about putting her through a trial. Any money she gets will simply go to Carroll and brother Dan. For that reason he/she wants to get the matter resolved.

Carroll recognizes that the statute of limitations problem is significant. His/Her position is that the family did not learn of the withering nature of the policy because of the drop in the stock market until 2004, two years after the statute had run. For that reason, he/she understands that the better case is against the trustee Jonathan Oster, who got Edna into the policy in the first place and then did not keep track of what was going on in the stock market. There was a serious breach of his fiduciary duty. His explanation is that he is a CPA and not a financial advisor. Further, he became trustee as a favor and has received no compensation for acting in that capacity. His only remuneration is that he does Edna’s taxes.

Carroll also recognizes that the case against Springfield Insurance Co. is a stronger case then against Merrill Finch, because its agent Burt Franklin was the one that sold the policy and recommended the investments. Merrill Finch’s agent, Hazel Bradford, was more passive.

If Carroll could get $200,000 out of Merrill Finch’s insurance carrier, this would be a good settlement. Then Edna would have funds to pursue the more significant defendants.

**SPECIAL FACTS – MERRILL FINCH & COMPANY AND**

**HAZEL BRADFORD, ITS AGENT**

Two attorneys for the insurance carrier have flown out from New York City to attend the mediation. They want to get the matter settled if they can. They are concerned about the case because the universal variable whole life insurance policy is very risky and inappropriate for an elderly person. Although Burt Franklin of Springfield Ins. Co. was the prime mover in talking Edna into buying the policy, the insured Hazel Bradford was Edna’s financial advisor and should have advised her against purchasing it in the first place because it was inappropriate for a person her age. One reason Hazel did not is because she received a bigger fee from Springfield then she normally receives. In fact, she shared some of the fee with Jonathan Oster, the trustee to get him to approve the policy, which is not only unethical but illegal. Plaintiff does not know about this, but if he/she found out, plaintiff would amend the complaint and ask for punitive damages. The insurance adjuster handling the case has every reason to settle it because the insurance policy in question covers punitive damages.

The adjuster’s strategy is to convince plaintiff to settle with Merrill Finch and Hazel and go after Springfield and Oster. At this time Springfield has only offered $50,000, but if Merrill Finch gets out of the case it would put more pressure on it to pay more money. Right now both Springfield and Oster’s insurance carrier are relying on Merrill Finch’s insurance carrier to do all the work. With it out of the case, they will have to start spending some money.

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