FRANCHISE TERMINATIONS: "GOOD CAUSE" DECODED

By

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ABSTRACT

The body of law surrounding franchises is far from uniform, including laws governing the termination of franchises. Laws concerning franchises differ from state to state; some states have special laws specifically addressing franchises while other states treat franchises as any other contractual relationship. The legislative definitions differ to some degree even on what constitutes a "franchise." These diverse views of the franchise relationship greatly affect the rights and duties of franchisor and franchisee alike. These differences also affect how courts evaluate the termination of a franchise relationship.

States that view franchise contracts as legally indistinct from other contractual agreements are typically less protective. In all states, violating certain franchise contract terms can lead to automatic or immediate termination. Even in states with laws intended to protect franchisees, certain acts permit automatic or immediate termination: insolvency, failure to operate franchise for five or more days, agreement of the parties, misrepresentation, repeated failure to comply with the law or with requirements of the franchise contract, seizure of or foreclosure upon the franchised premises, felony conviction of the franchisee, failure to pay fees after notice, and imminent danger to public health or safety. However, some states have attempted to regulate franchise terminations with statutes requiring "good cause" for termination — the goal is to balance the unequal bargaining power between franchisors and franchisees.

"Good cause" is usually defined narrowly by statutes or court decisions as the failure of a franchisee or dealer to comply substantially with essential and reasonable requirements imposed by the franchisor or supplier. The test used in defining good-cause centers on commercial reasonability. Similarly, the statutory term "unjust" (i.e., unfair) means a termination or nonrenewal made without good cause or in bad faith. In effect, such unconscionability depends on concrete evidence of (1) a franchisee's absence of meaningful choice and (2) contract terms unreasonably favorable to the franchisor. A franchisor's presumably superior bargaining power alone does not permit a finding of "unfairness."

By collecting and examining 342 cases dealing with franchise termination, the author has performed statistical analyses on the frequency, trends, and likelihood of courts reaching a "good cause" outcome while taking into account various factors, such as the existence of specific state laws and the reasons for termination. The results from these analyses are used to demonstrate the legal trends, a glaring need for uniform franchise laws, and how statutory modifications can reflect what the courts are already doing.

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I. INTRODUCTION AND HISTORY

The franchising concept, as it is known today, is a relatively new idea. Some historians trace franchise or licensing agreements as far back as 200 B.C. in ancient China,[1] but franchising similar to today's models can only be traced back to the mid-1800s. In the United States, franchising did not gain popularity until the 1950s. Three well-known U.S. examples include Isaac Singer with his sewing machine,[2] Western Union with its telegraph system,[3] and John Pemberton with Coca Cola.[4] This timeline, specifically the fact that franchising is a relatively new concept, may account for what some consider the disjointed law behind franchising in the United States.

In franchising, the most significant event is the termination — the end of a franchise before the specified contract term has lapsed. Typically, the franchisor invokes a breach of the franchise contract and, if there is a dispute, it is the franchisee who seeks to contest the termination. There are about 3,000 franchise systems in the United States,[5] and each year, thousands of terminations are contested in court.[6] To examine closely the public policy implications of franchise terminations, two questions must be explored: (1) What is the law in this area, and (2) Does the law, as it is expressed, match the actions taken in court? The statistical analyses that follow will demonstrate the trends and outcomes of termination cases for the past few decades. This article is primarily concerned the requirement of good cause for termination of a franchise contract agreement – when it applies, how it is defined and what comprises it. The statistical studies that follow analyze the varying bases upon which courts have anchored their decisions regarding the termination of a franchise agreement.

II. THE BLACK LETTER LAW

No definition of what constitutes a "franchise" applies uniformly across all fifty states.[7] The two predominant approaches are that state legislatures either: (1) have enacted laws specifically addressing franchising, or (2) have done little or nothing and thereby treat franchises

the same as any other contractual relationship.[8] How the franchise relationship is regarded greatly affects the rights and obligations of the parties.

The majority view is to treat franchise contracts the same as other business agreements. The effect is that courts are typically less protective of the franchisee. A franchisee's violation of the contract terms can lead to automatic or immediate termination.[9] Some contractual violations that have led to this type of termination include, but are not limited to, insolvency, failure to operate the franchise for five or more days, misrepresentation, repeated failure to comply with the law or with the requirements of the franchise contract, seizure of or foreclosure upon the franchised premises, the felony conviction of the franchisee, failure to pay fees even after notice, and imminent danger to public health or safety.[10]

In about a third of the states – those with specific state franchise laws – the termination of a business relationship can be treated very differently when that relationship meets the legislative definition of a franchise.[11] Some of these states attempt to regulate franchise terminations with statutes that require "good cause" for termination.[12] The public policy goal behind these laws is to balance the unequal bargaining power between franchisors and franchisees.[13] One would think that any requirement for termination would assist policymakers and adjudicators to make the treatment of terminations more uniform. However, problems arise in defining what exactly "good cause" means.[14]

A. Good Cause

Most legislation and judicial opinions define "good cause" narrowly as the failure of a franchisee or dealer to comply substantially with requirements or obligations under the franchise agreement.[15] If challenged, a franchisor must prove it had "good cause" to terminate the franchise relationship. This burden includes showing that the franchisee failed or refused to comply substantially with material and reasonable terms in the franchise agreement.[16] Some states provide a partial list of what is considered to be "good cause" (and sometimes what is not to be considered "good cause") in the statute itself.[17] These states have the option of using the list as guidance or deciding the issue on a case-by-case basis. This case analysis is the only method of determination available for the state courts whose statute provides little or no guidance as to the meaning of "good cause." The test used in defining good cause usually centers on commercial reasonableness.

In deciding a franchise termination case, courts seem to have taken a position that weighing facts and circumstances on a case-by-case basis is superior to relying on rules and lists. In each case, the court will generally consider the type and nature of the violation, what outcome would result if forfeiture occurs, the franchisor's conduct, as well as any other circumstances that are relevant to the case at hand.[18] Then, in order to reach a decision, a type of weighing will typically occur. If the violations or defaults committed by the franchisee are considered substantial, then termination is granted; if the violation or defaults are considered insubstantial, then termination is not granted.[19] In effect, the review is holistic in nature, in that the state legislature usually provides specific factors but the courts make a ruling based on any or all factors.

This definition of "good cause" raises other questions. What does it mean to show that the franchisee failed to or refused to comply substantially with material and reasonable terms of the franchise agreement? What is considered an equivalent business reason? What is considered substantial versus insubstantial? These questions not only weigh on the minds of regulators,

judges, and lawyers, but also cause uncertainty for the franchisors and franchisees facing the prospects of a franchise termination. Discerning franchisees likely sense what franchisor lawyers have long conceded: franchise agreements are drafted by franchisors with termination clauses often being the ultimate weapon in the franchisor's arsenal against opposing franchisees.[20] The following lists some reasons that courts have accepted as "good cause" for termination of the franchise agreement:[21]

- Failure to Pay
  - Fees
  - For Products Delivered
  - Rent
- Misuse of Trademark
  - Failure to provide goods or services in compliance with the company's licensing procedures, manuals, etc.
  - Selling of unauthorized products under the company's trademark
  - Adulterating the company's product
- Franchisor's failure to do business
  - Bankruptcy
- Failure to Cure Defaults
  - Concerning Products
  - Concerning Services
  - Series of willful persistent breaches
- Criminal Conduct
  - Conviction of Crime
- Transfer Without Consent
  - Of ownership
  - Of location
  - Assignment of Assets to Creditors
- Misrepresentation
  - With regard to the franchise
  - Knowingly maintaining false books
  - Submission of false reports
- Termination At Will
- Failure to Comply with Agreement
- Violation of Covenant not to Compete
- Disclosure of Confidential Information
- Failure to Meet Performance Standards
- Franchise Premises are Closed
- Franchise Premises are Taken Over by Others
- Franchise Premises are Foreclosed
- Failure to Maintain Hours or Conduct Business over a Specified Period
- Failure to Abide by the "Obey All Laws" Provision
- Conduct Reflecting Adversely on System
- Public Danger to Health or Safety
- Failure to Submit Records
- Competitive Conduct

- Death or Disability of Franchisee

Terminating a franchisee because it is a "deadbeat," though, may not rise to the level necessary to reach a good cause determination. For example, the failure to pay fees as provided by the franchise agreement will not, in and of itself, always be considered reasonable grounds for termination by the franchisor. Courts have found no error in a jury's determination that a franchisor did not have just cause (i.e., it lacked good cause) to terminate a franchise agreement, under a state retail franchising act, though the franchisee owed fees under the agreement, where the franchisee disputed the amount owed, continued to pay certain sums to the franchisor during the term of the franchise agreement, and engaged in continued negotiations with the franchisor to determine the correct amount owed. [22] In effect, these courts ruled in favor of franchisees that, while not paying everything owed, had contributed significantly to the franchise. A statutory prerequisite for termination thus may be seen as a "substantial performance" protection: franchisors may not terminate franchisees who have conscientiously striven to carry out their obligations under the franchise agreement, even if occasionally the franchisees have fallen short.

Differences in treatment among franchisees can also be a problem. In some cases, a nondiscriminatory withdrawal from a product market will be considered good cause for termination, cancellation, or nonrenewal of a franchise agreement.[23] However, other cases have come to an opposite conclusion, sometimes in the same jurisdiction. [24] In states with specific statutes enacted to govern franchises, those laws modify the termination provisions of all franchise agreements governed by that state's law. Therefore, when the terms of a private franchise agreement (governed by the laws of one of the aforementioned states) contain a provision that permits termination at will, the applicable state law will supersede the private arrangement and impose a "good cause" requirement on the franchisor's decision to terminate.[25] Claims for discrimination, even if franchisees have differing degrees of contractual protection, thus appear to be actionable.

State franchise law requiring good cause for termination or nonrenewal can also be preempted by a federal statute regulating termination or nonrenewal of a particular type of franchise. However, there are only two such federal laws — one governing retail petroleum marketing (gas stations)[26] and the Automobile Dealers' Day in Court Act.[27] These two statutes can be very influential as these industries make up a large portion of franchise relationships.[28] However, in the end, those statutes as well as other federal statutes important to franchising, most notably the Lanham Act,[29] do not preempt state franchise laws that proscribe the termination of a franchise without good cause.[30]

In short, while it may appear from a cursory glance that what is considered to fall under the heading of "good cause" is relatively settled, the area is still quite dynamic. Decisions seem to vary from state to state, from court to court, and sometimes even within the same court. What may have been considered good cause, or a lack thereof, in one decision may be deemed otherwise in a subsequent decision. Examination of what the courts actually rely upon in deciding termination disputes may – via statistical analysis - reveal with more certainty what courts truly find to be "good cause"; and, where judges have almost uniformly ruled certain conduct or inaction to be or not to be good cause, these rulings have, in effect, set the "good cause" standard.

B. Comparison to Good Faith and Fair Dealing

Not all franchise termination cases center on good cause. In some states, a franchise termination case will depend on the presence or absence of good faith (usually paired with fair dealing) or some combination of good cause with good faith and fair dealing. [31] So what does "good faith" mean? It sets forth a basic level of integrity and fairness that certainly may be seen as more passive and not rising to the level of the more active "good cause" standard. "Good faith" means "(1) honesty in belief or purpose, (2) faithfulness to one's duty or obligation, (3) observance of reasonable commercial standards of fair dealing in a given trade or business, or (4) absence of intent to defraud or to seek unconscionable advantage."[32] In essence, the absence of good faith is characterized by "bad faith" conduct violating "community standards of decency, fairness, or reasonableness."[33]

One thing is for sure: "good faith" is not the same thing as good cause. Good faith traces its origins to the common law doctrine of implied promises and implied conditions to a contract.[34] In the business law context, good faith and fair dealing requirements stem from agency law principles where principals and agents conversely owe each other this type of fiduciary duty.[35] The phrase "good faith and fair dealing" has come to imply that actions contrary to the community standards of honesty, fairness or reasonableness are prohibited.[36] Thus, the term "good faith" has no absolute meaning on its face because it is subject to interpretation by courts. The term's meaning is derived on a case-by-case basis from the terms of the contract in question and the circumstances of the situation. [37] In many instances, good faith is determined by the absence of bad faith.[38] This only underlines the lack of clarity in determining what constitutes good faith. For the purposes of this paper, good faith and good cause are analyzed both separately (as constituting different standards) and together (when looking at the general outcomes as being either for or against one party).

III. STATISTICAL ANALYSIS OF CASES

To determine if there are any general consistencies in court decisions regarding the termination of franchise agreements, it is necessary to derive a sound method for analyzing the various characteristics of franchise cases. Evaluating the cases with such specificity assists in determining whether particular factors can serve as predictors of the court's decision in similar cases. Thus, a list of cases involving franchise terminations was compiled (Section A). To study these cases with respect to a court's decision about whether there was good cause for termination, only cases where the franchisor initiated termination of the agreement were considered. From this data, factors affecting the outcome of the cases had to be identified and defined as variables for the study (Section B). With the established list of variables, the cases could then be coded to allow statistical analysis. As the cases were characterized for coding, questions arose that led to the formulation of hypotheses for the study. (Section C). With hypotheses in place, statistical analysis of the hypotheses could be completed for determination of the significance of the different variables, and ordered logistic regressions (Section D) allowed for conclusions regarding the hypotheses posed (Section E).[39]

A. Case Selection

The study consisted of 342 cases in which the franchisor terminated the agreement with its franchisee. They were compiled via Lexis and Westlaw searches for cases with the Lexis search term "franchis! w/ termin!" (or the Westlaw equivalent) within a combined database of

federal and state cases. For the purposes of the study, cases were selected from the search results if they involved the franchisor terminating the agreement. This resulted in roughly 600 cases from the initial search. Additional cases were removed if, upon analysis of the case, the decision did not directly address the termination issue. These reductions left the researchers with 342 cases for use in the statistical analyses.

B. Variables and Coding

In order to analyze the cases, it was necessary to identify key factors that could be treated as predictors of the outcome regarding a court's decision on the termination of a franchise agreement. A system of variables was produced to categorize cases involving the termination of franchise agreements. The variables were generated based upon a number of factors evident in the case law.[40] The following list details the variables used in this study:

1. Year - In what year did the court make its decision? The 342 cases in the study are dated between the years of 1961 and 2013. For the purposes of this study, we performed many of the statistical analyses among the spread of cases as a whole. However, for several analyses we separated the cases into different time periods. For example, we distinguished between case decisions falling either before or after 2008, before or after 2009, and within the time periods of 1961 to 1997, 1998 to 2003, 2004 to 2009, and 2010 to 2013. We have chosen 2008 and 2009 as a defining point during a transition period that took place in regards to the regulatory (and perhaps judicial) approach to franchise law.[41] In addition, the choice of the years 2008 and 2009 allowed for a fair sample of cases in both time periods.

2. State - In what state was the case decided, or did it take place in a federal court? The importance of this variable in the study relates further to the next family of variables, regarding specific state laws. If a case was decided in the U.S. territory of Puerto Rico, then the case is considered subject to federal laws.

3. Specific Laws - Does the state in which the decision was made (if not a federal law case) have specific laws governing franchise agreements and their termination?[42]

4. Traditional/Non-Traditional - Does the case involve a traditional or non-traditional franchise relationship? In the context of this research, traditional was designated to refer to businesses commonly recognized as franchises in the United States, such as restaurants, which have no special, federal laws governing their existence. Non-traditional franchises, on the other hand, refer to businesses such as gas stations and car dealerships, which often have specific, federal laws governing their existence. This category also encompasses franchise relationships beyond these two industries that cannot be classified in the traditional category.

5. Broad Reason - What was the reason given for the termination of the agreement? Broad reasons consisted of the most common general reasons given by franchisors for initiating the termination of the agreement with the franchisee. For the broad reasons for termination that were not very common, the designation of "Other" was used for more concrete statistical analysis.

6. Narrow Reason - Within the broad reasons, narrow reasons were generated to allow more specific correlation between cases if the initial analysis with broad reasons yields significant results.

7. Outcome - Finally, what was the conclusion of the court in regards to the termination? Did the court rule in favor of the franchisor by reaching a good cause or good faith conclusion or determining that the termination was appropriate? Or did the court rule in favor of the franchisee or fail to address the good cause or good faith issue?

After an initial compilation of the variables from each case, adjustments needed to be made in order to ensure that any result would be statistically significant. If a particular factor had only one occurrence, or no instance of occurrence, then that factor was removed from the data set because it was statistically irrelevant and would negatively affect the more common occurrences. Other factors, which were substantially similar, were combined to create one factor. For example, within the broad reasons for termination category, initially, the researcher had separated the reasons to include the separate categories of Breach of Contract, Failure to Comply with Agreement, and Failure to Meet Performance Standards. Each of these broad reasons deals with the situation where the franchisee has not complied with the franchise agreement, which has led to the subsequent termination. Therefore, the researcher combined these categories into one broad reason for termination for more significant statistical findings.

The variable of the narrow reason for termination was completely removed from statistical consideration. This was due to the complexity of calculating this variable in addition to the others. Additionally, many of the franchise terminations could not be classified into a narrow reason for termination because the court did not describe the termination in this much detail in its opinion or there was not a narrower reason claimed at all. The removal of this variable did not affect the results; it simply lessened the detail of those results.

Coding

The cases were broken up and coded[43] by 20 researchers. Preliminarily, the cases were coded with the preceding variables to produce a matrix of factors. Replacing the variables with numerical values was necessary in order to run ordered logistic regressions on the data. The dependent variable (the outcome, or court's decision) has five possible values. For the purpose of analysis we can say that these five outcomes are ordered. Hence we can assign numerical values as follows:

- Unaddressed = 0
- Bad Faith = 1
- Lack of Good Cause = 2
- Good Faith = 3
- Good Cause = 4

With this ordering we can run an ordered logistic regression. Additionally, it can be noted that the two outcomes "Bad Faith" and "Lack of Good Cause" are considered outcomes in favor of the franchisee, while "Good Faith" and "Good Cause" would be considered outcomes in favor of the franchisor. These two sets of outcomes were grouped together for a majority of the statistical analyses.

For the different predicting factors (or independent variables), a similar pattern was followed to generate data for an ordered logistic regression:

i) Category: Traditional (= 2) or Non Traditional (= 1)
ii) State Laws [Yes (= 3) or No (= 2)] or Federal Laws (= 1)
iii) Broad Reasons (Seven categories coded 1-7)

Once the case matrix was generated, a number of questions regarding the relationship between factors and the case outcome became apparent. The questions (below) were used to generate hypotheses to be answered by the statistical analyses.

1. Are the decisions that Judges are making in courtrooms in sync with "black letter" franchising law?
2. Is there a relationship between the year the decision was made and the outcome?
3. Is there a relationship between the type of franchise and the outcome?
4. Is there a relationship between the state's laws regarding franchise agreements (meaning, whether there are specific state franchise laws) and the outcome?
5. Is there a relationship between the reason given for termination and the outcome?
6. Is there any relationship between the state and the number of suits brought before the court?
7. Is there a significant difference in outcome if narrow reasons are considered? [*as opposed to simply looking at broad reasons*]
8. Is it possible to determine some type of hierarchy/weighted system to assign a value to different reasons as predictors of the court's decision?

To answer those questions, the outcome (court's decision) would be treated as the dependent variable. Each family of independent variables (Year, Specific State Laws, Traditional/Nontraditional, and [Broad] Reason for Termination) was separately considered to determine the distribution of outcomes for each variable. From that point, additional factor association can yield further information about the cumulative effect of different variables on the outcome.

C. Hypotheses for Analysis

In order to determine how the different factors contribute to the court's decision regarding franchise terminations, it was necessary to develop hypotheses regarding the effect of the variables in each case. Each of the hypotheses was formulated to help determine if the outcomes of franchise cases match with the black letter law of franchises. Given below are the fourteen hypotheses that were used in the analysis. Two of the hypotheses (#4 and #11) address differences in cases during different eras of franchise contract case law. The first hypothesis is to test the likelihood that the courts will rule in favor of the franchisor, finding good cause or good faith in the terms by which the franchise agreement was terminated. Hypotheses are also in place to test the effect of the various independent variables, such as whether a state has specific franchise laws, when the ruling occurred, and if franchisees in traditional franchise agreements are favored more by courts than franchisees in non-traditional agreements. We also posited tests to determine the effect of the different reasons given for terminating the agreement.

<u>Hypotheses</u>

1. The court favors the franchisor over the franchisee. (Outcome more often Good Faith/Good Cause than Bad Faith/Lack of Good Cause)
2. The courts favor the franchisee more in the traditional category than in the non-traditional category.
3. The court favors the franchisee more in states with specific laws than in states without.
4. The court favors the franchisee more under current laws than in the pre-2008 regime.
5. The courts will find good cause/good faith more often in failure to pay cases than failure to comply with agreement cases.
6. The courts will find bad faith/lack of good cause more often in violation of covenant not to compete cases than at will cases.
7. The courts will find bad faith/lack of good cause less often in At Will cases than in cases terminated because of any of the following three categories: Failure to Pay, Misuse of Trademark, or Breach of Contract/Failure to Comply with Agreement/Failure to Meet Performance Standards.
8. The courts will find bad faith/lack of good cause more often in failure to pay cases than in either Misuse of Trademark cases or Breach of Contract/Failure to Comply with Agreement/Failure to Meet Performance Standard cases.
9. The courts will find bad faith/lack of good cause more often in Misuse of Trademark cases than in cases terminated for Breach of Contract/Failure to Comply with Agreement/Failure to Meet Performance Standards.
10. In cases where the court rules good faith/good cause the (broad) reasons attributed are significantly different between traditional versus non-traditional franchises.
11. In cases where the court rules good faith/good cause the (broad) reasons attributed are significantly different between pre-2009 versus post-2009 regimes.
12. In cases where the court rules good faith/good cause the (broad) reasons attributed are significantly different between states that have specific laws versus those that do not.
13. In cases where the court rules good faith/good cause before 2009 the (broad) reasons attributed for termination are significantly different between states with specific laws governing franchises and states without specific laws.
14. In cases where the court rules good faith/good cause during 2009 or post-2009, the (broad) reasons attributed are significantly different between states with specific laws governing franchises and states without specific laws.

With the hypotheses in place, it is feasible to test the possible interdependence of the coded variables in regards to determining a case's outcome. One method used to accomplish this was through ordered logistic regression models.

D. Results

Of the 342 cases in the study, the distribution of Reasons for Termination is as follows: At Will, 14.3% (n=49); Failure to Comply with Agreement / Meet Performance Standards and Breach of Contract, 30.7% (n=105); Failure to Cure Defaults, 4.7% (n=16); Failure to Pay, 21.9%% (n=75); Misuse of Trademark, 6.7% (n=23); Other Reason, 16.4% (n=56); Violation of Covenant Not to Compete / Competitive Conduct, 5.3% (n=18). [See Appendix I: Reasons for Termination]

Hypothesis 1:

The court favors the franchisor over the franchisee (Outcome more often Good Faith/Good Cause than Bad Faith/Lack of Good Cause).

Basic descriptive statistics of the cases in the study can be used to test the first hypothesis simply by calculating the frequency of the different case outcomes. [See Appendix II: Hypothesis 1]. The court reached a Good Cause or Good Faith finding (a ruling in favor of the franchisor) in 61.7% (n=211) of the cases. Consider, however, that in 77 of the 342 cases in the study the outcome was labeled as "Unaddressed" or "Undetermined." If those cases without a good cause or good faith determination are ignored, then the percentage of cases with Good Cause or Good Faith outcomes is 79.6%. Both of these calculations show strong support for *Hypothesis 1*.

Hypothesis 2:
The courts favor the franchisee more in the traditional category than in the non-traditional category.

The study includes 200 cases categorized as Non-Traditional and 142 cases categorized as Traditional. [See Appendix V: Hypothesis 4]. In the Traditional category, 9.2% (n=13) of decisions favor the franchisee while 71.1% (n=101) favor the franchisor. In the Non-Traditional category, 20.5% (n=41) favor the franchisee while 55.0% (n=110) favor the franchisor.[44] When comparing the outcomes of the two categories and using a significance level of 0.05 or 0.01, the results are extremely statistically significant (Pearson $\chi^2 = 9.9299$, $p = 0.00162$). However, the results indicate a rejection of *Hypothesis 2*. The outcome shows that courts actually favor the franchisee more in Non-Traditional franchises than in Traditional franchises.

Hypothesis 3:
The Court favors the franchisee more in states with specific laws than in states without specific laws.

This hypothesis can be tested by comparing the outcomes of cases dependent on whether or not they were decided in a state with specific franchise laws. [See Appendix III: Hypothesis 2]. In cases decided in states with specific laws (n=184), the results show that the court found in favor of the franchisee 20.7% (n=38) of the time, and in favor of the franchisor 58.7% of the time (n = 108). Meanwhile, in cases decided without specific state laws (including federal cases, n=158), the results show a verdict favoring the franchisee 10.1% of the time (n=16) and favoring the franchisor 65.2% of the time (n=103). These figures show support for *Hypothesis 3*. A Pearson chi-square test of the data gives $\chi^2 = 6.3969$ and $p = 0.0114$. Since the p-value is smaller than the selected significance level of 0.05, it indicates that the differences observed between cases with and without specific state laws are statistically significant.

Hypothesis 4:
The court favors the franchisee more under current laws than in the pre-2008 regime.

Of the 342 cases in the study, 181 were decided prior to 2008 while 161 were decided either during or after 2008. [See Appendix IV: Hypothesis 3]. Again, viewing Good Faith/Good Cause decisions as in favor of the franchisor and Bad Faith/Lack of Good Cause decision as in

favor of the franchisee, we find that pre-2008 11.0% (n=20) of the decisions favored the franchisee while 56.9% (n = 103) favored the franchisor. Under the current regime, 21.0% (n=34) favored the franchisee while 67.1% (n=108) favored the franchisor. This indicates support for *Hypothesis 4* as the percentage of cases favoring the franchisee has increased. However, the percentage favoring the franchisor has also increased. This latter factor seems to affect the statistical significance of Hypothesis 4 as the Pearson chi-square test gives χ^2 = 2.398177, p = 0.1215. This p-value is higher than any relevant significance levels, indicating that the results are not statistically significant.

This finding influenced the researcher to conduct further analysis of the yearly data by breaking the data into four time periods: 1997 or before, 1998-2003, 2004-2009, and 2010 to present. The goal in computing further statistics was to look for possible trends in case outcomes over smaller periods of time. Of the 342 cases, 86 were decided before or during 1997, 67 were decided during or between 1998 and 2003, 67 were decided during or between 2004 and 2009, and 122 were decided during or after 2010.

Separating the data into these time periods results in a substantial sample size for each era, which assists in reaching more relevant findings. Before or during 1997, 19.8% (n = 17) favored the franchisee while 48.8% (n = 42) favored the franchisor. In the 1998-2003 timeframe, 20.9% (n = 14) favored the franchisee while 67.2% (n = 45) favored the franchisor. In the 2004-2009 timeframe, 13.4% (n = 9) favored the franchisee while 64.2% (n = 43) favored the franchisor. And lastly, in the time period during or after 2010, 11.5% (n = 14) favored the franchisee while 66.39% (n = 81) favored the franchisor.

Breaking the data into these yearly intervals shows a few interesting trends. In the earliest franchise cases (between 1961 and 1997), the likelihood that a court would reach a Good Cause or Good Faith decision by ruling in favor of the franchisor was less than 50% of the time. However, the later three time periods (ranging over the past decade and a half) have consistently favored the franchisor 15% to 20% more than the earlier courts did with Good Faith and Good Cause findings ranging from 64.2% to 67.2% of the decisions. The second interesting finding is that the number of case outcomes favoring the franchisee has steadily decreased over the past 10 years. The first two yearly regimes favored franchisees steadily around 20% of the time whereas the most recent set of cases (2010 and after) only favored the franchisee in 11.5% of the cases.

Hypothesis 5:
The courts will find good cause/good faith (favor the franchisor) more often in failure to pay cases than breach of contract/failure to comply with agreement/failure to meet performance standards cases.

There are 75 cases in the study with Failure to Pay as the Broad Reason for Termination. 70.7% (n = 53) of these cases had an outcome in favor of the franchisor (Good Cause / Good Faith). [See Appendix VI: Hypothesis 5]. There are a total of 105 cases with Breach of Contract/Failure to Comply with Agreement/Failure to Meet Performance Standards as the Broad Reason for Termination. In 67.6% of those cases, the court found in favor of the franchisor with a Good Cause/Good Faith finding. These results suggest support for *Hypothesis 5*, but logistic regressions show that the Reason for Termination variable is not statistically significant (χ^2 = 0.389, p = 0.53282) between cases under the Failure to Pay category and the Breach of Contract/Failure to Comply with Agreement/Failure to Meet Performance Standards category. See Appendix VIII: Hypothesis 5-9]. This statistical finding may be interpreted to

mean that courts are not more likely to find good cause or good faith in the franchise termination when there has been a monetary breach over when there has been a substantive breach of contract. There are no legal tactics or advantages for a franchisor to terminate a franchisee on the grounds of one category instead of the other.

Hypothesis 6:
The courts will find bad faith/lack of good cause more often in violation of covenant not to compete cases than termination at will cases.

Violation of Covenant Not to Compete is the reason for termination in 18 cases. 11.1% of these cases (n = 2) have Bad Faith/Lack of Good Cause as the court determined outcome. A total of 49 cases are coded under the Broad Reason for Termination At Will. Of these cases, 22.4% (n = 11) were decided in favor of the franchisee with an outcome of Bad Faith or Lack of Good Cause. [See Appendix VII: Hypothesis 6]. This finding demonstrates that franchises terminated because of a violation of the non-compete agreement are not more likely to have the court outcome of bad faith or lack of good cause than franchises terminated at will. However, the small sample size for the non-compete category may make this comparison inaccurate. This analysis inspired the development of Hypotheses 7-9 below, which compare the larger categories within the (broad) reasons for termination variable, such as At Will terminations, Failure to Pay, Misuses of Trademark, and Breach of Contract/Failure to Comply with Agreement/Failure to Meet Performance Standards, with one another.

Hypothesis 7:
The courts will find bad faith/lack of good cause less often in At Will cases than in cases terminated because of any of the following three categories: Failure to Pay, Misuse of Trademark, or Breach of Contract/Failure to Comply with Agreement/Failure to Meet Performance Standards.

At will termination is the reason for termination in 49 cases. As stated above, 22.4% of these cases (n = 11) have Bad Faith / Lack of Good Cause as the court determined outcome. A total of 75 cases are coded under the Broad Reason for Termination of Failure to Pay. Of these cases, 12% (n =9) were decided in favor of the franchisee. A total of 23 cases are coded under the Broad Reason for Termination of Misuse of Trademark. Of these cases, 13% (n = 3) were decided in favor of the franchisee. 105 cases are coded under the Broad Reason for Termination of Breach of Contract/Failure to Comply with Agreement/Failure to Meet Performance Standards. 15.2% (n = 16) of the cases in this broad reason for termination were decided in favor of the franchisee.

Contradictory to the hypothesis, it appears that courts will reach a finding of bad faith or lack of good cause more often when the franchise relationship is terminated at will than the other three categories. At Will termination leads to a bad faith or lack of good cause finding nearly 10% more often than both Failure to Pay and Misuse of Trademark cases.

Hypothesis 8:
The courts will find bad faith/lack of good cause more often in failure to pay cases than in either Misuse of Trademark cases or Breach of Contract/Failure to Comply with Agreement/Failure to Meet Performance Standard cases.

As stated in *Hypothesis 7*, a total of 75 cases are coded under the Broad Reason for Termination of Failure to Pay. Of these cases, 12% (n =9) were decided in favor of the franchisee with an outcome of Bad Faith or Lack of Good Cause. A total of 23 cases are coded under the Broad Reason for Termination of Misuse of Trademark. Of these cases, 13% (n = 3) were decided in favor of the franchisee. A total of 105 cases are coded under the Broad Reason for Termination of Breach of Contract/Failure to Comply with Agreement/Failure to Meet Performance Standards. Of these cases, 15.2% (n = 16) were decided in favor of the franchisee. With the percentiles favoring the franchisee ranging from 12% to 15.2%, the categorical differences among these (broad) reasons for termination are not statistically significant. The takeaway is that courts are likely to rule in favor of the franchisee at relatively equal rates across the termination categories of Failure to Pay, Misuse of Trademark, and Breach of Contract/Failure to Comply with Agreement/Failure to Meet Performance Standards.

Hypothesis 9:
The courts will find bad faith/lack of good cause more often in Misuse of Trademark cases than in cases terminated for Breach of Contract/Failure to Comply with Agreement/Failure to Meet Performance Standards.

From Hypotheses 7 and 9, the percentages of bad faith or lack of good cause outcomes in Misuse of Trademark cases and Breach of Contract/Failure to Comply with Agreement/Failure to Meet Performance Standards are 13% (n = 3 (out of 23)) and 15.2% (n = 16 (out of 105)) respectively. This finding shows that courts are likely to find for the franchisee at relatively equal rates within each (broad) reason for termination. If anything, courts are slightly more likely to find for franchisees in Breach of Contract cases. However, the percentile differences are so minimal that they are not statistically significant.

Hypothesis 10:
In cases where the court rules good faith/good cause the (broad) reasons attributed are significantly different between traditional versus non-traditional franchises.

From *Hypothesis 2*, statistics showed that courts favor the franchisor in the Traditional category 71.1% (n=101) of the time. While in the Non-Traditional category, courts favor the franchisor in 55.0% (n=110) of cases. The case distribution of Reasons for Termination among the Good Cause and Good Faith findings of these two categories is:

	Traditional (n = 101)		Non-Traditional (n = 110)	
Reason for Termination	**n**	**Percentage**	**n**	**Percentage**
At Will	6	5.9%	16	14.5%
Failure to Comply with Agreement	31	30.7%	39	35.5%
Failure to Cure Defaults	9	8.9%	2	1.8%
Failure to Pay	35	34.7%	19	17.3%
Misuse of Trademark	13	12.9%	3	2.7%
Other	2	1.98%	25	22.7%
Violation of Covenant Not to Compete	5	4.95%	6	5.5%

The (Broad) Reasons for Termination of Breach of Contract/Failure to Comply with Agreement/Failure to Meet Performance Standards and Violation of the Covenant Not to Compete are found in favor of the Franchisor with Good Cause or Good Faith findings at relatively similar rates. For the (Broad) Reason for Termination At Will, courts are more likely to rule for the franchisor in the Non-Traditional types of franchises than the Traditional franchises with nearly a 10% difference. Cases brought under the (broad) reason of Failure to Cure Defaults reaches an outcome in favor of the Franchisor 7% more frequently in the Traditional category than the Non-Traditional Category. The (broad) reason of Misuse of Trademark has similar results with outcomes favoring the franchisor more than 10% more likely in Traditional franchise cases rather than Non-Traditional. However, this outcome is most likely based upon the fact that the franchises that fall under the Traditional category (i.e. restaurants) are more easily misused as trademarks than the types of franchises that fall under the Non-Traditional category (i.e. gas stations, car dealerships, etc.)

The greatest differences between the Traditional and Non-Traditional categories are with the termination categories of Failure to Pay and Other Reasons for Termination. For a termination based upon a Failure to Pay, courts are more likely to rule in favor of the franchisor in Traditional franchise relationships than Non-Traditional franchises 17% of the time. Also significant is the fact that for franchises under the Traditional category, Failure to Pay cases have the highest percentage (34.7%) of Good Cause and Good Faith findings of any of the (Broad) Reasons for Termination.

However, the Non-Traditional category does not follow this trend. Instead a higher percentile of the cases in favor of the franchisor in the Non-Traditional category arises in cases brought under the category of Other Reasons for Termination. For this "Other" category, courts are 20% more likely to rule in favor of the franchisor in Non-Traditional cases than Traditional

cases. This suggests that for traditional types of franchises courts are more likely to find good cause for traditional reasons for terminating franchise agreements (such as Failure to Pay and Failure to Comply with Agreement) than the newer reasons that are being brought before courts under this category. Thus, in Non-Traditional Cases, courts are more likely to find good cause and good faith for a broader array of terminations than the "traditional" reasons franchisors terminates franchisees.

Looking broadly at these statistical findings, further inferences can be drawn from the types of (Broad) Reasons for Termination that are significantly different across the Traditional and Non-Traditional category. The cases that are more likely to be found in favor of the Franchisor in the Traditional category than the Non-Traditional category are the categories of Failure to Cure Defaults, Failure to Pay, and Misuse of Trademark. All of these terminations are executed for very specific reasons. In contrast, rulings for the franchisor are more common for At Will terminations and Other Reasons for Termination in the Non-Traditional category than the Traditional category. These termination categories are very broad. This trend demonstrates that for traditional franchises courts are not as likely to find Good Cause or Good Faith if the franchise has been terminated for broader reasons than the typical termination reasons.

Hypothesis 11:
In cases where the court rules good faith/good cause the (broad) reasons attributed are significantly different between pre-2009 versus post 2009 regimes.

There are 211 cases in the study with a court ruling of Good Cause or Good Faith. Of these cases, 117 were decided before 2009 and 94 during or after 2009. The distributions of Broad Reasons for Termination are as follows:

	Pre – 2009(n = 117)		2009 and After (n = 94)	
Reason for Termination	**N**	**Percentage**	**n**	**Percentage**
At Will	20	17.1%	2	2.1%
Failure to Comply with Agreement	33	28.2%	38	40.4%
Failure to Cure Defaults	6	5.1%	5	5.3%
Failure to Pay	31	26.5%	22	23.4%
Misuse of Trademark	12	10.3%	4	4.3%
Other	10	8.5%	17	18.1%
Violation of Covenant Not to Compete	5	4.3%	6	6.4%

The (Broad) Reasons for Termination of Failure to Cure Defaults, Failure to Pay, and Violation of Covenant Not to Compete result in a Good Cause or Good Faith outcome at relatively equal rates across both time periods. However, the broad reasons of At Will Termination and Misuse of Trademark resulted in a Good Cause or Good Faith ruling significantly more before 2009. In contrast, the broad reasons of Failure to Comply with Agreement and Other Reasons for Termination have resulted in Good Cause or Good Faith findings significantly more during most recent years (2009 and after). A more detailed interpretation of these findings is as follows.

For franchises that were terminated at will, courts are 15% less likely to find Good Cause or Good Faith for the termination now than they were before 2009. One potential explanation or factor is that courts do not favor at will terminations or at will franchises because of the uncertainty they entail. For courts to find Good Cause or Good Faith in modern times, courts

seem to require more than a simple at will termination. Franchises terminated under the Misuse of Trademark category resulted in a Good Cause or Good Faith finding 7% more before 2009 than in the modern regime. This is not a large statistical difference and can possibly be attributed to the fact that less Misuse of Trademark cases have been brought during the modern regime or that the types of cases that are being brought during the modern regime have changed somehow.

The two categories that have significantly increased in Good Cause and Good Faith findings since the pre-2009 era are the Breach of Contract/Failure to Comply with Agreement/Failure to Meet Performance standards termination and the Other Reasons for Termination category. Both categories for termination have increased in Good Cause and Good Faith findings by 10%. For the Failure to Comply category, this increase may demonstrate that courts are finding good cause and good faith for termination more on contract law grounds during the modern era. Additionally, the increase in the Other Reasons for Termination implies that courts are more likely to accept the "non-typical" reasons for termination that are presented to the courts in modern times than they used to accept. This may be because of the contract principles of good faith or fair dealing or may be because of the courts increasing favoritism towards franchisors.

Hypothesis 12:
In cases where the court rules good faith/good cause the (broad) reasons attributed are significantly different between states with specific state franchise laws versus states without such laws (including federal cases).

Hypothesis 12 examines the effect of Specific State Franchise Laws on court's decisions. Of the cases decided with Good Cause / Good Faith outcomes (n = 211), the distributions of Broad Reasons for Termination, as related to the existence of specific state laws, are as follows:

	Specific State Laws (n = 108)		State Cases without Specific State Laws (n = 103)	
Reason for Termination	**n**	**Percentage**	**n**	**Percentage**
At Will	9	8.3%	13	12.6%
Failure to Comply with Agreement	43	39.8%	27	26.2%
Failure to Cure Defaults	6	5.6%	5	4.9%
Failure to Pay	21	19.4%	33	32.0%
Misuse of Trademark	6	5.6%	10	9.7%
Other	17	15.7%	10	9.7%
Violation of Covenant Not to Compete	6	5.6%	5	4.9%

The (broad) reasons for termination of Violation of Covenant Not to Compete and Failure to Cure Defaults are found in favor of the franchisor at relatively equal rates. The reasons for termination that result in a Good Cause or Good Faith outcome more often in states with specific franchise laws are Failure to Comply with Agreement and Others Reasons for Termination. Courts find in favor of the Franchisor approximately 13% and 6% more frequently respectively. For states with specific state franchise laws, the higher Good Cause and Good Faith findings in the Failure to Comply with Agreement cases may represent the courts' viewpoints on freedom of contract principles. In the states with franchise laws, these laws are meant to be default rules for the parties to the franchise agreement to contract around. These principles are considered when a franchisee breaches the franchise contract or does not comply with their agreement in a state with specific laws.

At Will Termination and Misuse of Trademark Termination are slightly more likely to find in favor of the Franchisor in states without specific franchise laws (approximately 4% more likely). A more significant difference is that courts are over 12% more likely to reach a Good Faith or Good Cause outcome for Failure to Pay cases in states without specific laws than in states with specific laws. Generally, it is possible that this results from specific punishments (fines, etc.) and repercussions for franchisees that fail to pay their franchisors in states with specific laws.

Hypothesis 13:
In cases where the court rules good faith/good cause before 2009, the (broad) reasons attributed for termination are significantly different between states with specific laws governing franchises and states without specific laws.

There are 117 cases in the study with a court ruling of Good Cause or Good Faith before 2009. Of these 117 cases, 62 were decided in states with specific state franchise laws and 55 were decided in states without such laws. The distributions of (Broad) Reasons for Termination are as follows:

	Specific State Laws (Pre-2009) n = 62		State Cases without Specific State Laws (Pre-2009) n = 55	
Reason for Termination	**n**	**Percentage**	**n**	**Percentage**
At Will	7	11.3%	13	23.6 %
Failure to Comply with Agreement	25	40.3%	9	16.4%
Failure to Cure Defaults	2	3.2%	4	7.3%
Failure to Pay	13	21%	18	32.7%
Misuse of Trademark	5	8.1%	7	12.7%
Other	7	11.3%	2	3.6%
Violation of Covenant Not to Compete	3	4.8%	2	3.6%

The only (Broad) Reason for Termination above that does not show even a slight difference in Good Faith and Good Cause findings between states with specific franchise laws and those without before 2009 is the Violation of Covenant Not to Compete Reason. In states with specific franchise laws, the categories with increased outcomes in favor of the Franchisor are Failure to Comply with Agreement and Other Reasons for Termination, with an approximate 24% and 8% difference respectively.

On the other hand, in states without specific franchise laws, the (Broad) Reasons for Termination of At Will Termination, Failure to Cure Defaults, Failure to Pay, and Misuse of Trademark result in pro-franchisor outcomes more frequently than in states without specific laws. The most significant differences are approximately 12% increase of likelihood for At Will Termination and Failure to Pay cases. The other Reasons for Termination, Failure to Cure Defaults and Misuse of Trademark, are only approximately 4% more likely to reach a Good Cause or Good Faith finding in cases without specific state laws.

Hypothesis 14:
In cases where the court rules good faith/good cause during 2009 or post-2009, the (broad) reasons attributed are significantly different between states with specific laws governing franchises and states without specific laws.

There are 94 cases in the study with a court ruling of Good Cause or Good Faith during or after the year 2009. Of these 94 cases, the number decided in states with specific state franchise laws is relatively equal to the number decided in states without state franchise laws; 46 and 48 respectively. The distributions of (Broad) Reasons for Termination are as follows:

	Specific State Laws (2009 and After) N = 46		State Cases without Specific State Laws (2009 and After) N = 48	
Reason for Termination	n	Percentage	n	Percentage
At Will	2	4.3%	0	0%
Failure to Comply with Agreement	18	39.1%	20	41.7%
Failure to Cure Defaults	4	8.7%	1	2.1%
Failure to Pay	8	17.4%	14	29.2%
Misuse of Trademark	1	2.2%	3	6.3%
Other	10	21.7%	7	14.6%
Violation of Covenant Not to Compete	3	6.5%	3	6.3%

For the modern regime (2009 and after), as in the pre-2009 era, the probability of reaching a Good Cause or Good Faith outcome in a Violation of Covenant Not to Compete case is not statistically different between states with specific franchise laws than states without specific franchise laws. Additionally, at 39.1% and 41.7% Good Cause and Good Faith findings, specific state laws do not have a significant impact in the category of Failure to Comply with Agreement.

The categories with mildly significant differences are the categories of At Will Termination, Failure to Cure Defaults, Misuse of Trademark, and Other Reasons for Termination. At Will Termination, Failure to Cure Defaults, and Other Reasons for Termination result in a finding in favor of the Franchisor 4.3%, 6.6%, and approximately 7% more often in states with specific state laws than in states without specific laws respectively. Conversely, Misuse of Trademark cases are 4.1% more likely to result in a Good Cause or Good Faith outcome in states without specific franchise laws than states with such laws. The most significant difference is that courts favor franchisors over 12% more in states without specific franchise laws when the termination results because of a Failure to Pay.

After comparing the pro-franchisor outcomes across (Broad) Reasons for Termination in states with specific franchise laws and states without for each period of time, it is also useful to compare and contrast the outcomes for each group of states with corresponding findings in the other time period. For both eras, cases brought under the broad reason of Violation of Covenant

Not to Compete reached good faith or good cause outcomes at relatively equal rates in states with specific franchise laws and states without specific laws.

In the pre-2009 period, the categories with increased outcomes in favor of the Franchisor in states with specific laws were the Failure to Comply with Agreement reason and Other Reasons for Termination. The Failure to Comply with Agreement category reached pro-franchisor outcomes approximately 40% of the time — 24% more frequently than in states without specific franchise laws. However, in the modern regime, the occurrences of pro-franchisor outcomes in the Failure to Comply with Agreement category were relatively equal in states with specific laws and states without. The states without specific laws found for the franchisor 41.7% of the time, which demonstrates an increase in the post-2009 genre to the level of occurrences for states with specific laws in the pre-2009 time period. However, in both time periods, the Other Reasons for Termination category resulted in a finding in favor of the Franchisor approximately 7% and 8% more often in states with specific state laws. The percentile of good cause and good faith findings for this reason for termination increased approximately 10% from the pre-2009 era to the current era, but the differences between the state groups remained the same.

In the earlier time period, the (Broad) Reasons for Termination of At Will Termination, Failure to Cure Defaults, Failure to Pay, and Misuse of Trademark result in pro-franchisor outcomes more frequently in states with specific laws. Before 2009, the most significant differences are approximately 12% increase of likelihood for At Will Termination and Failure to Pay cases. For the Failure to Pay category, this increased likelihood of pro-franchisor outcomes in states without specific laws remained around 12%. However, in the modern era, the categories with mildly significant differences favoring the franchisor more in states without specific laws are the categories of At Will Termination, Failure to Cure Defaults, Misuse of Trademark.

IV. A PATHWAY TO REFORM

To understand the full breadth of these findings and what they mean for franchise law, it is necessary to have a strong understanding of past legislative efforts, concerns and trends in the respective area of law. Historically, legislative movements in franchise law have been geared towards two areas; that is, the regulation of the franchise relationship, especially in the area of termination of the franchise relationship, and disclosure requirements that the franchisor must comply with when dealing with prospective franchisees.[45]

The roots of these movements can be traced back to the 1930s. At that time, the U.S. economy was suffering during the Great Depression, which led to one third of the automobile dealers going out of business.[46] The automobile industry had been one of the strongest industries in the nation up until this point in time, which made an immediate response necessary. The Federal Trade Commission (FTC) performed a study on the bargaining disparity between the dealers and manufacturers and how the manufacturers bullied dealers into unfair contract terms with threats of terminating their business relationships.[47] This study inspired a few state legislatures to take action. For example, the Wisconsin legislature passed a law that proscribed termination of dealers without "due regard to the equities of [the] dealer and without just provocation."[48]

Over the next decade and a half, 19 other states enacted statutes geared towards protecting automobile dealers.[49] Federal legislative efforts were soon to follow when Congress enacted the Federal Automobile Dealers' Suits Against Manufacturer's Act in 1956.[50] A glance

at modern times shows that nearly all of the states have adopted similar regulations that monitor the franchise relationship between automobile manufacturers and dealers.[51] Historically, the automobile sector has been the most heavily regulated area of franchise law. Not until the 1970s did similar regulations for the rest of the franchise industry come into existence. The majority of these regulations focused on the terminations of franchise relationships and were many of the statutes analyzed in the cases used in this study.

Despite these legislative progresses in franchise law, as related to the topic of termination, the most profound successes have been seen in the second area mentioned, the disclosure requirements of franchisors. In 1979, the FTC issued a rule requiring disclosure of the terms of franchise offerings nationwide.[52] The imposition of uniform franchise laws has been explored marginally in this area of franchise law. For example, most states and the FTC adopted the UFOC (Uniform Franchise Offering Circular) establishing a uniform disclosure format for businesses offering franchises to potential franchisees.[53] These steps to uniformity in franchise law disclosure requirements have made significant progress. Additionally, this movement reflects how important authorities of franchise law have considered the imposition of uniform laws. The author proposes that it is time for the area of franchise termination specifically, and franchise law as a whole, to follow the lead of the franchise disclosure laws by adopting uniform laws.

The inconsistencies and uncertainties in franchise law are not limited to the topic of termination, which is why the author's proposal extends past this area of franchise law to encompass franchise law in its entirety. Issues can be seen much earlier on in the franchise relationship when a business arrangement between the franchisor and franchisee is even formed. If the business relationship is formed in a state with specific franchise laws, the statutes will not be applicable unless the arrangement meets the definition of what constitutes a franchise. A majority of jurisdictions define a franchise as "an agreement that is: (1) either express or implied, (2) oral or written, and (3) between two or more persons."[54] However, this definition is not uniform across the country. Some states allow a franchise relationship to be created through oral agreement but others require the arrangement be reduced to writing. This demonstrates one of the many uncertain areas of franchise law that may be subject to litigation. For example, if the court determines a franchise relationship never existed between the two parties, the question as to whether the termination was wrongful or not is moot.[55] This type of claim requires an analysis of the statutory elements of a franchise before the parties can litigate the more substantive issues of the case.

The most frequently raised substantive issues under franchise law are the following: trademark and intellectual property protections, contractual disputes, antitrust law and trade regulation, bankruptcy, and termination. While termination of the franchise relationship is the subject of this article, it is important to recognize that other commonly litigated areas of franchise law have their inconsistencies and non-uniform application. The issues of antitrust law and bankruptcy, as well as other parts of franchise law, are heavily regulated and governed by federal laws. The existence of federal rules cuts down on some of the inconsistencies within these areas of franchise law. These more straightforward applications are in stark contrast with the uncertainty that is the area of franchise termination.

The implications of non-uniform franchise laws can be separated into two categories: first, the effects on the parties to such litigation, and secondly, the impact on the franchise industry at large. To understand the former, it is necessary to explore how a franchise termination case is brought into the judicial system. Franchise termination lawsuits can be

classified into two categories – lawsuits brought by the franchisor or lawsuits brought by the franchisee. A franchisee may sue the franchisor if it believes the termination was wrongful, if the franchisor was in breach of the franchise agreement, for damages, to enjoin the franchisor from termination, etc. The franchisor may sue the franchisee for damages because of a breach of contract, misuse of trademark, or any of the other reasons for termination. The reasons for bringing a lawsuit or seeking damages are endless.

The laws governing franchises vary depending on where the lawsuit is filed and whether they are litigating in the federal or state judicial system. Some states have enacted specific franchise laws to govern franchise relations, but others rely on principles from contract law and business law.[56] The majority of states view franchise contracts and franchise terminations the same as any other business agreement or termination of a business relationship. This approach shows strong favoritism for the franchisor, which can discourage franchisees from entering into franchise agreements in these states.

Even if a state does have specific franchise laws, the treatment of the termination of a franchise can vary just as much from state to state. Most state statutes infuse the inconsistently defined "good cause" requirement into their termination statutes. Some statutes define "good cause" as the failure of the franchisee to comply substantially with the material terms of the franchise.[57] Other states include a list of specific defaults of the franchisee that give the franchisor "good cause" to terminate.[58] To the franchisee, doing business in a state with specific franchise laws initially seems to be beneficial, as good cause requirements protect franchisees from terminations for anything less. However, as seen through this statistical study, what constitutes good cause is very inconsistent and case law provides little for franchisees to rely upon.

This good cause ambiguity is equally as frustrating for franchisors. In the United States alone, franchisors typically have many franchise relationships established across an entire region, if not across the entire country.[59] This does not take into account the franchisors that do business internationally. When franchisors bring a cause of action against a franchisee, they can only do so in a court with personal jurisdiction over the franchisee. This often will be the state within which the franchisee operates the franchise unit, although forum-selection clauses in the franchise agreement often give the franchisor the discretion to bring an action where the franchisor is principally located or some other favored place.[60] Thus, when pleading their case, the franchisors must first look to whether that state has enacted specific franchise laws and to whether federal laws apply to the industry the franchise is operating within. Secondly, if the state has enacted specific franchise laws, the franchisor must prove to the court that the franchise was terminated in compliance with the good cause requirement within the statute or under one of the categories of good cause listed in the statute. These categorical good cause statutes may contribute to a franchisor's decision to terminate a franchisee and – almost as important - how the franchisor describes the reasons for termination within a termination letter.

Outside of the franchisor and franchisee, there are many reasons why the imposition of uniform franchise laws would be beneficial to the franchise industry and the judicial system. Perhaps the most pressing issue with varying state franchise laws is the well-known choice-of-law debate. The franchisor and the franchisee often have their headquarters and corporate registrations in two different states. Many cases include arguments over which state's law should govern.[61] Each party will likely urge the court to utilize whichever law is more favorable to its set of facts. This type of forum shopping is the reason that jurisdiction statutes are in place.

If the franchise agreement contains a choice-of-law provision, the parties may further dispute whether the provision is conscionable and controlling. With the aforementioned differences in bargaining power between the franchisor and the franchisee, the choice-of-law provision is likely to be boilerplate language that the franchisor has selected. Settling preliminary issues, such as choice-of-law and contractual fairness, transforms the dispute into a battle about topics that are not the key franchise issues in question. The courts' dockets are full enough as is.[62] If franchise laws were uniform, the courts' time would not be spent on these secondary issues.

As demonstrated above, the imposition of uniform franchise laws would have positive impacts for both parties in the franchise relationship and the judicial system. With termination being such a magnificent threat to franchisees, it can be viewed as a threat to the franchise industry as a whole. With uncertain good cause requirements for termination, franchisees may be hesitant to do business with franchisors. This result would be catastrophic as one third of all United States retail sales are through franchises.[63] Franchising opens countless opportunities for promoting and expanding trademarks, individual business ownership, and employment.[64]

Now that the importance of franchising and uniform franchise laws has been explored, it is necessary to propose how this goal can be accomplished with respect to the statistical findings of this study. The good cause requirement for termination has the potential of adding an element of fairness and security to the franchise relationship. Thus, the author proposes that the good cause requirements be included in the uniform termination laws but with more specificity and clarity than the current types of laws.

The statistical analyses of the cases provided a confirmation of *Hypothesis 1* —the court favors the franchisor over the franchisee. This finding means that the court's decision will more often be Good Cause or Good Faith and not Bad Faith or Lack of Good Cause. The results showed a rejection of *Hypothesis 2*, which if confirmed would have stated that the franchisee is favored more in traditional cases than in non-traditional cases. There was support for *Hypothesis 3*: the court favors the franchisee more in states with specific laws than in states without, as chi-square tests determined that the results were statistically significant. *Hypothesis 4* was apparently correct, indicating that current laws do favor the franchisee more than laws before 2008, but this was also not statistically significant, as the number of cases favoring for the franchisor had also increased. Regardless, these two hypotheses demonstrate how states with specific laws and more modern courts are trending towards favoring franchisees in evaluating good cause requirements.

The conclusion that the outcome of court cases tend to favor the franchisor, and that the franchisee is favored more often in non-traditional cases than traditional cases, does not help much to clarify if the actions of the court are consistent with the black letter law of franchises. The findings may be influenced by outside factors, such as franchisors may be more legally sophisticated and tend to only bring cases where they are certain to receive a favorable outcome. Another explanation is that the terms of the agreement are greatly in the franchisor's favor due to unequal bargaining power at the formation of the relationship.[65] The court's position then is to merely enforce these terms to honor freedom of contract principles. Franchisees may be favored in non-traditional cases because the applicable federal laws are more protective of franchisees.[66] While these few insights can be helpful and may serve as guidance in certain types of cases, they demonstrate the great inconsistencies and uncertainties in franchise law related to the topics of good cause and terminations.

In *Hypothesis 3*, it was determined that courts rule in favor of the franchisee approximately 10% more often in states that have specific franchise laws. This may seem like good news for the franchisee, but the outcomes are still overwhelmingly in favor of the franchisor in both states without specific franchise laws and states with specific franchise laws. However, when comparing the (Broad) Reasons for Termination in *Hypothesis 12*, it is clear how inconsistent the good cause and good faith findings are for each reason for termination.

In this study, it was found that the two leading (Broad) Reasons for Termination of a franchisee are Failure to Pay and Failure to Comply with Franchise Agreement (See *Hypothesis 2*). In Failure to Pay cases, courts are more than 12% likely to reach a Good Faith or Good Cause outcome for in states without specific laws than in states with specific laws. In states with specific franchise laws, it is likely that courts require more than a failure to pay violation when determining whether the franchisor had good cause to terminate the relationship. As stated earlier, a franchisee may still be fulfilling other obligations of the franchise agreement, which make termination for this reason alone improper. Often times, the franchisee's failure to pay may be a reaction to a perceived violation of the franchisor or a misunderstanding.

The proposal for the good cause requirement with respect to this reason for termination is that a failure to pay by the franchisee should constitute a good cause reason for termination when accompanied with another violation. It is necessary to leave a small window for termination claims for franchisee failure to pay when the circumstances are so egregious that it would be unfair to the franchisor to continue on in the business relationship. This rule is analogous to contract law principles that only allow a party to stop complying with contract provisions in response to a "violating" party when the contract breach has been substantive.

For Failure to Comply with Agreement cases, courts find in favor of the franchisor approximately 13% more often in states with specific franchise laws than states without. This most likely stems from the fact that state legislatures provide the franchise parties with "fallback" laws, or default rules, to use, but also expect the parties to contract for the rights and protections that they want. Legislatures often predict that the statutory rules will inspire the parties to think critically about each standard they include in their own contracts. While franchisee protections are important, the concepts of freedom of contract and encouraging well-informed and prudent franchisees are also important. For these reasons, the uniform law proposal is that a Failure to Comply with Agreement or Breach of Contract violation is a legitimate reason for the franchisor to terminate the franchisee, but with the same "substantive breach" requirements that will be imposed for Failure to Pay violations.

Hypothesis 7 found that courts are more likely to rule in favor of the franchisee when the franchise was terminated at will, then for a failure to pay, misuse of trademark, or failure to comply with agreement. This finding may be a reflection of the same freedom of contract mindset that has been discussed with respect to failure to pay and failure to comply with agreement uniform laws. If a franchisee agrees to a franchise arrangement where it can be terminated at will by the franchisor, or it can terminate the franchise at will, there is a certain amount of uncertainty in the arrangement from its inception. If the goal of franchise termination legislation is to protect franchisees from undue terminations and maintain franchise arrangements when possible, the existence of at will termination contravenes this policy. If parties are knowingly and willingly entering into these agreements,[67] then it is not the court's nor the legislature's job to intervene with stringent good cause requirements for this type of termination. Thus, the uniform law proposal does not suggest a good cause requirement for this type of termination.

According to *Hypothesis 11*, one of the reasons for termination that has seen increased levels of Good Cause and Good Faith outcomes in the modern regime is the Other Reasons for Termination category. This finding implies that courts are moving away from the traditional good cause standard for termination and are considering different types of reasons for termination as good cause. This may be due to advances in franchising, the type of disputes parties choose to litigate, and a variety of other factors. Perhaps one could say that the good cause standard itself is evolving over time. The takeaway for this uniform law proposal, however, is that drafters need to analyze the types of terminations that fall into this "other" category when defining what constitutes good cause.

V. CONCLUSION

This study has shown that franchise law, specifically the area of termination, is in a state of disarray without workable standards for the parties and courts to employ. Since this industry is essential for the U.S. and world economies, a cohesive good cause requirement and standard for termination is necessary to protect franchisees and simplify the judicial process. Uniform laws are a necessity to reap the full rewards of such a system.

APPENDICES

Appendix I. Reasons for Termination Distribution

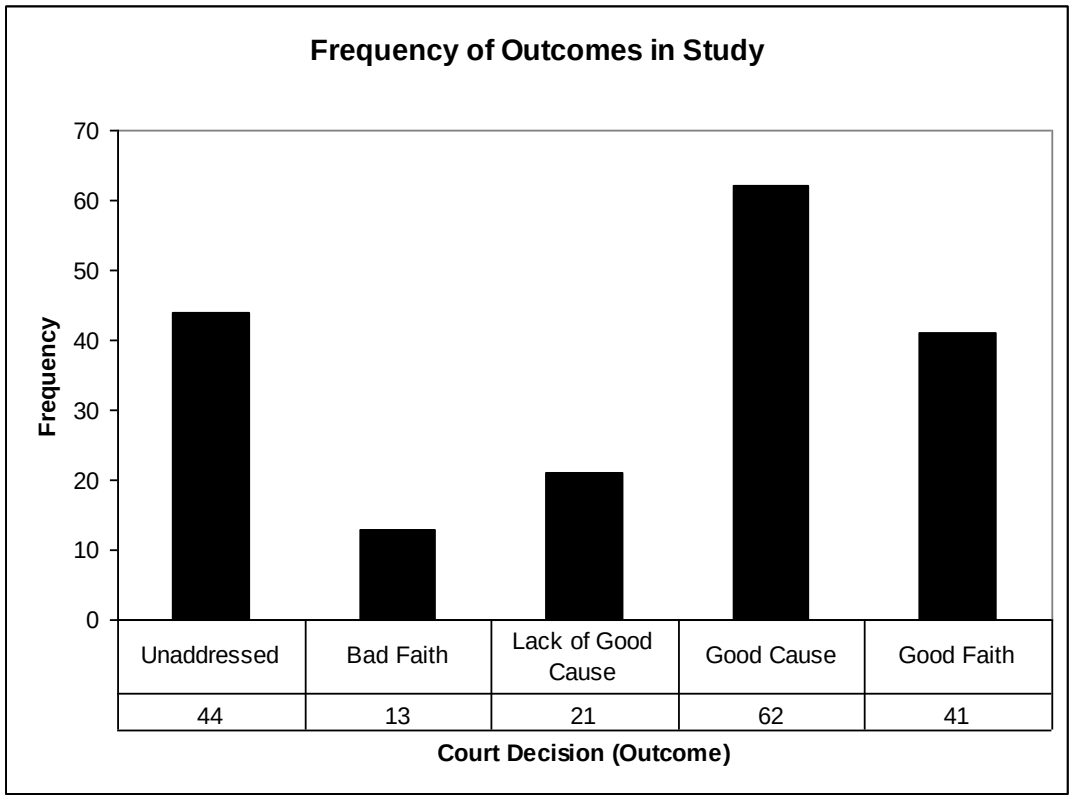
The Chart shows the distribution of all 181 cases in the study when categorized by the reason for termination and the court's decision.

Court Decision (Outcome)

Reasons for Termination	Good Cause/Good Faith	Lack of Good Cause/Bad Faith	Unaddressed	Total Counted	Percentage of Total
At will	44.9%	22.4%	32.7%	49	14.3%
Breach of Contract/Failure to Comply with Agreement / Meet Performance Standard	67.6%	15.2%	17.2%	105	30.7%
Failure to Cure Defaults	68.75%	6.25%	25.0%	16	4.7%
Failure to Pay	70.7%	12.0%	17.3%	75	21.9%
Misuse of Trademark	69.6%	13.0%	17.4%	23	6.7%
Other Violation of Covenant Not to Compete / Competitive Conduct	51.83%	21.43%	30.4%	56	16.4%
	61.1%	11.1%	27.8%	18	5.3%
Total Counted	211	54	77	342	100.0%
Percentage of Total	61.7%	15.8%	22.5%	100.00%	

Appendix II. Hypotheses 1 Figures

Descriptive Statistics and Histogram of Outcomes



Outcome	Freq.	Percent	Cum.
Bad Faith	13	7.18	7.18
Good Cause	62	34.25	41.44
Good Faith	41	22.65	64.09
Lack of Good Cause	21	11.60	75.69
Unaddressed	44	24.31	100.00
Total	181	100.00	

Appendix III. Hypothesis 3 Figures

Presence of Specific State Laws	# Cases	Percentage
Yes	184	53.8%
No/Federal Cases	158	46.2%

State Laws?

Outcome	Yes	Total "No" Cases	No (State Case)	No (Federal Case)	Total
Unaddressed	23	21	13	8	44
Bad Faith	9	4	3	1	13
Lack of Good Cause	13	8	4	4	21
Good Faith	17	24	10	14	41
Good Cause	36	26	16	10	62
Total	**98**	**83**			**181**

Pearson χ^2 (1) = 6.396908 P_r = 0.01143

Outcome	Yes	No or Federal	Total
Unaddressed	38	39	77
Bad Faith/Lack of Good Cause	38	16	54
Good Faith/Good Cause	108	103	211
Total	**184**	**158**	**342**

Using a significance level of 0.05, the Pearson test shows that the outcomes do vary significantly between cases decided with and without specific state franchise law.

Appendix IV. Hypothesis 3 Figures

Year of Case Decision

Outcome	Pre - 1985	Post - 1985	Total
Unaddressed	12	32	44
Bad Faith	4	9	13
Lack of Good Cause	6	15	21
Good Faith	11	30	41
Good Cause	8	54	62
Total	**41**	**140**	**181**

Pearson χ^2 (4) = 5.2165 P_r = 0.266

The Pearson test shows that the outcomes do not vary significantly between Pre- and Post- 1985 cases.

Appendix VI. Hypothesis 5 Figures

Reason for Termination	*n*	Result Favors Franchisor	Percentage
Failure to Pay	75	53	70.7%
Failure to Comply with Agreement	105	71	67.6%

Appendix VII: Hypothesis 6 Figures

Reason for Termination	*n*	Result Favors Franchisee	Percentage
Violation of Covenant Not to Compete	18	2	11.1%
At Will	49	11	22.4%

Appendix VIII: Hypothesis 7-9 Figures

Reason for Termination	*n*	Result Favors Franchisee	Percentage
Failure to Pay	75	9	12.0%
At Will	49	11	22.4%
Misuse of Trademark	23	3	13.0%
Breach of Contract/Failure to Comply with Agreement/Failure to Meet Performance Standards	105	16	15.2%

Appendix VIII. Hypothesis 5-9 Figures

More broadly we do find that the outcomes vary significantly with the reasons for termination.

Ordered Logistic Regression of All Data

The value P>|Z| in the output below provides a measure of a variable's significance in the regression. If the value exceeds 0.05 then the corresponding variable is not significant for the data in the study.

```
. ologit  GOutcome1  GYear1 GCategory1 GStatelaw1 GBroad1

Iteration 0:   log likelihood = -269.00552
Iteration 1:   log likelihood = -263.63232
Iteration 2:   log likelihood = -263.62089
Iteration 3:   log likelihood = -263.62089

Ordered logistic regression                     Number of obs   =        181
                                                LR chi2(4)      =      10.77
                                                Prob > chi2     =     0.0293
Log likelihood = -263.62089                     Pseudo R2       =     0.0200
```

GOutcome1	Coef.	Std. Err.	z	P>|z|	[95% Conf.	Interval]
GYear1	.3681984	.3252284	1.13	0.258	-.2692375	1.005634
GCategory1	.7633311	.2893838	2.64	0.008	.1961492	1.330513
GStatelaw1	.0673061	.1668937	0.40	0.687	-.2597995	.3944118
GBroad1	-.021567	.073131	-0.29	0.768	-.1649011	.1217672
/cut1	.6844323	.7782584			-.8409261	2.209791
/cut2	1.047637	.7764842			-.4742441	2.569518
/cut3	1.566404	.7773042			.0429161	3.089893
/cut4	2.558194	.7945685			1.000868	4.11552

Testing the Parallel Regression Assumption:

```
. brant
```

Brant Test of Parallel Regression Assumption

Variable	chi2	p>chi2	df
All	22.99	0.028	12
GYear1	0.53	0.912	3
GCategory1	10.40	0.015	3
GStatelaw1	5.73	0.125	3
GBroad1	4.64	0.200	3

A significant test statistic provides evidence that the parallel regression assumption has been violated.

Parallel regression assumption has been violated for the category variable.

Multinomial Probability Regression Output of All Data:

```
. mprobit  GOutcome1  GYear1 GCategory1 GStatelaw1 GBroad1, base(0)

Iteration 0:   log likelihood = -251.57921
Iteration 1:   log likelihood = -250.88744
Iteration 2:   log likelihood = -250.87201
Iteration 3:   log likelihood =   -250.872

Multinomial probit regression                     Number of obs   =        181
                                                  Wald chi2(16)   =      33.09
Log likelihood =   -250.872                       Prob > chi2     =     0.0072
```

GOutcome1	Coef.	Std. Err.	z	P>|z|	[95% Conf.	Interval]
_outcome_2						
GYear1	.2370167	.4790687	0.49	0.621	-.7019407	1.175974
GCategory1	-.8162047	.4497003	-1.81	0.070	-1.697601	.0651917
GStatelaw1	.266696	.2845185	0.94	0.349	-.2909499	.824342
GBroad1	.1272811	.1038876	1.23	0.221	-.0763349	.3308971
_cons	-1.191241	1.262195	-0.94	0.345	-3.665096	1.282615
_outcome_3						
GYear1	.1260551	.4169062	0.30	0.762	-.6910659	.9431762
GCategory1	-.4842984	.3729327	-1.30	0.194	-1.215233	.2466362
GStatelaw1	.0775226	.2261527	0.34	0.732	-.3657286	.5207737
GBroad1	-.0387791	.0940872	-0.41	0.680	-.2231866	.1456284
_cons	-.0740204	1.014627	-0.07	0.942	-2.062652	1.914611
_outcome_4						
GYear1	.0582075	.3759739	0.15	0.877	-.6786878	.7951028
GCategory1	-.2516558	.3323117	-0.76	0.449	-.9029749	.3996632
GStatelaw1	-.28322	.1968162	-1.44	0.150	-.6689727	.1025327
GBroad1	-.0887705	.0850665	-1.04	0.297	-.2554978	.0779567
_cons	1.14084	.8989709	1.27	0.204	-.621111	2.90279
_outcome_5						
GYear1	.5230469	.3854787	1.36	0.175	-.2324776	1.278571
GCategory1	.6658552	.3192884	2.09	0.037	.0400613	1.291649
GStatelaw1	.1669951	.1979716	0.84	0.399	-.221022	.5550122
GBroad1	.0357367	.0821928	0.43	0.664	-.1253581	.1968316
_cons	-2.280581	.9650683	-2.36	0.018	-4.17208	-.3890821

(GOutcome1=Unaddressed is the base outcome)

Prchange –

This command computes and reports the change in the predicted probability of an outcome changing from one to another given a change in the independent variables. *Prchange Output for previous Multinomial Probit Regression:*

```
. prchange

mprobit: Changes in Probabilities for GOutcome1

GYear1
            Avg|Chg|    Unaddres    Lack_of_    Good_Fai    Good_Cau    Bad_Fait
Min->Max    .0531475  -.07386164  -.01330715  -.04569995   .12861222   .00425653
   -+1/2   .05503797  -.07438371   -.0152878  -.04792342   .13448581   .00310909
  -+sd/2    .0232017  -.03134926  -.00644916  -.02020583   .05668506   .00131917

GCategory1
            Avg|Chg|    Unaddres    Lack_of_    Good_Fai    Good_Cau    Bad_Fait
Min->Max   .10680899   -.0043944  -.09210721  -.08240111   .26702249  -.08811977
   -+1/2   .10756944  -.00764327  -.09164239  -.08437987   .2689236   -.08525808
  -+sd/2   .05479429  -.00408685   -.0469173  -.04346035   .13698572   -.0425212

GStatelaw1
            Avg|Chg|    Unaddres    Lack_of_    Good_Fai    Good_Cau    Bad_Fait
Min->Max    .0817222  -.00235298   .02617731  -.20195255   .13144428   .04668391
   -+1/2   .04066312  -.00580978   .01141378  -.09584801   .06464317   .02560084
  -+sd/2   .03246323  -.00465184   .00911628  -.07650623   .05161378   .02042802

GBroad1
            Avg|Chg|    Unaddres    Lack_of_    Good_Fai    Good_Cau    Bad_Fait
Min->Max   .07772223   .00444192  -.03952044  -.15478511   .09834382   .09151986
   -+1/2   .01325974   .00188395  -.00636628  -.02678308    .0176619    .0136035
  -+sd/2    .0247396   .00349921  -.01187479   -.0499742   .03292108    .0254287

          Unaddres   Lack_of_   Good_Fai   Good_Cau   Bad_Fait
Pr(y|x)  .26323959  .11780826  .22845404  .33411902  .05637909

             GYear1  GCategory1  GStatelaw1     GBroad1
    x=      1.77348     1.53591     2.33702     3.35912
sd(x)=       .41974      .500092     .797364     1.86735

.
```

Multinomial Probity Regression Comparing Good Cause and All Other Outcomes:

```
. mprobit  GOutcome1  GYear1 GCategory1 GStatelaw1 GBroad1, base(4)

Iteration 0:   log likelihood = -251.57921
Iteration 1:   log likelihood = -250.88744
Iteration 2:   log likelihood = -250.87201
Iteration 3:   log likelihood =   -250.872

Multinomial probit regression                     Number of obs   =        181
                                                  Wald chi2(16)   =      33.09
Log likelihood =   -250.872                       Prob > chi2     =     0.0072
```

GOutcome1	Coef.	Std. Err.	z	P>|z|	[95% Conf.	Interval]
Unaddressed						
GYear1	-.5230469	.3854787	-1.36	0.175	-1.278571	.2324776
GCategory1	-.6658552	.3192884	-2.09	0.037	-1.291649	-.0400613
GStatelaw1	-.1669951	.1979716	-0.84	0.399	-.5550122	.221022
GBroad1	-.0357367	.0821928	-0.43	0.664	-.1968316	.1253581
_cons	2.280581	.9650683	2.36	0.018	.3890821	4.17208
_outcome_2						
GYear1	-.2860302	.4944118	-0.58	0.563	-1.255059	.682999
GCategory1	-1.48206	.4456344	-3.33	0.001	-2.355487	-.6086326
GStatelaw1	.0997009	.2864897	0.35	0.728	-.4618086	.6612104
GBroad1	.0915444	.1052145	0.87	0.384	-.1146722	.297761
_cons	1.089341	1.315174	0.83	0.408	-1.488353	3.667034
_outcome_3						
GYear1	-.3969917	.4335679	-0.92	0.360	-1.246769	.4527857
GCategory1	-1.150154	.369641	-3.11	0.002	-1.874637	-.4256705
GStatelaw1	-.0894725	.2279507	-0.39	0.695	-.5362477	.3573026
GBroad1	-.0745159	.0955475	-0.78	0.435	-.2617855	.1127538
_cons	2.206561	1.083064	2.04	0.042	.0837947	4.329327
_outcome_4						
GYear1	-.4648394	.3951678	-1.18	0.239	-1.239354	.3096752
GCategory1	-.917511	.3306343	-2.78	0.006	-1.565542	-.2694797
GStatelaw1	-.4502151	.198079	-2.27	0.023	-.8384429	-.0619873
GBroad1	-.1245073	.0868645	-1.43	0.152	-.2947586	.0457441
_cons	3.421421	.9856257	3.47	0.001	1.48963	5.353212

(GOutcome1="Good Cause" is the base outcome)

PR change output for Good Cause vs. All Other Outcomes:

```
. prchange

mprobit: Changes in Probabilities for GOutcome1

GYear1
            Avg|Chg|    Unaddres    Bad_Fait    Lack_of_    Good_Fai    Good_Cau
Min->Max    .0531475  -.07386164   .00425653  -.01330715  -.04569995   .12861222
   -+1/2   .05503797  -.07438371   .00310909   -.0152878  -.04792342   .13448581
  -+sd/2    .0232017  -.03134926   .00131917  -.00644916  -.02020583   .05668506

GCategory1
            Avg|Chg|    Unaddres    Bad_Fait    Lack_of_    Good_Fai    Good_Cau
Min->Max   .10680899   -.0043944  -.08811977  -.09210721  -.08240111   .26702249
   -+1/2   .10756944  -.00764327  -.08525808  -.09164239  -.08437987    .2689236
  -+sd/2   .05479429  -.00408685   -.0425212   -.0469173  -.04346035   .13698572

GStatelaw1
            Avg|Chg|    Unaddres    Bad_Fait    Lack_of_    Good_Fai    Good_Cau
Min->Max    .0817222  -.00235298   .04668391   .02617731  -.20195255   .13144428
   -+1/2   .04066312  -.00580978   .02560084   .01141378  -.09584801   .06464317
  -+sd/2   .03246323  -.00465184   .02042802   .00911628  -.07650623   .05161378

GBroad1
            Avg|Chg|    Unaddres    Bad_Fait    Lack_of_    Good_Fai    Good_Cau
Min->Max   .07772223   .00444192   .09151986  -.03952044  -.15478511   .09834382
   -+1/2   .01325974   .00188395    .0136035  -.00636628  -.02678308    .0176619
  -+sd/2    .0247396   .00349921    .0254287  -.01187479   -.0499742   .03292108

          Unaddres   Bad_Fait   Lack_of_   Good_Fai   Good_Cau
Pr(y|x)  .26323959  .05637909  .11780826  .22845404  .33411902

            GYear1  GCategory1  GStatelaw1     GBroad1
    x=     1.77348     1.53591     2.33702     3.35912
sd(x)=      .41974      .500092     .797364     1.86735
```

Multinomial Probability Regression ignoring cases with unaddressed outcomes:

```
. mprobit  GOutcome1  GYear1 GCategory1 GStatelaw1 GBroad1 if  GOutcome1>0 , base(4)

Iteration 0:   log likelihood = -150.78362
Iteration 1:   log likelihood = -150.59285
Iteration 2:   log likelihood = -150.59186
Iteration 3:   log likelihood = -150.59186

Multinomial probit regression                     Number of obs   =        137
                                                  Wald chi2(12)   =      32.68
Log likelihood = -150.59186                       Prob > chi2     =     0.0011
```

GOutcome1	Coef.	Std. Err.	z	P>|z|	[95% Conf.	Interval]
_outcome_1						
GYear1	-.2909454	.5421347	-0.54	0.591	-1.35351	.7716192
GCategory1	-1.613771	.482924	-3.34	0.001	-2.560285	-.6672573
GStatelaw1	.0448641	.3112804	0.14	0.885	-.5652343	.6549626
GBroad1	.1126957	.1170553	0.96	0.336	-.1167285	.34212
_cons	1.276207	1.447777	0.88	0.378	-1.561385	4.113798
_outcome_2						
GYear1	-.4046455	.4742221	-0.85	0.394	-1.334104	.5248129
GCategory1	-1.253794	.4012122	-3.13	0.002	-2.040155	-.4674322
GStatelaw1	-.1442163	.2470234	-0.58	0.559	-.6283732	.3399406
GBroad1	-.0738144	.1071185	-0.69	0.491	-.2837629	.136134
_cons	2.452724	1.200774	2.04	0.041	.0992509	4.806197
_outcome_3						
GYear1	-.5357351	.4353936	-1.23	0.219	-1.389091	.3176207
GCategory1	-1.016239	.3630683	-2.80	0.005	-1.72784	-.3046381
GStatelaw1	-.5301936	.2167167	-2.45	0.014	-.9549506	-.1054366
GBroad1	-.1317793	.0982271	-1.34	0.180	-.3243009	.0607422
_cons	3.887339	1.107588	3.51	0.000	1.716507	6.058171

(GOutcome1="Good Cause" is the base outcome)

Combined Outcomes

Regression combining Good Cause and Good Faith as well as combining Bad Faith and Lack of Good Cause:

```
. mprobit  GOutcome2  GYear1 GCategory1 GStatelaw1 GBroad1

Iteration 0:   log likelihood = -170.07902
Iteration 1:   log likelihood = -170.01683
Iteration 2:   log likelihood = -170.01683

Multinomial probit regression                     Number of obs   =        181
                                                  Wald chi2(8)    =      13.57
Log likelihood = -170.01683                       Prob > chi2     =     0.0936
```

GOutcome2	Coef.	Std. Err.	z	P>|z|	[95% Conf.	Interval]
_outcome_1						
GYear1	-.3216757	.3520972	-0.91	0.361	-1.011773	.3684222
GCategory1	-.2995572	.3019552	-0.99	0.321	-.8913786	.2922642
GStatelaw1	.0604551	.1837335	0.33	0.742	-.299656	.4205662
GBroad1	.0341026	.0771622	0.44	0.659	-.1171324	.1853377
_cons	.0869638	.8393051	0.10	0.917	-1.558044	1.731972
_outcome_2						
GYear1	-.1654043	.3746376	-0.44	0.659	-.8996806	.568872
GCategory1	-1.016913	.3306437	-3.08	0.002	-1.664963	-.3688631
GStatelaw1	.227281	.2021868	1.12	0.261	-.1689979	.6235598
GBroad1	.067433	.0825006	0.82	0.414	-.0942652	.2291312
_cons	.1367028	.9102159	0.15	0.881	-1.647288	1.920693

```
(GOutcome2=2 is the base outcome)

.
```

Almost nothing is significant in this regression

Combined Outcomes and Unaddressed Cases Ignored

Regression ignoring the unaddressed outcomes in the previous analysis, only two possible outcomes is now considered:

```
. mprobit  GOutcome2  GYear1 GCategory1 GStatelaw1 GBroad1  if GOutcome2 >0

Iteration 0:   log likelihood = -70.236242
Iteration 1:   log likelihood = -70.081746
Iteration 2:   log likelihood = -70.081609
Iteration 3:   log likelihood = -70.081609

Multinomial probit regression                     Number of obs   =        137
                                                  Wald chi2(4)    =      12.65
Log likelihood = -70.081609                       Prob > chi2     =     0.0131

------------------------------------------------------------------------------
   GOutcome2 |      Coef.   Std. Err.      z    P>|z|     [95% Conf. Interval]
-------------+----------------------------------------------------------------
_outcome_1   |
       GYear1 |  -.1380951   .4195899    -0.33   0.742    -.9604761     .684286
   GCategory1 |  -1.128758   .3667401    -3.08   0.002    -1.847555   -.4099607
   GStatelaw1 |   .2108281    .223631     0.94   0.346    -.2274805    .6491368
      GBroad1 |   .0879277   .0943758     0.93   0.352    -.0970455     .272901
        _cons |   .1402347   1.029017     0.14   0.892    -1.876602    2.157072
------------------------------------------------------------------------------
(GOutcome2=2 is the base outcome)
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Again, Traditional / Non-Traditional is the only significant variable.

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[1] LLOYD TARBUTTON, FRANCHISING: THE HOW-TO BOOK 1986. In it, the author, founder of EconoLodge, states that the first store franchise was started in 200 B.C. when Lo Kass, a local businessman, began operating multiple retail stores in his area. Tarbutton further speculates that the practice may have even started earlier than this with the granting of specific routes to rickshaw drivers.
See also MARK ABELL, THE LAW AND REGULATION OF FRANCHISING IN THE EU 12-15 (2013) (offering a chronology of franchising that references business methods and distribution channels often overlooked in other accounts of franchising's origins, such as Japan's Norenkai restaurant arrangement, "tied" breweries in the United Kingdom, and the Harper Beauty Shop network in North America and Europe).

[2] My Franchise Expert, http://www.myfranchiseexpert.com/article/a-brief-introduction-to-the-history-of-franchising.

[3] The Lemelson Center for the Study of Invention and Innovation, http://invention.smithsonian.org/resources/fa_wu_index.aspx#series2

[4] The Coca-Cola Company, http://www.thecoca-colacompany.com/ourcompany/historybottling.html

[5] SUMMIT FRANCHISES, YOUR FRANCHISE EXPERTS: FAQS (2014), *available at* http://www.summitfranchises.com/faqs.php ("By conservative estimates they [sic] are now over 3,000 different franchise businesses opportunities available in the market place and growing with over 70 different industry categories").

[6] To get a sense of just how many franchise termination cases there may be, the author searched a database of all publically available Canadian cases that refer to franchising or the Ontario Arthur Wishart Act (Ontario's franchise law). Limiting the data to only cases described with the noun "termination" or the verb "terminate," the author found 101 cases in the seven years, 2006 through 2012. With an economy and population about ten times larger, the United States surely must have hundreds of franchise termination cases each year, perhaps into the thousands if one considers that most cases never rise to the level of a reported court decision (the type found in the Canadian database). See GOLDMAN HINE LLP, CANADIAN FRANCHISE CASE LAW DATABASE (last updated March 2013), http://www.goldmanhine.com/canadian-franchise-case-law-database/.

[7] Robert W. Emerson, *Franchising and the Parol Evidence Rule*, 50 AM. BUS. L.J. 659, 661 n.8 (2013).

[8] The states which have laws specifically concerning franchises: Arkansas, California, Connecticut, Delaware, Hawaii, Illinois, Indiana, Iowa, Michigan, Minnesota, Mississippi, Missouri, Nebraska, New Jersey, Washington and Wisconsin. These states tend to coincide with the sixteen "good cause" states: Arkansas, California, Connecticut, Delaware, Hawaii, Illinois, Indiana, Iowa, Michigan, Minnesota, Nebraska, New Jersey, Rhode Island,

Virginia, Washington, and Wisconsin. ARK. CODE ANN. § 4-72-204 (2010); CAL. BUS. & PROF. CODE § 20020 (Deering 2010); CONN. GEN. STAT. ANN. § 42-133f (2010); DEL. CODE ANN. tit. 6, § 2552(a) (2010); HAW. REV. STAT. ANN. § 482E-6 (LexisNexis 2010); 815 ILL. COMP. STAT. ANN. 705/19 (LexisNexis 2010); IND. CODE ANN. § 23-2-2.7-1(7) (LexisNexis 2010); IOWA CODE ANN. § 523H.7(1) (West 2010); MICH. COMP. LAWS ANN. § 445.1527(27)(c) (West 2010); MINN. STAT. ANN. § 80C.14(3)(b) (West 2010); NEB. REV. STAT. ANN. § 87-404 (Lexis-Nexis 2010); N.J. STAT. ANN. § 56:10-5 (West 2010); R.I. GEN. LAWS § 6-50-1 et seq. (2010); VA. CODE ANN. § 13.1-564 (West 2010); WASH. REV. CODE ANN. § 19.100.180(2)(j) (West 2010); WIS. STAT. ANN. § 135.03 (West 2010). The District of Columbia, Puerto Rico and the Virgin Islands also have statutes that govern the termination of franchises. South Dakota and Virginia have statutes that, while not directly commenting on termination, restrict the franchisor's ability to refuse to renew the franchise agreement.

[9] Amerada Hess Corp. v. Quinn, 362 A.2d 1258, 1268-69 (N.J. Super. Ct. Law Div. 1976).

[10] CAL BUS & PROF CODE § 20021 (2008).

[11] Defining a franchise is difficult. Erwin S. Barbre, Annotation, *Fraud in Connection with Franchise or Distributorship Relationship*, 64 A.L.R.3d 6, § 1[a] (2009) ("[T]he courts and commentators have had a great deal of difficulty in formulating definitions for the terms "franchise" and "franchising"; a good deal of the problem results from the fact that the term "franchise" has been used to designate an almost infinite number of marketing systems.")

[12] Larry Hobbs Farm Equip., Inc. v. CNH Am., LLC, 291 S.W.3d 190 (Ark. 2009); 7-Eleven, Inc. v. Dar, 757 N.E.2d 515 (Ill. App. Ct. 1st Dist. 2001).

[13] For example, one of the earliest state statues on franchising law generally "reflected the [New Jersey] legislature's deep concern over abuses and manipulations by franchisors, particularly in the terminating and non-renewal of franchises; as such, the statute merely codified the existing public policy already in effect in New Jersey." Robert W. Emerson, *Franchise Contract Interpretation: A Two-Standard Approach*, 2013 MICH. ST. L. REV. 641, 666 n.152 (describing the holding in Shell Oil Co. v. Marinello, 307 A.2d 598, 602 (N.J. 1973)). *See also* Christopher J. Curran, Claims Against a Franchisor Upon an Unreasonable Withholding of Consent to Franchise Transfer, 23 J. Corp. L. 135, 152 (1997); Peter C. Lagarias & Robert S. Boulter, The Modern Reality of the Controlling Franchisor: The Case for More, Not Less, Franchisee Protections, 29 Franchise L.J. 139, 141 (2010); Dennis D. Palmer, *Franchises: Statutory and CommonLaw Causes of Action in Missouri Revisited*, 62 UMKC L. Rev. 471, 491 (1994); Thomas M. Pitegoff, *Franchise Relationship Laws: A Minefield for Franchisors*, 45 Bus. Law. 289, 289 (1989).

[14] For example, the North Carolina statute concerning Beer Franchises states:

> Good cause for altering or terminating a franchise agreement, or failing to renew or causing a wholesaler to resign from such an agreement, exists when the wholesaler fails to comply with provisions of the agreement which are reasonable, material, not unconscionable, and which are not discriminatory when compared with the provisions imposed, by their terms or in the manner of enforcement, on other similarly situated wholesaler by the supplier. In any dispute over alteration, termination, failure to renew or causing a wholesaler to resign from a franchise agreement, the burden is on the supplier to establish that good cause exists for the action.

N.C. Gen. Stat. § 18B-1305(a) (2011). *See also* RK. CODE ANN. § 4-72-202 (2008); CAL BUS & PROF CODE § 20020, § 20999.1(2008); CONN. GEN. STAT. § 42-133f (2008); DEL. CODE ANN. 6 §2552 (2008); HAW. REV. STAT. § 482E-6 (2008); 815 ILL. COMP. STAT. ANN. 705/19 (2008); IOWA CODE § 537A.10 (2008); MICH. COMP. LAWS SERV. §45.1527 (2008); MINN. STAT. § 80C.14 (2008); MISS. CODE ANN. § 75-77-2 (2008); MO. REV. STAT. §407.413(2008); NEB. REV. STAT. § 87-402 (LexisNexis 2008); and N.J. Rev. Stat. § 56:10-5 (2008)

[15] Monmouth Chrysler-Plymouth v. Chrysler Corp., 102 N.J. 485 at 493 (N.J. 1986); 7-Eleven, Inc., 325 Ill. App. 3d at 408 ((Ill. App. Ct. 1st Dist. 2001); Maple Shade Motor Corp. v. Kia Motors of Am., Inc., 384 F. Supp. 2d 770, 774 (D.N.J. 2005).

[16] Hartford Elec. Supply Co. v. Allen-Bradley Co., 250 Conn. 334, 736 A.2d 824 (1999); Stetzer v. Dunkin' Donuts, Inc., 87 F. Supp. 2d 104, 115 (D. Conn. 2000).

[17] The North Carolina statute provides for termination "for cause" and without any notice:

> A supplier may terminate or fail to renew a franchise agreement for any of the following reasons, and the termination shall be complete upon receipt by the wholesaler of a written notice of the termination and the reason:
> (1) Insolvency of the wholesaler, the dissolution or liquidation of the wholesaler, or the filing of any petition by or against the wholesaler under any bankruptcy or receivership law which materially affects the wholesaler's ability to remain in business.
> (2) Revocation of the wholesaler's State or federal permit or license for more than 30 days.
> (3) Conviction of the wholesaler, or of a partner or individual who owns ten percent (10%) or more of the partnership or stock of the wholesaler, of a felony which might reasonably be expected to adversely affect the goodwill or interest of the wholesaler or supplier. The provisions of this subdivision shall not apply, however, if the wholesaler or its existing partners or stockholders shall have the right to purchase the interest of the offending partner or stockholder, and such purchase is completed within 15 days of the conviction.
> (4) Fraudulent conduct by the wholesaler in its dealings with the supplier or its products.
> (5) Failure of the wholesaler to pay for the supplier's products according to the established terms of the supplier.
> (6) Assignment, sale or transfer of the wholesaler's business or control of the wholesaler without the written consent of the supplier, except as provided in G.S. 18B-1307.

N.C. Gen. Stat. § 18B-1305(c) (2011).

[18] Craig Food Industries, Inc. v. Taco Time International, Inc., 469 F. Supp. 516 at 547 (D. Utah 1979).

[19] Ard Dr. Pepper Bottling Co. v. Dr. Pepper Co., 202 F.2d 372, 373 (5th Cir. 1953).

[20] Mary Ellen Podmolik, *New franchise rules called "baby steps": Risks and rewards better explained before buying in*, CHI. TRIB., May 7, 2007, *available at* http://articles.chicagotribune.com/2007-05-07/business/0705060457_1_international-franchise-association-franchise-firms-american-franchisee-association (quoting Priscilla Taylor, a new franchisee of the coffee-and-smoothie franchise, Maui Wowi Hawaiian, "I didn't want to go back into the corporate world. It was a well-educated gamble. [Franchise] agreements, from what I understand, are clearly written in the favor of the franchiser"); Jez Davison, *Sharing the Franchise Vision – and Then Making it Work*, EVENING GAZETTE (Middlesbrough, England), April 8, 2008, *available at* http://www.questia.com/library/1G1-177593862/sharing-the-franchise-vision-and-then-making-it, (quoting Colin Walsh, assistant solicitor at Jacksons Solicitors, Stockton, United Kingdom, "Franchise agreements are generally very onerous on the franchisee. The termination clause of the agreement needs to be reviewed to ensure that the franchisee is fully aware of what actions may give rise to this clause being invoked"); *see also* Robert W. Emerson, *Fortune Favors the Franchisor: Survey and Analysis of the Franchisee's Decision Whether to Hire Counsel*, 51 SAN DIEGO L. REV. __ (2014) (surveys of numerous franchisor counsel show they strongly believe franchisees need their own, independent, experienced counsel from the outset, yet relatively few actually obtain legal assistance).

[21] The author compiled this list by examining the treatise, W. MICHAEL GARNER, FRANCHISE AND DISTRIBUTION LAW AND PRACTICE (2013-14) and the author's own study of more than 300 franchise termination cases.

[22] G.M. Garrett Realty, Inc. v. Century 21 Real Estate Corp., 17 Fed. Appx. 169 (4th Cir. 2001).

[23] *Id.* at 1248; *cf* Larry Hobbs Farm Equipment, Inc. v. CNH America, LLC, 375 Ark. 379, 291 S.W.3d 190 (2009).

[24] See, e.g., Kealey Pharmacy & Home Care Service, Inc. v. Walgreen Co., 539 F. Supp. 1357, *aff'd,* 761 F. 2d 345 (7th Cir. 1985); J & S Home Realty v. Anaconda Co., 172 Mont. 236 (1977).

[25] General Motors Corp. v. New A.C. Chevrolet, Inc., 263 F.3d 296, 319 (3d Cir. 2001).

[26] Petroleum Marketing Practices Act, 15 U.S.C. §§ 2801-2841. The author's examination of all state laws governing terminations of gasoline dealerships (most states have some such law) found that only 16 states mentions "good cause," with the following specific problems being state-specified grounds for termination in a number of states: failure to comply with franchise provisions (12 states), the occurrence of an event impacting the franchise relationship (10 states), agreement of the parties (five states), conversion of the premises to another use (five states), franchisee's failure to exercise good faith in carrying out the franchised business (five states), the franchisor's market withdrawal (four states), customer complaints about the franchisee or its business (two states), an uneconomical franchise (one state), the franchisee's failure to operate the premises in a clean, safe, and healthful manner (one state), and the franchisee's failure to agree to changes in the provisions (one state).

[27] Automobile Dealer Suits Against Manufacturers, 15 U.S.C. §§ 1221-1226

[28] Statistics and sources as to the size and portion of the franchise market devoted to gas dealerships and likewise as to auto dealerships.
[29] Pub. L. No. 79-489, ch. 540, 60 Stat. 427 (1946) (codified as amended at 15 U.S.C. §§ 1051–1141n (2006, Supp. 2002)). To protect its trademark, a franchisor "must retain sufficient control over the licensees' dealings in the end product to insure that they will apply the mark to either the same product or to one of substantially the same quality with which the public in the past has associated the product." 1 GLADYS GLICKMAN, FRANCHISING § 3A.02[4][a] (Westlaw 2006).

[30] Ispahani v. Allied Domecq Retailing USA, 320 N.J. Super. 494, (App. Div. 1999) (referring to 15 U.S.C. §§ 1051 to 1127)); Melissa R. Gleiberman, *From Fast Cars to Fast Food: Overbroad Protection of Trade Dress Under Section 43(a) of the Lanham Act*, 45 Stan. L. Rev. 2037, 2038 (1993).
[31] Some findings of good cause may depend on a franchisee's bad faith. See, e.g., Ark. Code Ann. 4-72-202(7)(B) (Michie 1995); Cal. Corp. Code 31,101, 31,119 & 31,125 (West 1996); D.C. Code Ann. 20-1201(B) (1996); Wis. Stat. 135.03 (1996); V.I. Code Ann. tit. 12A, 132 (1996).
[32] BLACK'S LAW DICTIONARY 762 (9TH ed. 2009).
[33] RESTATEMENT (SECOND) OF CONTRACTS § 205 cmt. a (1979).
[34] Peter Macrae Dillon, *What is Good Faith - Franchise Lawyer Canada*, *available at* http://www.evancarmichael.com/Franchises/704/What-is-Good-Faith--Franchise-Lawyer-Canada.html (last visited Feb. 3, 2014).
[35]RESTATEMENT (THIRD) OF AGENCY § 8.15 (2006); General Motors Acceptance Corp. v. Crenshaw, Dupree & Milam L.L.P., 986 S.W.2d 632, 636 (Tex.App.1998); Condon Auto Sales & Serv., Inc. v. Crick, 604 N.W.2d 587, 599 (Iowa 1999).
[36] Simply put, good faith and fair dealing prohibits actions that are contrary to community standards of honesty, reasonableness, or fairness [citing Gateway Realty Ltd. v. Arton Holdings Ltd., 106 N.S.R.2d 180 (1991), aff'd, 112 N.S.R.2d 180 (Nova Scotia 1992)]. Good faith and fair dealing prohibits actions that destroy, injure, or limit a party's right or ability to receive the fruits of the contract that were expected at the ***time*** of forming the contract. Dillon, *supra* note 34 (emphasis in original).
[37] Id.
[38] Id.
[39] The statistical analysis was performed with the STATA 10.0 software package.
[40] An initial set of factors were gathered from various references as mentioned in part II, above. The references were compared to one another, and duplicate factors were removed. This list was then compared to the case set to confirm that all possible factors were included in the list.
[41] Empty footnote
[42] See Part II Footnote 4 for a list of states with specific laws for franchises.
[43] "Coding" refers to each researcher reading the cases assigned and identifying which variables appear in each of those cases. Each case should have had all variables present (save the narrow reason), and if a case did not have all variables present, that case was thrown out.
[44] The remaining cases bringing the numbers up to 100% were cases where those matters were unaddressed.
[45] GARNER, *supra* note 21, at § 5:2.
[46] *Id.*
[47] *Id.*
[48] Wis. Stat. § 553.03(4).
[49] Brown & Conwill, *Automobile Manufacturer-Dealer Legislation*, 57 Col 219 (1957).
[50] 15 U.S.C. §§ 1221 to 1225.
[51] GARNER, *supra* note 21, at § 14:1
[52] 16 C.F.R. pt. 436.
[53] The UFOC system was replaced by a Franchise Disclosure Document (FDD), per the amended FTC Franchise Rule. *See* 1 Bus. Franchise Guide (CCH) ¶ 5828 (1990) (providing a sample UFOC). The federal disclosure requirements are met by following a format prescribed by the Federal Trade Commission (FTC). The federal rule, entitled, "Disclosure Requirements and Prohibitions Concerning Franchising and Business Opportunity Ventures," promulgated in 1979 and amended in 2007, remains a disclosure rule, *not* a rule mandating a filing with the government or outlining certain substantive law requirements. 16 C.F.R. §§ 436.1-.3 (2009). There is no private cause of action under the Rule. *Id.* For more detailed information on the FTC Rule, *see* GARNER, *supra* note 21, at §§ 5:9-:13.

[54] GARNER, *supra* note 21, at § 5:2.
[55] *Id.*
[56] The states which have laws specifically concerning franchises: Arkansas, California, Connecticut, Delaware, Hawaii, Illinois, Indiana, Iowa, Michigan, Minnesota, Mississippi, Missouri, Nebraska, New Jersey, Washington and Wisconsin. The District of Columbia, Puerto Rico and the Virgin Islands also have statutes that govern the termination of franchises. South Dakota and Virginia have statutes that, while not directly commenting on termination, restrict the franchisor's ability to refuse to renew the franchise agreement. *See* Robert W. Emerson, *Franchise Terminations: Legal Rights and Practical Effects When Franchisees Claim the Franchisor Discriminates*, 35 Am. Bus. L.J. 559, 645 (1998)

[57] A number of states have that type of definition in their franchise laws.
[58] States such as Arkansas follow that approach.
[59] George F. Carpinello, *Testing the Limits of Choice of Laws Clauses: Franchise Contracts as a Case Study*, 74 Marq. L. Rev. 57,69 (1990-1991).
[60] Venue stipulations in the franchise agreement have become standard in almost all franchise contracts. Emerson, *supra* note 13, at 695 (up from 27% of franchise contracts in a 1971 study, and 62% in 1993, to 93% in 2013). Courts tend to support these clauses. *See* M.B. Rests., Inc. v. CKE Rests., Inc., 183 F.3d 750, 753 (8th Cir. 1999) (finding that a franchise contract was a form contract and that individual clauses were not actually negotiated, but holding that this did not render a challenged forum selection clause per se unenforceable).
[61] *See generally*, Carpinello, *supra* note 59.

[62] *See, e.g. Easing Case Congestion with Volunteers*, THE THIRD BRANCH (June 2009), http://www.uscourts.gov/news/TheThirdBranch/09-06-01/Easing_Case_Congestion_with_Volunteers.aspx
[63] U.S. Dep't of Commerce, Franchising in the Economy 1985–1987, Chart 3.
[64] GARNER, *supra* note 21, at § 1:3

[65] Westfield Centre Service, Inc. v. Cities Service Oil Co., 86 N.J. 453, 461-62, 432 A.2d 48, 53 (N.J., 1981) ("Though economic advantages to both parties exist in the franchise relationship, disparity in the bargaining power of the parties has led to some unconscionable provisions in the agreements. Franchisors have drafted contracts permitting them to terminate or to refuse renewal of franchises at will or for a wide variety of reasons including failure to comply with unreasonable conditions."); *See* Raymond T. Nimmer & Jeff Dodd, Modern Licensing Law § 12:7 (2010)
[66] *See* Raymond T. Nimmer & Jeff Dodd, Modern Licensing Law § 12:31 (2010)
[67] That is, of course, a big "if." There is evidence to support the contention of franchisee advocates that prospective franchisees are often ill-informed and without good counsel, and thus they are unprepared for the consequences of entering a franchise contract. Emerson, *supra* note 20.