

**CASE NOTE: CONTRACTS—WHEN “GOOD CAUSE”  
GOES BAD: MINNESOTA RESTRICTS PROTECTION  
FOR DEALERS UNDER HUEMDA—*RIVER VALLEY  
TRUCK CTR., INC. V. INTERSTATE COS.***

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“God is very busy. He can’t control all the details. He’s running a franchise operation.”<sup>1</sup>

## I. INTRODUCTION

Decentralized control of “the details” is at once the blessing and the curse of the franchise operation. A franchisor succeeds by delegating the practical tasks of running its business to its franchisees, which constitute a veritable army of motivated entrepreneurs and managers. But by relinquishing control of its operations to its franchisees, a franchisor entrusts important features of its livelihood to the same army. To protect its business, a franchisor must rely on some means of keeping its franchisees’ actions in harmony with its goals and standards. The most potent and absolute of these means is the threat of termination or nonrenewal of the franchise.

The consequences of termination can be dire to the franchisee. As a result, the question of whether the government should control the franchisor’s ability to exercise its “doomsday option” is a controversial issue in the debate over how to foster an equitable yet prosperous environment for franchise operations.<sup>2</sup> The importance of the franchise relationship to American business underscores the high stakes of the debate. Franchises and dealerships represent a significant part of the U.S. economy.<sup>3</sup>

But because legislatures in many jurisdictions perceive disparities in power between franchisor and franchisee,<sup>4</sup> most states have enacted franchise protection statutes that limit the franchisor’s ability to terminate or elect not to renew the franchise,

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1. NUNS ON THE RUN (Handmade Films Ltd. 1990).

2. See ABA Antitrust Section: Monograph No. 17, *Franchise Protection: Laws Against Termination and the Establishment of Additional Franchises* 19 (1990) [hereinafter ABA Monograph].

3. See *infra*, note 17. Additionally, many scholars distinguish dealerships (or “product distribution franchises”) from franchises where the franchisees more closely adhere to a defined business model (the “business format franchise,” such as a fast food restaurant franchise). See Thomas J. Chinonis, *Implied Covenant of Good Faith: A Two-Way Street in Franchising*, 11 DEPAUL BUS. L.J. 229, 233 (1998). Because the arguments in this note apply to either arrangement, I shall use the terms “franchise” and “dealership” interchangeably.

4. See Robert W. Emerson, *Franchise Terminations: Legal Rights and Practical Effects When Franchisees Claim the Franchisor Discriminates*, 35 AM. BUS. L.J. 559, 564–65 (1998).

at least in certain sectors.<sup>5</sup> Many of these statutes protect against arbitrary termination or nonrenewal by the franchisor by requiring the franchisor to first show “good cause.”<sup>6</sup> In Minnesota, for example, the Heavy and Utility Equipment Manufacturers and Dealers Act (HUEMDA) protects heavy-truck dealers by prohibiting manufacturers from terminating or electing not to renew a dealership without a showing of “good cause.”<sup>7</sup>

The meaning of “good cause” in franchise protection statutes is fertile ground for litigation. In *River Valley Truck Center, Inc. v. Interstate Cos.*,<sup>8</sup> the Minnesota Supreme Court examined the issue of whether the action of a third party, which was outside the control of the dealer, amounted to “good cause” that could justify the manufacturer’s nonrenewal of the dealership agreement. The court held that the decision of a third-party manufacturer to change its own product line could serve as the sole basis for another manufacturer to deny the renewal of its agreement with a dealer who represented both parties.<sup>9</sup>

This note first gives a brief overview of the reasons for, and the history of, legislation that protects dealers in dealership agreements.<sup>10</sup> It then discusses the *River Valley Truck Center* decision and the implications of the Minnesota Supreme Court’s conclusion.<sup>11</sup> It argues that the court wrongly decided *River Valley Truck Center*, in that the court’s holding diminished the protection intended for dealers under HUEMDA and deprived them of their opportunities to cure noncompliance with their dealership agreements.<sup>12</sup> This note also suggests that the holding arose from misplaced concerns about overprotecting dealers at the expense of

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5. See Boyd Allan Byers, *Making a Case for Federal Regulation of Franchise Terminations—A Return-of-Equity Approach*, 19 J. CORP. L. 607, 626–27 (1994).

6. See *infra* Part II.D.

7. MINN. STAT. §§ 325E.068–.0684 (2004). The Minnesota legislature has also enacted a generally applicable franchise-protection statute, the Minnesota Franchise Act. See MINN. STAT. § 80C.14 (2004).

8. 704 N.W.2d 154 (Minn. 2005).

9. *Id.* International, a truck manufacturer, decided to stop offering Interstate’s engines in its trucks. *Id.* at 156. Interstate then notified its dealers who sold International trucks that it would not renew their dealership agreements, on the grounds that they could not comply with the terms of their Interstate dealership agreements while still honoring their International dealership agreements. *Id.*

10. See *infra* Part II.

11. See *infra* Part III.

12. See *infra* Part IV.

manufacturers.<sup>13</sup> This note concludes that a holding in favor of the dealership would have been fair and practicable and would not have imposed an unfair burden on the manufacturer.<sup>14</sup>

## II. BACKGROUND

### A. *The Importance and Benefits of the Franchise Model*

The franchise system has been called “the most dynamic business arrangement since the corporation.”<sup>15</sup> The advantages and successes of the franchising system suggest that it may represent an optimal blend between small business and big business.<sup>16</sup> In 2004, the number of franchised businesses exceeded 760,000, representing nearly ten percent of the U.S. private-sector economy.<sup>17</sup> Franchises are a popular business model for small business operators<sup>18</sup> and franchisors alike.<sup>19</sup> Franchising also has an

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13. See *infra* Part IV.B.

14. See *infra* Part V.

15. Byers, *supra* note 5, at 608 (quoting *Franchising in the U.S. Economy: Hearing Before the Comm. on Small Bus.*, 101st Cong., 2d Sess. 1 (1990) (statement of Rep. John LaFalce, Member, Comm. on Small Bus.)).

16. The franchise relationship has been described as “the perfect marriage between big business and the small businessman: the franchisor obtains new sources of expansion capital, new distribution markets, and self-motivated vendors of its products, while the franchisee acquires the products, expertise, stability, and marketing savvy usually reserved only for larger enterprises.” Additionally, franchising benefits consumers by providing competitive pricing, convenient locations, and consistency in the products available at various locations. Jefferson I. Rust, Note, *Regulating Franchise Encroachment: An Analysis of Current and Proposed Legislative Solutions*, 19 OKLA. CITY U. L. REV. 489, 492 (1996) (quoting David J. Kaufmann, *Business Strategies and Compliance Issues*, in *FRANCHISING 1990*, at 17 (PLI Commercial Law and Practice, Course Handbook Series No. 525, 1990)).

17. The International Franchise Association commissioned Price Waterhouse Coopers to study the economic impact of the franchise sector. Using 2001 data, the study found that the franchise businesses directly accounted for ten percent of the U.S. private-sector economy, and indirectly accounted for even more. See William L. Killion, *What Red Ball Jets, Attitude, and a New IFA Study Mean for Franchisor Trial Lawyers*, 23 *FRANCHISE LAW JOURNAL* 196, 196–97 (2004); see also *Self-Evaluation: Is Franchising for You?*, *FRANCHISING WORLD*, Apr., 2005, at 14.

18. See David Hess, Comment, *The Iowa Franchise Act: Towards Protecting Reasonable Expectations of Franchisees and Franchisors*, 80 *IOWA L. REV.* 333, 338–39 (1995). Franchisees enjoy the benefits of a proven business model, elements of large-business infrastructure (such as favorable pricing agreements), national exposure, recognizable trademarks, and immediate goodwill. *Id.*

19. See *id.* at 339. Along with an immediate capital investment from franchisees in the form of franchise fees, franchisors gain a motivated entrepreneurial workforce, sometimes with immediate local market expertise and

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intangible effect on the economy, in that it serves as a path to business ownership for those who lack the money (or the stomach) to go at it alone. Government officials, and often franchisors, too, tout franchising opportunities as accessible means by which the aspiring entrepreneurs among us live the “American Dream.”<sup>20</sup>

In theory, the franchise arrangement is a winning solution for both parties. The franchisee buys into a business with a likelihood of profitability but which requires less capital and knowledge than would be required to start a business anew.<sup>21</sup> By investing in a franchise, the franchisee can enjoy more autonomy than would a business manager employed by the company, yet the franchisee exposes itself to less risk than an entrepreneur starting a business from scratch.<sup>22</sup> Similarly, the franchisor can leverage the capital investments of the franchisees to grow its business more quickly.<sup>23</sup> The franchisor can also leverage the independence and local market expertise of its franchisees instead of having to manage its far-flung locations directly.<sup>24</sup> Further synergies between the two develop as a result of economies of scale as the web of franchises form a more effective whole, with greater buying power, promotional ability, and a more efficient distribution network.<sup>25</sup>

#### B. Drawbacks of the Franchise Model

Despite the mutually beneficial nature of the franchise arrangement, the interests of the franchisor and the franchisee are not necessarily in harmony. In return for the benefits of an entrepreneurial workforce, the franchisor must forgo immediate oversight of a franchise’s operations to the franchisee.<sup>26</sup> But the value of the franchisor’s trademark, the asset that attracts franchisees in the first place, depends on the quality and

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established local goodwill. *Id.*

20. Paul Steinberg & Gerald Lescatre, *Beguiling Heresy: Regulating the Franchise Relationship*, 109 PENN ST. L. REV. 105, 140 (2004). Steinberg and Lescatre use such quotes with a degree of irony as they describe how the “American Dream” can become a nightmare for the unwary franchisee. *See id.* at 140–41.

21. *See* Rust, *supra* note 16, at 492–93.

22. *See* Byers, *supra* note 5, at 619.

23. *See* Hess, *supra* note 18, at 339.

24. *See* Byers, *supra* note 5, at 616–17.

25. *See id.* at 619.

26. *See* Mary deLeo, Note, *Emasculating Goliath: Did Postal Instant Press v. Sealy Strike an Unfair Blow at the Franchising Industry?*, 25 W. ST. U. L. REV. 117, 127 (1997).

consistency of the goods and services that franchisees provide to the customer.<sup>27</sup> For this and other reasons,<sup>28</sup> franchisors frequently advocate for the power to exercise their own discretion over termination and nonrenewal of franchises.<sup>29</sup> While the franchisor may see these measures as its most powerful means to protect its standards and goodwill,<sup>30</sup> the franchisee typically abhors the consequences.<sup>31</sup>

The effects of termination and nonrenewal on the franchisee are onerous.<sup>32</sup> Accordingly, a franchisee might be willing to accept draconian terms in a renewal agreement simply to keep from losing its franchise.<sup>33</sup> Advocates for the franchisee frequently point out that, because franchisors have more sophistication and experience in crafting agreements, franchisees are prone to entering into contracts that place the franchisor's interests above their own, especially in regard to termination or nonrenewal clauses.<sup>34</sup> Because the consequences of losing a franchise are potentially dire for franchisees, the franchisor can wield its termination powers to control its franchisees' business operations, or even to exploit its franchisees outright.<sup>35</sup> Where the circumstances encourage inequitable contracts, advocates argue, legislation protecting the franchisees is necessary.

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27. *Id.* at 127–28.

28. See ABA Monograph, *supra* note 2, at 5–6. Other reasons for a franchisor to terminate or elect not to renew a franchise include creating disincentives for underperformance among franchisees and improving its own ability to react to market forces. *Id.* at 6–8.

29. See Thomas M. Pitegoff, *Franchise Relationship Laws: A Minefield for Franchisors*, 45 BUS. LAW. 289, 292 (1989).

30. See Byers, *supra* note 5, at 620.

31. One consequence of termination or nonrenewal of the franchise to the franchisee can be a drastic reduction or even a total loss of the franchisee's equity in its business. See *id.* at 621. "In effect, the power to terminate a franchise typically is also the power to destroy the franchisee's business." Emerson, *supra* note 4, at 575.

32. Termination or nonrenewal of the franchise casts the franchisee's future in serious doubt. The time, money, and effort that the franchisee expends to establish its franchise are lost. See Hess, *supra* note 18, at 343–44. Many of the investments a franchisee might retain are unique to the franchise and of little value outside of it. See Byers, *supra* note 5, at 621. Worse, the more resources a franchisee has invested in its franchise, the more it stands to lose when the franchise is terminated. See David A. Eisenberg, *Balancing a Relationship—"Good Cause" Termination of Franchise Agreements in Michigan*, 72 U. DET. MERCY L. REV. 369, 370 (1995).

33. See Emerson, *supra* note 4, at 574–75.

34. See Steinberg & Lescatre, *supra* note 20, at 152.

35. See ABA Monograph, *supra* note 2, at 29.

*i. Franchisors' Response*

On the other hand, advocates for the franchisors argue that franchise protection statutes are harmful to the franchise environment as a whole.<sup>36</sup> They maintain that the power to terminate or elect not to renew a non-conforming, or “rogue,” franchise is crucial to maintaining quality control<sup>37</sup> and ensures franchisee performance.<sup>38</sup> They add that effective use of this power works to the benefit of all. When individual franchisees sell substandard products and services, such practices reflect poorly not only on the franchisor but on other franchisees as well.<sup>39</sup> Advocates also argue that statutory curtailment of a franchisor’s ability to terminate or elect not to renew a franchise would significantly increase the costs of business in the franchise sector.<sup>40</sup> Such legislation, they argue, would operate as a barrier to new entrants in the franchise industry, and would have negative effects on consumers and small businesses.<sup>41</sup>

Additionally, advocates for franchisors argue that franchise protection legislation is unwarranted, in part because franchisors are not as willing to terminate franchises as the proponents of legislation suggest.<sup>42</sup> After all, franchisors want to grow their businesses, and terminating a franchise works against not only the franchisee’s interests but the franchisor’s own interests as well.<sup>43</sup> As to unequal bargaining power, the advocates point out that franchisees can have nearly as much in the way of resources and sophistication as franchisors.<sup>44</sup> Finally, advocates argue that

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36. See generally Hess, *supra* note 18, at 351–52.

37. See ABA Monograph, *supra* note 2, at 5–6.

38. See *id.* at 7 (citing Richard Smith, *Franchise Regulation: An Economic Analysis of State Restrictions on Automobile Distribution*, 25 J.L. & ECON. 125, 129 (1982) (describing the threat of lost investment to the franchisee as a “performance bond”).

39. See Theodore Frank, *The Economic Interest Test and Collective Action Problems in Antitrust Tie-In Cases*, 61 U. CHI. L. REV. 639, 650 (1994).

40. See Andrew A. Caffey, *The Proposed Uniform Franchise Act: The Franchisor Viewpoint*, FRANCHISE L.J., Spring 1986, at 7, 8.

41. See *id.*

42. See ABA MONOGRAPH, *supra* note 2, at 37.

43. “[T]ermination of a franchise is typically a costly and unsatisfactory result for the franchisor.” Lewis G. Rudnick & Donald L. Weaver, *Can a Franchise Agreement Be Both Fair and Effective?*, in BUILDING FRANCHISE RELATIONSHIPS: A GUIDE TO ANTICIPATING PROBLEMS, RESOLVING CONFLICTS, AND REPRESENTING CLIENTS 3, 61 (Ann Hurwitz & Rochelle Buchsbaum Spandorf eds., 1998).

44. Advocates for franchisors also point to a number of practices that challenge the notion that franchisees necessarily occupy weaker bargaining

competition in the franchise market acts as a mechanism for controlling abuses. Where franchise opportunities abound, abusive franchisors will eventually be squeezed from the marketplace.<sup>45</sup>

Moreover, advocates for the franchisors argue, effective legal means of dealing with abuses already exist outside of franchise protection laws.<sup>46</sup> Naturally, much of the franchise relationship is governed by contract law,<sup>47</sup> which provides protection against unconscionable abuses of bargaining power in an agreement<sup>48</sup> and a means for the franchisee to sue for bad faith activity by the franchisor.<sup>49</sup> Some commentators also challenge franchise terminations and nonrenewals as unreasonable restraints of trade under antitrust law.<sup>50</sup> Finally, there are other less intrusive forms of franchise litigation, such as franchise disclosure laws, which protect franchisees by forewarning them.<sup>51</sup>

### C. *Enter the Real World*

Commentators continue to debate whether franchisees actually experience the abuses that are debated in theory. Franchisors predictably argue that the incidence of abuse is too low

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positions. There is, of course, an advantage to having a successful businessperson running part of your business, as opposed to a novice. Accordingly, franchisors will attempt to lure these franchisees, which are likely to have significant capital and experience, with more favorable terms. See ABA MONOGRAPH, *supra* note 2, at 31 (citing R. BORK, *THE ANTITRUST PARADOX* 55 (1978); Mathewson & White, *The Economics of Franchise Contracts*, 28 J.L. & ECON. 503 (1985)). Aside from the fact that some franchisees have considerable resources and sophistication, there are also some franchisors that work only with franchisees that license to subordinate operators (or “sub-franchisees”). These franchisees, in turn, may be wealthy and savvy investors. See ABA Monograph, *supra* note 2, at 29 (citing Braun, *Policy Issues of Franchising*, 14 SW. U. L. REV. 155, 255 n.272 (1984)).

45. See ABA Monograph, *supra* note 2, at 32.

46. See generally Joel Iglesias, *Applying the Implied Covenant of Good Faith and Fair Dealing to Franchises*, 40 HOUS. L. REV. 1423, 1431 (2004).

47. “[F]ranchise law is simply a combination of contract law, common law, administrative law, and statutory law.” *Id.*

48. See Byers, *supra* note 5, at 628.

49. See Iglesias, *supra* note 46, at 1424–25.

50. See ABA Monograph, *supra* note 2, at 9. See also Charles J. Faruki, *The Defense of Terminated Dealer Litigation: A Survey of Legal and Strategic Considerations*, 46 OHIO ST. L.J. 925, 973 (1985) (noting that termination “frequently underlies alleged violation of both franchise laws and antitrust laws”).

51. See Theodore M. Becker & Michael J. Boxerman, *Franchise Renewals: Considerations for Franchisors and Franchisees*, 19 FRANCHISE L.J. 45, 45 (1999) (noting that sixteen states, plus the District of Columbia, have disclosure laws that govern the termination of franchises).

to merit franchise regulation and cite studies painting the relationships between franchisor and franchisee in a positive light nationwide. For example, a 1993 study by the Small Business Administration found a high degree of satisfaction among franchisees with their franchise relationships and advised against interfering with the growing franchise sector through further legislation protecting franchisees.<sup>52</sup> A Gallup poll conducted in the same year found that only six percent of franchisees had a "poor" working relationship with their franchisors.<sup>53</sup>

Data gathered before the spread of franchise-protection statutes, which began in the 1970s,<sup>54</sup> presents a clearer picture of the potential for abuse. In fact, in 1978 the Small Business Administration (SBA) noted that the franchise industry was "plagued" with abuse by franchisors.<sup>55</sup> But the change in tone of the SBA, accompanied by the growth in franchise-protection legislation since 1978, may actually suggest that franchise relationships have improved because of, and not in spite of, litigation governing the franchise relationship.<sup>56</sup>

The political element of franchise legislation may tip the scale of the debate towards the franchisees, even though the franchisors typically have greater access to legislators.<sup>57</sup> The populist element

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52. David J. Kaufmann, *Statistics Refute Franchising Abuses*, N.Y. L.J., July 22, 1993, at 3-4.

53. *Id.* But Kaufman notes that the Gallup poll was financed by a group representing franchisors, the International Franchise Association. *Id.*

54. See Tracey A. Nicastro, *How the Cookie Crumbles: The Good Cause Requirement for Terminating a Franchise Agreement*, 28 VAL. U. L. REV. 785, 788 (1994).

55. The franchise industry has been plagued by numerous abuses and misrepresentations aimed at unsophisticated prospective franchisees. Widespread instances have been documented involving such malpractices as high pressure franchise transactions, unscrupulous and experienced franchisors, using hidden fee requirements and kickbacks, failure to provide information on services and training to be furnished to the franchisee, and the use of coercive methods to get quick, large deposits.

Lorin M. Kleeger, *Judicial Interpretation of the Petroleum Marketing Practices Act: Conflict and Diversity*, 32 EMORY L.J. 273, 275 n.9 (citing 43 Fed. Reg. 59, 625 (Jan. 3, 1978)).

56. David Hess argues that "good cause" legislation can improve the franchise relationship by fostering more security and confidence among franchisees, who in turn may invest more in their franchises to the benefit of both parties. See Hess, *supra* note 18, at 352. The threat of arbitrary termination, on the other hand, may dissuade franchisees from investing and performing to the extent that they otherwise might. See ABA Monograph, *supra* note 2, at 66-67.

57. See Steinberg & Lescatre, *supra* note 20, at 128. But see Jean Wegman Burns, *Vertical Restraints, Efficiency, and the Real World*, 62 FORDHAM L. REV. 597,

of the debate, which argues that smaller individual actors in the economy are inherently “better” and thus worthy of protection, figures prominently in legislative acts.<sup>58</sup> Legal scholars debate the merits of the “smaller is better” notion,<sup>59</sup> but the balance of rhetoric among legislatures has generally favored the small businessperson over the large corporation.<sup>60</sup> Ultimately, whether based on sound policy or merely populist sentiment, legislatures in many jurisdictions have decided that the balance of power in a franchise relationship is so disparate as to require legislation to protect the franchisee.<sup>61</sup>

*D. The Legislative Response and HUEMDA*

The first attempt to protect franchisees from the effects of termination and nonrenewal came in the form of the Federal Fairness in Franchising Act, introduced by Senator Phillip A. Hart of Michigan in 1969.<sup>62</sup> While never adopted, the Act featured two elements common to its later and more successful state analogs: (1) written notice in advance of nonrenewal or termination; and (2) a requirement that the franchisor show “good cause” for nonrenewal or termination.<sup>63</sup>

Congress subsequently passed protective legislation aimed at franchisors in the automobile<sup>64</sup> and petroleum industries,<sup>65</sup> but a federal law applying to franchises in general has yet to be enacted.<sup>66</sup>

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643–44 (1993) (noting that franchisors argue that franchisee’s association lobbies are quite powerful).

58. See ABA Monograph, *supra* note 2, at 27.

59. See *id.*

60. Franchise protection legislation, in particular, “tend[s] to be presented to legislators and perceived in very emotional terms—vulnerable small business versus overpowering big business—and so characterized continue to find much popularity in state legislatures.” See Byers, *supra* note 5, at 640 n.210 (quoting Andrew A. Caffey, *Franchise Termination and Nonrenewal Legislation: Recent Developments and Trends in State Legislation*, 49 ANTITRUST L.J. 1343, 1343 (1980)).

61. See Byers, *supra* note 5, at 624–25; See, e.g., Franchise Practices Act, ARK. CODE ANN. §§ 4-72-201 to -210 (2001); Franchise Relations Act, CAL. BUS. & PROF. CODE §§ 20000–20043 (West 1997).

62. See Eisenberg, *supra* note 32, at 372.

63. See *id.*

64. Federal Automobile Dealer Franchise Act, 15 U.S.C. §§ 1221–1225 (2000).

65. Petroleum Marketing Practices Act, 15 U.S.C. §§ 2801–2806 (2000).

66. See Byers, *supra* note 5, at 626. Another attempt at providing uniform national protection of franchisees was made more recently. The Small Business Franchise Act, H.R. 3308, which contained a number of sweeping provisions

In addition, many states have followed suit to protect particular industries.<sup>67</sup> Nineteen states have considered franchisee-protection statutes,<sup>68</sup> seventeen states have enacted generally applicable statutory protection for franchisees,<sup>69</sup> and fifteen states require “good cause” or some variant thereof for termination or nonrenewal.<sup>70</sup> Similar to federal regulation, state statutes protecting certain industries are easier to get through state legislatures than statutes that protect franchises as a whole. Numerous state laws protect such industries as petroleum, alcoholic beverage distribution, farm equipment dealers, and motor vehicle dealers.<sup>71</sup>

In Minnesota, dealers in the heavy-truck industry receive protection under Heavy and Utility Equipment Manufacturers and Dealers Act (HUEMDA), which requires manufacturers to show “good cause” for terminating or electing not to renew a dealership agreement.<sup>72</sup> HUEMDA defines “good cause” as failure by the dealer to “substantially comply with essential and reasonable requirements” in the dealership agreement.<sup>73</sup> Furthermore, it is a

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intended to reduce fraud and abuse in the franchise industry, passed the U.S. House of Representatives, but not the Senate. The Library of Congress: THOMAS, H.R. 3308: Small Business Franchise Act of 1999, *available at* <http://thomas.loc.gov/cgi-bin/query/z?c106:H.R.+3308>.

67. See David Gurnick & Steve Vieux, *Case History of the American Business Franchise*, 24 OKLA. CITY U. L. REV. 37, 59 (1999).

68. See Byers, *supra* note 5, at 611.

69. Thomas J. Collin, *State Franchise Laws and the Small Business Franchise Act of 1999: Barriers to Efficient Distribution*, 55 BUS. LAW. 1699, 1700. See, e.g., Franchise Practices Act, NEB. REV. STAT. §§ 87-401 to -410 (2003); Fair Dealership Law, WIS. STAT. ANN. §§ 135.01-.07 (West 2001).

70. See Nicastro, *supra* note 54, at 786 n.6 (citing ARK. CODE ANN. § 4-72-204 (Michie 1991); CAL. BUS. & PROF. CODE §§ 20020-20021 (West 1987); CONN. GEN. STAT. § 42-133f (West 1992); DEL. CODE ANN. tit. 6, § 2552 (1993); HAW. REV. STAT. § 482E-6 (1985); 815 ILL. COMP. STAT. ANN. 705/19 (West 1993); IND. CODE ANN. § 23-2-2.7-1 (West 1979); IOWA CODE ANN. § 523H.7 (West Supp. 1993); MICH. COMP. LAWS ANN. § 445.1527 (West 1989); MINN. STAT. ANN. § 80C.14 (West Supp. 1992); MISS. CODE ANN. § 75-24-53 (West 1991); MO. ANN. STAT. § 407.405 (Vernon 1990); NEB. REV. STAT. § 87-404 (1987); N.J. STAT. ANN. § 56:10-5 (West 1989); VA. CODE ANN. § 13.1-564 (Michie 1993); WASH. REV. CODE § 19.100.180 (West Supp. 1993); WIS. STAT. ANN. § 135.03 (West 1989) (Wisconsin Fair Dealership Law)).

71. See ABA Monograph, *supra* note 2, at 1.

72. Heavy and Utility Equipment Manufacturers and Dealers Act (HUEMDA), MINN. STAT. §§ 325E.068-.0684 (2004).

73. MINN. STAT. § 325E.0681, subdiv. 1 (2004). The statute enumerates eight circumstances that establish good cause: (1) dealer changes business structure without manufacturer's consent; (2) bankruptcy or liquidation of dealership; (3) dealer changes location of dealership without manufacturer's consent; (4) dealer defaults on a financial obligation to manufacturer; (5)

violation of HUEMDA for a manufacturer to terminate or fail to renew a dealership agreement based on “a natural disaster, a labor dispute, or other circumstance beyond the dealer’s control.”<sup>74</sup>

In *River Valley Truck Center Inc. v. Interstate Cos.*,<sup>75</sup> the Minnesota Supreme Court faced the issue of whether third-party actions constitute the type of circumstance “beyond the dealer’s control” excluded from the “good cause” definition of HUEMDA.

### III. THE *RIVER VALLEY TRUCK CENTER* DECISION

#### A. *Facts*

Prior to 2002, River Valley Truck Center, Inc., (River Valley) was a dealer of Detroit Diesel engines through its dealership agreement with Interstate Companies, Inc., d/b/a Interstate Detroit Diesel (Interstate).<sup>76</sup> River Valley was also an authorized dealer of heavy-duty trucks manufactured by the International Truck and Engine Corporation (International).<sup>77</sup> Like most heavy-duty truck manufacturers at that time, International offered Detroit Diesel engines as an option to its customers.<sup>78</sup> In April 2002, International announced it would stop offering Detroit Diesel engines in its new trucks.<sup>79</sup> International instructed its dealers, including River Valley, to persuade their customers to use engines made by other manufacturers.<sup>80</sup> River Valley joined other International dealers in an unsuccessful attempt to persuade International to reconsider its decision.<sup>81</sup>

Several months later, River Valley’s dealership with Interstate suffered the consequences of International’s choice. In November 2002, Interstate notified its International dealers in the region, including River Valley, that it would not renew their dealership agreements for 2003.<sup>82</sup> Interstate decreed that honoring

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dealership is abandoned; (6) felony conviction of the dealer; (7) dealer engages in conduct that is harmful to its customers or the public; (8) dealer fails to meet manufacturer’s market penetration requirements. *Id.* at subdiv. 1(a)–(h).

74. MINN. STAT. § 325E.0682(b)(4) (2004).

75. 704 N.W.2d 154 (Minn. 2005).

76. *Id.* at 156.

77. *Id.*

78. *Id.*

79. *Id.* at 156–57.

80. *Id.*

81. *Id.* at 166.

82. *Id.* at 157.

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International's decision precluded these dealerships from meeting their obligations to Interstate to sell and promote Detroit Diesel engines.<sup>83</sup>

River Valley sued for an injunction to prevent Interstate from failing to renew its dealership agreement.<sup>84</sup> Interstate maintained that, as a result of International's decision, River Valley could no longer comply with the "Sales and Promotion Responsibilities" section of their dealership agreement.<sup>85</sup> Both River Valley and Interstate agreed that the district court could decide the case without a trial, based on the facts presented.<sup>86</sup>

The district court granted summary judgment in favor of Interstate, holding that because River Valley's relationship with International now required them to sell trucks with competing engines, Interstate had good cause to terminate River Valley's dealership.<sup>87</sup> In effect, the district court found that River Valley and Interstate had become competitors.<sup>88</sup> The Minnesota Court of Appeals affirmed, finding that Interstate had "good cause" under HUEMDA to fail to renew River Valley's dealership even though any failure to comply with its dealership with Interstate was unintentional.<sup>89</sup> Moreover, while HUEMDA prohibited manufacturers from failing to renew a dealership for "the results of a natural disaster, a labor dispute, or other circumstances beyond the dealer's control," the court held that River Valley's noncompliance was not based on circumstances beyond its control because River Valley could comply by ceasing to represent International.<sup>90</sup> Accordingly, River Valley petitioned the Minnesota Supreme Court for review.<sup>91</sup>

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83. *Id.*

84. *Id.* at 158.

85. *Id.* at 159. This agreement provided: (1) River Valley would "actively and effectively [promote] the sale of" Detroit Diesel products; (2) if River Valley represented a manufacturer offering Detroit Diesel engines in its products, it would promote and appropriately stock such products. *Id.*

86. *Id.* at 158.

87. *River Valley Truck Ctr. v. Interstate Cos.*, 680 N.W.2d 99, 103 (Minn. Ct. App. 2004), *aff'd* 704 N.W.2d 154 (Minn. 2005).

88. In fact, the district court stated that by maintaining its International dealership, River Valley had "undertaken its obligation to participate in driving Detroit Diesel out of business." *Id.* at 103.

89. *Id.* at 107.

90. *Id.* at 105 (quoting MINN. STAT. § 325E.0682(b)(4) (2002)).

91. *River Valley Truck Ctr.*, 704 N.W.2d at 154.

*B. The Court's Analysis*

The Minnesota Supreme Court, in granting River Valley's petition for review, first examined the issue of whether International's decision provided Interstate with "good cause" to fail to renew River Valley's Detroit Diesel dealership agreement.<sup>92</sup> The court said that even though HUEMDA listed eight circumstances establishing "good cause" for failure to renew a dealership agreement, none of these circumstances existed in River Valley's case.<sup>93</sup>

The court nonetheless found good cause for termination.<sup>94</sup> Turning to the dealership agreement between River Valley and Interstate, the court found that River Valley could not possibly meet the first requirement in the "Sales and Promotion Responsibilities" section so long as it maintained International exclusively as its truck manufacturer.<sup>95</sup> As such, River Valley could not substantially comply with its Detroit Diesel dealership agreement, and Interstate therefore had "good cause" to refuse to renew River Valley's dealership agreement.<sup>96</sup>

Next, the court revisited the Minnesota Court of Appeals' analysis of whether HUEMDA, which prohibits a manufacturer from refusing to renew a dealership agreement based on "circumstances beyond the dealer's control,"<sup>97</sup> precluded Interstate from refusing to renew its dealership agreement due to International's decision.<sup>98</sup> The court interpreted "other circumstances" to mean only circumstances that temporarily prevented the dealer's compliance with the dealership agreement.<sup>99</sup> The court based this reading on interpretations of similar statutes in other states (such as Iowa,<sup>100</sup> Arkansas,<sup>101</sup> and North Dakota<sup>102</sup>)

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92. *Id.* at 158–61.

93. *Id.* at 159 n.4.

94. *Id.* at 162.

95. *Id.* at 159–61.

96. *Id.* at 162.

97. *See* MINN. STAT. § 325E.0682(b)(4) (2004).

98. *See River Valley Truck Ctr.*, 704 N.W.2d at 161–62.

99. *Id.* at 161. Justice Russell Anderson, in his dissent, rejected the idea that the legislature intended this phrase to mean only temporary circumstances. *Id.* at 167 (Anderson, J., dissenting).

100. *Id.* at 161 (citing IOWA CODE § 322F.7(7)(a) (2004)).

101. *Id.* (citing *S. Implement Co., Inc. v. Deere & Co.*, 122 F.3d 503, 508 (8th Cir. 1997)).

102. *Id.* (citing N.D. CENT. CODE. § 51-07-01.2(5) (2005)).

and also on public policy grounds.<sup>103</sup> The court argued that the purpose of HUEMDA was to create a level playing field between manufacturers and dealers<sup>104</sup> and that requiring manufacturers to place dealers' interests ahead of their own, indefinitely if not permanently, would tilt the balance of power unfairly toward the dealers and subvert the purpose of the statute.<sup>105</sup>

Additionally, the court upheld the Minnesota Court of Appeals' judgment that River Valley's noncompliance with its dealership agreement was not beyond its control, as River Valley could have found another manufacturer to represent that could offer Detroit Diesel engines in its products.<sup>106</sup> Therefore, the court held that Interstate's failure to renew River Valley's dealership agreement met the "good cause" requirement,<sup>107</sup> and did not violate HUEMDA's prohibition against the nonrenewal of a dealership for reasons beyond a dealer's control.<sup>108</sup>

In the dissent, two justices joined Justice Russell Anderson in taking issue with the majority's findings that River Valley was not in compliance with its dealership agreement<sup>109</sup> and that the "circumstances beyond the dealer's control" provision of HUEMDA was limited to temporary circumstances.<sup>110</sup> As to the argument that

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103. *Id.* at 161–62.

104. *Id.* at 162 (citing *Ziegler Co. v. Rexnord, Inc.*, 433 N.W.2d 8, 11–12 (Wis. 1988)). The court sought support for its policy argument by turning to an interpretation of the Wisconsin Fair Dealership Law ("WFDL"), "on which HUEMDA was apparently patterned." *Id.* at 161.

105. *Id.* at 162.

106. *Id.* In fact, a strict interpretation of "beyond the dealer's control" is problematic. One of the examples of "circumstances beyond the dealers control" provided in HUEMDA is a labor dispute. Brief and Addendum for Appellant at 23, *River Valley Truck Ctr. v. Interstate Cos.*, 704 N.W.2d 154 (Minn. 2005) (No. A03-1273) (citing MINN. STAT. § 325E.0682(b)(4) (2004)). But as River Valley noted in their brief, a dealer's ability to resolve a labor dispute is always in its control, though in reality a settlement that resolves the dispute might be unpalatable to the dealer. *Id.*

107. *River Valley Truck Ctr.*, 704 N.W.2d at 161.

108. *Id.* at 161.

109. Justice Anderson's analysis of the dealership agreement led him to conclude that its terms allowed River Valley to comply by promoting the service of Detroit Diesel engines and the sale of Detroit Diesel replacement engines and parts, even though they could no longer sell trucks equipped with Detroit Diesel engines. *Id.* at 164 (Anderson, J., dissenting).

110. *Id.* at 167. Justice Anderson argued that the majority's interpretation of the statute was contrary to the plain meaning of the statute and noted that determining whether a circumstance was temporary or permanent may be difficult. *Id.* He also argued that this interpretation weakens HUEMDA's ability to serve another of its purposes, protecting the dealer. *Id.* Finally, he noted that the

River Valley could comply with its dealership agreement by representing a manufacturer other than International, Justice Anderson argued that finding another manufacturer in the time period Interstate required would have been a “practical impossibility.”<sup>111</sup> Though Justice Anderson stated that his opinion was grounded in “basic contract construction and statutory interpretation,”<sup>112</sup> an important public policy argument appeared at numerous points in his opinion: the manufacturer should not be allowed to terminate a dealership agreement unless the dealer has had a meaningful opportunity to comply with the agreement.<sup>113</sup>

#### IV. ANALYSIS OF THE *RIVER VALLEY TRUCK CENTER* DECISION

##### A. *Balancing the Interests of the Manufacturer and Dealer*

The purpose of HUEMDA was to create a level playing field between the franchisor and the franchisee by protecting the franchisee.<sup>114</sup> Similarly, both the majority and dissenting opinions in *River Valley Truck Center* alluded to HUEMDA’s purpose of bringing balance to the franchisor-franchisee relationship.<sup>115</sup> For example, the majority justified its finding that the “other circumstances” clause in HUEMDA<sup>116</sup> should be narrowly construed<sup>117</sup> by comparing this clause to statutes with similar clauses

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definition of “good cause” in HUEMDA was stricter than that in the Wisconsin Fair Dealership Law, and therefore the Minnesota legislature meant to provide greater protection to dealers in HUEMDA than the WFDL. *Id.* at 167–68.

111. *Id.* at 168.

112. *Id.* at 169.

113. *Id.* at 167–69.

114. See *Astleford Equip. Co. v. Navistar Int’l Transp. Corp.*, 632 N.W.2d 182, 191 (Minn. 2001).

115. See 704 N.W.2d at 162 (finding the Wisconsin Supreme Court’s interpretation in *Ziegler Co. v. Rexnord, Inc.*, 433 N.W.2d 8, 12 (Wis. 1988) of the purpose of the WFDL as “equaliz[ing] the power of dealers and grantors and not to insulate dealers from all economic reality”); see also *id.* at 167 (Anderson, J., dissenting) (citing *Astleford* in noting that HUEMDA was intended to protect the dealer in light of the superior bargaining position of the manufacturer).

116. MINN. STAT. § 325E.0682(b)(4) (2004). The statute reads:

It is a violation of [this subchapter] for an equipment manufacturer to . . . attempt or threaten to terminate, cancel, fail to renew, or substantially change the competitive circumstances of the dealership agreement if the attempt or threat based on the results of a natural disaster, a labor dispute, or other circumstances beyond the dealer’s control.

*Id.*

117. *River Valley Truck Ctr.*, 704 N.W.2d at 161.

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from Arkansas,<sup>118</sup> Iowa,<sup>119</sup> North Dakota,<sup>120</sup> and Wisconsin.<sup>121</sup> The Arkansas statute, for example, allowed a change in the manufacturer's relationship with the dealer to satisfy "good cause."<sup>122</sup> The *River Valley* majority echoed the Wisconsin Supreme Court in defining the purpose of dealer protection statutes as to provide parity between dealers and manufacturers and not to protect dealers *per se*.<sup>123</sup> Justice Anderson's dissent, on the other hand, addressed balance from the perspective of the dealer, noting that the intent of HUEMDA was to protect the dealer from the superior bargaining position of the manufacturer.<sup>124</sup>

Balance, as harmonious as it sounds, is inherently subjective in its perception and execution. But Justice Anderson's perception of balance was clearly supported by the intent of HUEMDA. Several prior decisions have established the intent of HUEMDA to be protection for the dealer.<sup>125</sup> That the terms of HUEMDA itself contain numerous provisions safeguarding the dealer implies the same purpose.<sup>126</sup> The point of HUEMDA's "good cause" requirement is that protection against arbitrary termination or nonrenewal is necessary to prevent abusive actions by the manufacturer.<sup>127</sup>

The court's explanation of how its decision struck a just balance between the interests of manufacturer and dealer is unsatisfactory. Understandably, a manufacturer wishes to avoid

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118. *Id.* (citing *S. Implement Co. v. Deere Co.*, 122 F.3d 503, 508 (8th Cir. 1997) (discussing Arkansas Farm Equipment Retailer Franchise Protection Act, ARK. CODE ANN. § 4-72-310) (West 2006)).

119. *Id.* (citing IOWA CODE § 322F.7(7)(a) (2004) (including drought, flood, and economic recession as among "conditions beyond the dealer's control")).

120. *Id.* (citing N.D. CENT. CODE § 51-07-01.2(5) (2004) ("including 'sustained drought or other natural disaster in the dealership market area' as examples of 'circumstance[s] beyond the farm equipment dealer's control'")).

121. *Id.* at 161-62 (citing *Ziegler Co. v. Rextord, Inc.*, 433 N.W.2d 8, 11-12 (Wis. 1988)).

122. *S. Implement Co.*, 122 F.3d at 508.

123. *River Valley Truck Ctr.*, 704 N.W.2d at 162 (quoting *Ziegler Co.*, 433 N.W.2d at 11-12).

124. *See id.* at 168 (Anderson, J., dissenting).

125. *See, e.g., Midwest Great Dane Trailers v. Great Dane Ltd. P'ship*, 977 F. Supp. 1386, 1394 (D. Minn. 1997) (citing *Jungbluth v. Hometown, Inc.*, 548 N.W.2d 519, 524-25 (Wis. 1996)); *see also Astleford Equip. Co. v. Navistar Int'l Transp. Corp.*, 632 N.W.2d 182, 191 (Minn. 2001).

126. *See* MINN. STAT. §§ 325E.0681-325E.0684 (2004).

127. *See Hess, supra* note 18, at 358-59. "While the franchisee cannot reasonably expect a perpetual franchise agreement, wide discretion for the franchisor to refuse renewal creates a large opportunity for abuse." *Id.*

being permanently subject to an arrangement that runs contrary to its interests. But the majority in *River Valley Truck Center*, in its abhorrence to create such an arrangement, overestimated the implications for manufacturers that would have resulted from a decision in favor of the dealer. The court also underestimated the implications of its decision on the dealer, which lost a viable business through no fault of its own.

*B. The Minnesota Supreme Court's Finding Imposes a Hardship on Dealers*

*i. Exacerbating Imbalance Between Dealers and Manufacturers*

Whether or not franchisors tend to abuse their positions, the nature of franchising leaves little doubt that franchisors do, at times, abuse their positions. Furthermore, while franchisees are typically required to meet a number of conditions in their franchise agreements (such as sales quotas and the like), franchisors do not share the same responsibilities. While a franchisor may sanction an underperforming franchisee, a franchisee is usually powerless to correct a poorly managed franchisor, even though the effects may weigh more heavily on the franchisee in the latter situation than on the franchisor in the former.<sup>128</sup>

But the imbalance runs deeper than that. A “structural inevitability” of franchising is the fact that the franchisee depends on the franchisor<sup>129</sup> not only for materials essential to the business, which the franchisee frequently can only purchase through the franchisor,<sup>130</sup> but also for such things as land and financing.<sup>131</sup> Furthermore, at least part of the franchisee’s business depends on the continuance of the franchise. But despite the degree to which the franchisee depends on the franchisor, the franchisor is generally not bound to respect the reasonable expectation of the franchisee that, in return for its dependence, the franchisee can continue to operate as long as it satisfies its agreement.<sup>132</sup> Franchisors owe no fiduciary duty to franchisees,<sup>133</sup> and no other

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128. See Hess, *supra* note 18, at 341–42.

129. See ABA Monograph, *supra* note 2, at 34–35.

130. *Id.*

131. *Id.*

132. See Hess, *supra* note 18, at 355.

133. See Steinberg & Lescatre, *supra* note 20, at 285. In fact, though the Eighth Circuit decreed that a fiduciary relationship was inherent in a franchise

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duty to honor the franchisee's expectations is likely to come from the franchise agreement itself<sup>134</sup> or from contract law governing it.<sup>135</sup> Hence, the purpose of "good cause" legislation is not to offer blanket protection to the franchisee, but to protect the franchisee's reasonable expectations.<sup>136</sup>

But in finding for the manufacturer in *River Valley Truck Center*, the court weakened HUEMDA's "good cause" standard. When, as the court would have it, "good cause" expands to include nearly any permanent or indefinite circumstance beyond the dealer's control,<sup>137</sup> the franchisee's business becomes vulnerable to those circumstances in a way that the franchisor's business does not. As a result of the court's holding, the franchisee's interests can come to a quick end due to outside circumstances to which an independent business, not to mention the franchisor, could reasonably adjust.

The court in *River Valley Truck Center* erroneously created not only an expansive definition of "good cause" but also an opening for franchisors to draft broader termination and nonrenewal clauses in their agreements.<sup>138</sup> As a result of this holding, a clause allowing for termination based on circumstances beyond the dealer's control (such as third-party actions) would be valid and enforceable in a dealership agreement.<sup>139</sup> Because courts tend to defer to the terms of a contract, the effect might be to keep such

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relationship in *Arnott v. American Oil Co.*, 609 F.2d 873, 881 (8th Cir. 1979), *cert. denied*, 446 U.S. 918 (1980), the court strictly limited that finding in *Bain v. Champlin Petroleum Co.*, 692 F.2d 43, 48 (8th Cir. 1982). See Furaki, *supra* note 50, at 975. Courts since *Bain* have been unfriendly to the proposition that franchise relationships are fiduciary in nature. *Id.*

134. See Robert W. Emerson, *Franchising and the Collective Rights of Franchisees*, 43 VAND. L. REV. 1503, 1509 n.21 (1990) (noting the franchisor usually drafts the franchise agreement and that most obligations fall on the franchisee).

135. See Robert W. Emerson, *Franchise Contract Clauses and the Franchisor's Duty of Care Toward Its Franchisees*, 72 N.C.L. REV. 905, 907 (1994) (finding that, where courts encounter contract clauses that suggest a franchise relationship that is fiduciary in nature, they only "quickly examine whether the parties acted in good faith and exercised fair dealing").

136. See Hess, *supra* note 18, at 355.

137. Certain permanent circumstances beyond the dealer's control, such as bankruptcy of a dealer, would still be excluded by HUEMDA. See MINN. STAT. § 325E.0681, subdiv. 1 (2004).

138. See Pitegoff, *supra* note 29, at 318 (describing the Wisconsin Supreme Court's similar decision in *Ziegler Co. v. Rexnord, Inc.*, 433 N.W.2d 8 (Wis. 1988), as creating a "broader freedom to contract").

139. But a caveat exists. HUEMDA requires that "good cause" means failure by the dealer to comply with "essential and reasonable requirements." MINN. STAT. § 325E.0681, subdiv. 1 (2004).

clauses insulated from contract law principles such as the implied covenant of good faith.<sup>140</sup> While no franchisor could anticipate all of the circumstances in which it would prefer to terminate a franchise,<sup>141</sup> the more likely and easily foreseeable circumstances could still become part of a franchise agreement.<sup>142</sup>

*ii. No Meaningful Opportunity to Comply*

The purpose of the “other circumstances outside the dealer’s control” clause is to protect the dealer in cases where the dealer has no practical opportunity to cure noncompliance.<sup>143</sup> Critics of “good cause” legislation argue that franchisors need discretion to deal with changing conditions.<sup>144</sup> But this view also supports the claim for regulating termination of franchises. Since the franchisee typically has little control over the franchise relationship, it has even less ability to adapt to new circumstances. Therefore, at the very least, a franchisee should be protected from new or unforeseen circumstances, unless it commits a material breach of the franchise agreement.<sup>145</sup>

It follows from this argument that a dealer should have a meaningful opportunity to comply with the terms of its dealership agreement.<sup>146</sup> The terms of HUEMDA itself imply “good cause” by the dealer’s failure to perform when given the opportunity, not merely by the dealer’s inability to perform due to circumstances beyond its control.<sup>147</sup> Where the basis of “good cause” stems from the actions of a third party, which inherently bring about noncompliance, there is no opportunity for the dealer to cure the

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140. See W. Michael Garner, *The Implied Covenant of Good Faith in Franchising: A Model For Discretion*, 20 OKLA. CITY U.L. REV. 305, 310–11 (1995) (finding that the implied covenant of good faith is applied inconsistently to franchise agreements, with many courts applying it as a rule of construction or simply a curb on one party’s discretion where it exists).

141. See ABA Monograph, *supra* note 2, at 55.

142. Indeed, the majority decision in *River Valley Truck Center* implied that Interstate’s dealership agreement adequately contemplated and covered International’s decision to stop using the engines Interstate dealt. *River Valley Truck Ctr., Inc. v. Interstate Cos.*, 704 N.W.2d 154, 160 (Minn. 2005).

143. *Id.* at 167 (Anderson, J., dissenting).

144. See ABA Monograph, *supra* note 2, at 34.

145. See *id.* at 8.

146. See *Wadena Implement Co. v. Deere & Co.*, 480 N.W.2d 383, 388 (Minn. Ct. App. 1992) (finding that “good cause” does not exist if a dealer had no practical opportunity to fulfill the terms of the dealership agreement).

147. See *supra* note 73. Note that each of the eight circumstances listed refers to actions or failures to act on the dealer’s part.

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situation.<sup>148</sup> The franchisor has the opportunity to adjust to any such circumstances. The franchisee, on the other hand, faces termination without an opportunity to adjust. The *River Valley Truck Center* decision denies dealers the protection of the opportunity to adjust intended under HUEMDA. Without such protection, the dealer cannot bring itself into compliance with its dealership agreement.<sup>149</sup>

*iii. Dealers Who Represent Multiple Manufacturers*

Dealers who represent more than one manufacturer are particularly vulnerable to the holding in *River Valley Truck Center*. Interstate argued, and the court agreed, that River Valley could have complied with its dealership agreement by terminating its dealership agreement with International.<sup>150</sup> Forcing a dealer to cancel other dealership agreements could, however, potentially destroy the dealer's business.<sup>151</sup> Furthermore, the unreasonable nature of such a demand from a manufacturer is contrary to the intent of the legislature.<sup>152</sup> In effect, the *River Valley Truck Center* decision allows a manufacturer to coerce a dealer with the threat of termination or nonrenewal to end or otherwise change its relationships with other manufacturers.<sup>153</sup> This sort of coercion can be devastating to dealers and violates the terms of a different section of HUEMDA, which prohibits manufacturers from coercing a dealer to refuse equipment produced by another manufacturer.<sup>154</sup>

*C. A Finding for the Dealer in River Valley Truck Center Would Not Have Unfairly Affected Manufacturers*

Franchisors have their own set of worries regarding regulation of the franchise agreement. For example, the manufacturers are naturally averse to the possibility of being "locked" into dealership

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148. Appellant's Reply Brief at 9, *River Valley Truck Ctr. v. Interstate Cos.*, 704 N.W.2d 154 (Minn. 2005) (No. A03-1273).

149. See *Wadena Implement Co.*, 480 N.W.2d at 388.

150. Respondent's Brief at 31-32, *River Valley Truck Ctr.*, 704 N.W.2d 154 (No. A03-1273); *River Valley Truck Ctr.* 704 N.W.2d at 162.

151. Appellant's Brief & Addendum at 22-23, *River Valley Truck Ctr.*, 704 N.W.2d 154 (No. A03-1273).

152. *Id.* at 23 (stating that "the legislature does not intend a result that is absurd, impossible of execution, or unreasonable") (citing MINN. STAT. § 645.17(1) (2004)).

153. *Id.*

154. MINN. STAT. § 325E.0682 (2004).

agreements with underperforming dealers.<sup>155</sup> And franchisors themselves usually draft franchise agreements and craft the terms to protect their interests.<sup>156</sup> As a result, franchisors wish to preserve their freedom to contract.<sup>157</sup> Franchisors also want to maintain their ability to respond to the market.<sup>158</sup> But a holding honoring the intended definition of “good cause” in HUEMDA would not have compromised the interests of franchisors to the extent that the court feared.

*i. The Unfounded Fear of Franchises in Perpetuity*

The dissent in *River Valley Truck Center* interpreted HUEMDA to mean that franchisors could neither terminate nor fail to renew a franchise agreement absent the franchisee’s failure to substantially comply with the agreement.<sup>159</sup> From the franchisor’s perspective, this interpretation suggests the dangerous possibility of a perpetual franchise, inescapable by the franchisor for any reason so long as the franchisee remains in compliance.<sup>160</sup> The majority decision alluded to this fear when the court warned against “[r]equiring Interstate to put River Valley’s interests ahead of its own, perhaps permanently.”<sup>161</sup>

But a number of escape routes still exist for the franchisor. Material breach caused by the dealer’s failure to comply and cure noncompliance in a timely manner is still grounds for termination or nonrenewal.<sup>162</sup> Moreover, HUEMDA’s list of eight “good cause” circumstances would still allow a manufacturer to refuse renewal of a dealership agreement based on dealer non-compliance itself, so long as the statute’s notice and right to cure provisions are

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155. See Emerson, *supra* note 4, at 639.

156. See Emerson, *supra* note 134, at 1509 (stating that “[b]ecause the franchise contract usually is determined by the franchisor . . . most of the express contractual obligations fall upon the franchisee”).

157. See Emerson, *supra* note 4, at 641 (stating that franchisors “object to good cause as impediments to their right to contract freely”).

158. See ABA Monograph, *supra* note 2, at 64.

159. *River Valley Truck Ctr., Inc. v. Interstate Cos., Inc.*, 704 N.W.2d 154, 168 (Minn. 2005) (Anderson, J., dissenting).

160. See Nicastro, *supra* note 54, at 790; see also ABA Monograph, *supra* note 2, at 19. Note that some states with franchise protection laws require good cause for termination, but not nonrenewal. *Id.* HUEMDA requires good cause for both. See MINN. STAT. § 325E.0681, subdiv. 1 (2004).

161. *River Valley Truck Ctr.*, 704 N.W.2d at 162.

162. MINN. STAT. § 325E.0681, subdiv. 1 (2004).

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satisfied.<sup>163</sup> *River Valley Truck Center* does not preclude the possibility that a manufacturer could terminate franchises as part of a general market withdrawal from the area.<sup>164</sup>

Furthermore, the remedies under statutes like HUEMDA are likely to be limited to money damages or a temporary injunction.<sup>165</sup> This presents the franchisor with the opportunity to escape its agreement via efficient breach.<sup>166</sup> In short, the franchisor can accept money damages and related costs as part of the overall cost of escaping the franchise. While franchisors may find this arrangement unpalatable, the effects of termination are even more disagreeable for the franchisee.<sup>167</sup> In addition, while HUEMDA prohibits unilateral termination by the franchisor without “good cause” there is no such requirement against a mutually agreed-upon settlement that terminates the franchise.<sup>168</sup> In other words, a manufacturer can still extricate itself from a dealership under HUEMDA without “good cause” by either negotiating a settlement or assuming money damages. In either situation, the manufacturer can evaluate the costs of termination and select the most efficient outcome. A holding for the dealer in *River Valley Truck Center* would have merely required that the manufacturer internalize the cost of terminating a dealership without “good cause.”

ii. *Freedom to Contract*

The dissent in *River Valley Truck Center* would have invalidated any term in a dealership agreement that allowed the manufacturer to terminate or fail to renew the agreement for any reason other than substantial noncompliance by the franchisee.<sup>169</sup> Franchisors in

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163. *Id.* at subdiv. 2.

164. Courts are divided as to whether termination of a franchise is done with good cause as a result of general withdrawal from a market. *See* Nicastro, *supra* note 54, at 796–97.

165. *See* Westfield Ctr. Serv., Inc. v. Cities Serv. Oil Co., 432 A.2d 48 (N.J. 1981). Courts would be reluctant to impose a permanent injunction that locks a franchisor into a business agreement for fear of creating a taking. *Id.* at 56.

166. *See* David Charny, *Nonlegal Sanctions In Commercial Relationships*, 104 HARV. L. REV. 375, 435 n.188 (1990). “Note that legal intervention would not prevent efficient breach of the franchise contract.” *Id.*

167. *See* Nicastro, *supra* note 54, at 790 (describing termination as affecting franchisees who “spent large amounts of money and established a good business” only to have franchisors “take the business, and reap the profits”).

168. MINN. STAT. § 325E.0681, subdiv.1 (2004).

169. *River Valley Truck Ctr.*, 704 N.W.2d at 167 (Anderson, J., dissenting) (arguing that allowing a manufacturer to terminate a dealership for any reason

general would desire the ability to include such terms in their agreements, especially since these terms favor the franchisor's interests.<sup>170</sup> Franchisors also argue that restrictions on their ability to draft such terms discourage their involvement in the franchise sector and reduce opportunities for franchisees.<sup>171</sup> The law has long respected, with certain exceptions, the freedom of parties to protect and bargain to satisfy their own interests in contracts.<sup>172</sup> In spite of this principal, the *River Valley Truck Center* dissent's interpretation of HUEMDA clearly interferes with the franchisor's and franchisee's freedom to contract with one another.

Where public policy opposes certain types of contractual promises, the law has regularly held them unenforceable.<sup>173</sup> For example, certain promises in adhesion contracts, such as those that arise from unequal bargaining power between the parties where one party controls all the terms, have been held voidable by Minnesota courts.<sup>174</sup> But even assuming that the franchisor inherently occupies such a superior bargaining position relative to the franchisee,<sup>175</sup> a ruling that a contract is an adhesion contract does not necessarily render its terms unenforceable. A court could decide to only invalidate those terms it finds unconscionable or that fall outside the reasonable expectations of the weaker party.<sup>176</sup>

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outside the dealer's control is "inconsistent with the statutory scheme" of HUEMDA).

170. See Emerson, *supra* note 134, at 1509.

171. See Emerson, *supra* note 135, at 926 n.79.

172. See E. A. FARNSWORTH, CONTRACTS § 5.1 (1982) (finding that the freedom to contract is outweighed by public policy only occasionally).

173. "Public policy has been the announced rationale for striking down contracts or contract clauses on grounds of immorality, unconscionability, economic policy, unprofessional conduct and diverse other criteria." JOHN D. CALAMARI & JOSEPH M. PERILLO, THE LAW OF CONTRACTS § 22.1, at 843 (5th ed. 2003).

174. See, e.g., Hauenstein & Bermeister, Inc. v. Met-Fab Indus., Inc., 320 N.W.2d 886 (Minn. 1982) (finding that forum-selection clauses in adhesion contracts are unenforceable).

175. Indeed, HUEMDA assumes exactly that. See Astleford Equip. Co., Inc. v. Navistar Int'l Transp. Corp., 632 N.W.2d 182, 191 (Minn. 2001); see also Postal Instant Press, Inc. v. Sealy, 51 Cal. Rptr. 2d 365, 373-74 (Cal. Ct. App. 1996) (noting that franchise agreements in general exhibit many of the attributes of an adhesion contract).

176. See deLeo, *supra* note 26, at 152. See also, e.g., Keating v. Superior Court, 645 P.2d 1192 (Cal. 1982), *rev'd in part on other grounds sub nom.* Southland Corp. v. Keating 465 U.S. 1 (1984) (holding that even though the franchise contract at issue was adhesive, the contract was enforceable because it fell within the parties' reasonable expectations).

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While this may seem like a reasonable safeguard of the franchisee's interests, courts generally do not adequately recognize unconscionability<sup>177</sup> or failures of franchise agreements to meet the reasonable expectations of the parties.<sup>178</sup> The common-law approach to contracts does not take into account the realities of franchising.<sup>179</sup>

The effects on dealers of termination or nonrenewal, therefore, justify an interpretation of HUEMDA that grants dealers greater protection from unfavorable contract provisions than the common law affords them.<sup>180</sup> While buy-back provisions in franchise agreements and statutes such as HUEMDA<sup>181</sup> may protect the dealer's investment in inventory, they generally fail to compensate the dealer for significant losses, such as other lost investments that were unique to the dealership or the loss of the value of the business as a going concern.<sup>182</sup>

Furthermore, a contractual approach to addressing franchisor abuses may be inherently faulty.<sup>183</sup> For one, a franchise agreement could never encompass all of the reasonably likely circumstances surrounding the termination of a franchise.<sup>184</sup> In fact, the ongoing

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177. Courts base findings of unconscionability on "unfair surprise" in the agreement; and because terms in franchise agreements tend to be conspicuous, courts will enforce the contract no matter how unconscionable the results. See ABA Monograph, *supra* note 2, at 58–59; see also Emerson, *supra* note 4, at 579.

178. Courts often mistakenly assume that parties to franchise agreements allocate their risks efficiently. See Robert A. Hillman, *An Analysis of the Cessation of Contractual Relations*, 68 CORNELL L. REV. 617, 625–26 (1983).

179. See ABA Monograph, *supra* note 2, at 59.

180. In fact, the Minnesota Legislature, acting to protect franchisees, countermanded the Eighth Circuit Court of Appeals' holding in *Modern Computer Systems, Inc. v. Modern Banking Systems, Inc.*, 871 F.2d 734 (8th Cir. 1989). The court ruled that a forum-selection clause in a franchise agreement was enforceable. *Modern Computer Systems*, 871 F.2d at 740. The Minnesota Legislature countered this holding by voiding such clauses in the Minnesota Franchise Act (MINN. STAT. § 80C.21 (2004)). See James V. Jordan & Judith B. Gitterman, *Franchise Agreements: Contracts of Adhesion?*, 16 FRANCHISE L.J. 1, 43 (1996).

181. MINN. STAT. § 325E.0681, subdiv. 3 (2004) (imposing an obligation on the manufacturer to repurchase at full value the dealer's inventory that was bought within twenty-four months prior to the manufacturer's termination notice).

182. See Steinberg & Lescatre, *supra* note 20, at 170.

183. See Warren S. Grimes, *Market Definition in Franchise Antitrust Claims: Relational Market Power and the Franchisor's Conflict of Interest*, 67 ANTITRUST L.J. 243, 273–74 (1999) (arguing that contract law is ill-equipped to deal with antitrust abuses and that the weaker position of the franchisee makes it less likely or able to bring a contract claim in court).

184. See ABA Monograph, *supra* note 2, at 29 (citing Goetz & Scott, *Principles of Relational Contracts*, 67 VA. L. REV. 1089, 1092–94 (1981)).

nature of the franchise relationship itself makes it impossible to express within the confines of a single contract<sup>185</sup> the many facets of the relationship extending beyond contract law.<sup>186</sup> Finally, because substantial reasons exist to suggest that franchisees are considerably less able than franchisors to represent their interests in a franchise agreement, subjugating the franchisee's interests to the franchisor's freedom to contract is inherently inequitable.<sup>187</sup>

*iii. Economic Efficiency*

A third concern franchisors have about termination regulation is that such regulation impedes their ability to respond to the market. Again, however, a ruling for the dealer in *River Valley Truck Center* would not have unfairly impeded this ability. To understand franchisors' concerns, suppose that Interstate had chosen to terminate River Valley's dealership, not as the result of any third party's actions, but because it identified factors that would make River Valley's region an unattractive market in the future. A non-franchised business could make a decision to withdraw from the market and concern itself with nothing outside of the logistics of withdrawal. Interstate, if it were forced to honor its dealership agreement, could only make the same withdrawal by incurring additional costs.<sup>188</sup>

Critics of franchise legislation argue that restrictions on the ability to terminate or fail to renew create a drag effect on the franchise sector of the economy.<sup>189</sup> A holding for the dealer in *HUEMDA*, they would argue, locks the manufacturer into an inefficient business arrangement. When termination becomes costlier and riskier, they argue, the overall efficiency of the franchise sector is damaged.<sup>190</sup>

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185. See ABA Monograph, *supra* note 2, at 55.

186. *Id.* at 56 (arguing that, because the franchisee creates a business under the demands of the franchisor, the franchisor has a duty under property law not to harm such business).

187. See Steinberg & Lescatre, *supra* note 20, at 240–41 (arguing that the power imbalance between the franchisor and the franchisee, and courts' tendencies to honor the express terms of franchise agreements, invite bad faith behavior by the franchisor).

188. But when a franchisor terminates franchises as part of a general market withdrawal, courts may find that a franchisor has good cause. See Eisenberg, *supra* note 32, at 391–92.

189. See ABA Monograph, *supra* note 2, at 68–69.

190. See *id.* at 65.

But franchise legislation also contributes to economic efficiency by optimally allocating costs between the parties.<sup>191</sup> In fairness, the franchisee's termination costs should, to some degree, be shifted to the franchisor so long as the franchisee has not substantially failed to comply with its agreement. Furthermore, there is no evidence that franchise-protection laws significantly harm the franchise sector,<sup>192</sup> which undermines the argument that protecting the franchisee creates a palpable negative effect on the franchise economy.

## V. CONCLUSION

In *Westfield Centre Service, Inc. v. Cities Service Oil Co.*,<sup>193</sup> the Supreme Court of New Jersey opined that "disparity in the bargaining power of the parties has led to some unconscionable provisions in [franchise] 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."<sup>194</sup> Most jurisdictions recognize a need to protect the interests of franchisees in certain industries, if not in the franchise sector as a whole.<sup>195</sup> The imbalance of the relationship in favor of the franchisor and the risks of forfeiture justify further protection of the franchisee, beyond that which courts applying contract law principles to the franchise agreement would offer. The Minnesota Legislature recognized this reality when they enacted franchise protection acts such as the Minnesota Franchise Act and HUEMDA.<sup>196</sup>

The *River Valley Truck Center* court took a step toward unsettling the balance that the Minnesota Legislature sought to bring to the

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191. See Hess, *supra* note 18, at 339.

192. See ABA Monograph, *supra* note 2, at 66; see also Steinberg & Lescatre, *supra* note 20, at 286 (arguing that a franchise protection law in Ontario, Canada, similar to the Small Business Franchising Act proposed in the U.S., has had no negative effect on franchising in Ontario). But see James A. Brickley, *Royalty Rates and Upfront Fees in Share Contracts: Evidence from Franchising*, 18 J.L. ECON. & ORG. 511, 532-33 (2002) (showing evidence that franchisees pay more for their franchises in states that have franchise-protection laws).

193. 432 A.2d 48 (N.J. 1981).

194. *Id.* at 53.

195. See Edgar G. McQueen, Jr., *The Choice-of-Law Dilemma in Franchising*, 20 OKLA. CITY U. L. REV. 391, 396-97 (1995) (reflecting that most states have recognized abuses in the industry and an inequality of bargaining power and have thereafter made some effort to protect franchisees).

196. See *supra* note 180.

franchise relationship. The Minnesota Supreme Court, in denying protection under HUEMDA to a dealer torn between two manufacturers that it represented, argued that applying the definition of “good cause” as plainly stated in HUEMDA shielded dealers from the realities of the economy.<sup>197</sup> But as a result of their decision, a manufacturer may terminate a dealership agreement based not on the effects of a third-party’s decision, but on the decision itself. The dealer has no control over another party’s choice and, therefore, no meaningful opportunity to cure it.

Yet an opportunity to cure noncompliance with the dealership agreement is central to the dealer’s reasonable expectations in entering into the agreement.<sup>198</sup> Rather than shielding dealers from the realities of the market economy, a ruling for the dealer in *River Valley Truck Center* would have more fairly accounted for the realities of the franchise relationship. Permitting the dealer to keep its dealership as long as it performs in a satisfactory manner equitably protects the dealer’s expectations and investments.<sup>199</sup> Conversely, the freedom of the manufacturer to define the terms of the dealership agreement, to respond to its market, and to withdraw from franchise relationships would be hampered only by its responsibility to honor the reasonable expectations of its dealers.

The relationship between franchisor and franchisee is akin to a partnership, wider and more complicated in fact than any document could contain.<sup>200</sup> Yet in the absence of franchise protection laws, courts tend to reduce that relationship to the terms of a boilerplate contract drafted by the stronger of the two parties. Legislatures have enacted franchise protection laws with the intent to help the law reflect the actual nature of franchises. By finding for the manufacturer in *River Valley Truck Center*, the Minnesota Supreme Court took a step away from the intentions of the Minnesota Legislature and a step towards inequity in the franchise relationship.

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197. *River Valley Truck Ctr.*, 704 N.W.2d at 162.

198. See Hess, *supra* note 18, at 355.

199. *Id.*

200. See ABA Monograph, *supra* note 2, at 55.