



Distributor Terminations

by Stephen E. Story

In distributor termination litigation, juries are increasingly awarding substantial, often multi-million dollar, verdicts to distributors. In addition to those reported verdicts, however, countless disputes occur in the daily alteration of existing supply arrangements that never receive any publicity.

Products generally are sold through multiple levels of distribution before reaching the end user. Typically, a manufacturer makes the product and sells it to a distributor, who resells the product to a dealer, who ultimately resells the product to an end user. Manufacturers, distributors and dealers, from time to time, will all desire to modify their existing distribution arrangements, for a variety of business reasons. These changes in existing supply relationships frequently result in disputes between the supplier and the distributor,¹ and often produce litigation. In distributor termination litigation, juries are increasingly awarding substantial, often multi-million dollar, verdicts to distributors. In addition to those reported verdicts, however, countless disputes occur in the daily alteration of existing supply arrangements that never receive any publicity. Virtually every distributor termination carries with it a significant potential for expensive and time-consuming litigation, as well as an opportunity for reasonable resolution by appealing to the underlying business motives of the parties. This article focuses on the legal and practical aspects of distributor disputes, particularly with an eye toward litigation avoidance.

The Legal Framework

In Virginia, distributorship agreements that are unwritten or that lack a specific term are generally considered to be at-will agreements, terminable upon notice from the supplier.²

The ability of a supplier to unilaterally terminate a distributor, however, may be severely limited by at least four distinct sources: the parties' agreement, whether written and/or oral; generic and/or industry-specific state and federal distributor protection statutes; federal and state antitrust statutes; and other statutory common law protections (including those in the Uniform Commercial Code). A general understanding and review of these limitations should undergird every distributor termination analysis.

The Parties' Agreement

Enforceable distribution agreements may be written or oral, and written agreements run the gamut from formal distribution agreements to informal exchanges of letters, or even orders, between the parties. Whatever its form, counsel must attempt to fully define the terms of the parties' agreement, because express provisions in a distribution agreement will generally serve as the starting point for a court's analysis of disputed issues. Well-drafted and unambiguous provisions are generally enforced, often at the summary judgment stage of litigation proceedings. Examples of the types of issues frequently governed by the express language of written distributorship agreements include termination, the return of inventory, performance standards or sales quotas, and protections for trademark, trade secrets and related goodwill.³

Increasingly, distribution agreements also contain express provisions designed to give manufacturers the upper hand in distributorship termination disputes. These provisions, which are generally enforced, include mandatory arbitration provisions, choice of law provisions (stipulating that the law of the supplier's home state applies) and choice of forum provisions (mandating that any litigation be brought exclusively in the supplier's local courts).⁴

Because the written agreement will serve as the primary framework for resolution of any distributorship dispute, counsel for the supplier and the distributor both should take great care in the initial preparation and review of that agreement. Although outside the scope of this article, this step, without question, constitutes the most efficient litigation avoidance technique.

Distributor Protection Legislation

Beyond any constraints imposed by the distribution agreement itself, a variety of federal and state generic and industry-specific legislation provides distributors with procedural and substantive safeguards against termination.

At the federal level, the primary laws governing distribution arrangements are the Petroleum Marketing Practices Act⁵ ("PMPA") and the Automobile Dealers' Day in Court Act.⁶ Both statutes superimpose specific standards of conduct on the distribution relationship, the former between the suppliers and distributors

apply to protect distributors in certain industries. The Virginia Retail Franchising Act⁸ applies to any retail⁹ franchise relationship, founded on a written contract or agreement,¹⁰ pursuant to which the party is granted the "right to engage in the business of offering, selling or distributing goods or services at retail under a marketing plan or system prescribed in substantial part by a franchisor;" the franchisee's operation "is substantially associated with the franchisor's trademark, service mark, trade name, logo-type, advertising or other commercial symbol designating the franchise or its affiliate;" and a franchise fee of at least \$500 is paid in connection with the distribution arrangement.¹¹

The Act outlines various rules for such a franchise, an example of which is that franchises must file an application and registration fee with the State Corporation Commission.¹² The requirements of the Act limit its availability as a source of protection to distributors except in those situations where the supplier controls the sales activity of its distributor, such as in true franchise relationships.¹³ Distribution relationships subject to the Virginia Retail Franchising Act may not be cancelled without "reasonable cause," nor may the franchisee use undue influence to induce a franchisee to surrender any rights given to him by the franchise agreement.¹⁴ The Act does not prevent nonrenewals of written franchise agreements that have expired according to their terms, but only prescribes "arbitrary" or "unfair" termination of the relationship during an existing term.¹⁵ Available remedies for violating the Act include not only recovery of actual damages sustained for improper termination of the franchise, but also the franchisee's reasonable attorneys' fees and the other costs of its suit to enforce its rights under the Act.¹⁶

Although the Act only governs distribution arrangements that contemplate establishing or maintaining a place of business in Virginia,¹⁷ this provision has been broadly and remedially read by the Virginia Supreme Court as requiring that the business contemplated or transacted under the franchise agreement merely have a "nexus to the Commonwealth."¹⁸

In addition to the Virginia Retail Franchising Act, the Virginia General Assembly has enacted legislation that affords procedural and substantive termination safeguards to distributors in certain industries. These laws include: the Virginia Beer¹⁹ and Wine²⁰ Franchise Acts, each of which has good cause requirements for the termination, cancellation or non-renewal of a beer or wine wholesaler and provides for notice and an opportunity to cure remediable grounds for termination;²¹ The Virginia Farm

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of motor fuel and the latter between automobile suppliers and their distributors.⁷

On the state level, a Virginia statute generally applies to termination of any retail franchisee, and a number of statutes specifically

Machinery Dealerships Act,²² which provides for 90 days notice of termination of any distributor agreements, except under limited circumstances, and imposes a duty on the supplier to repurchase the distributor's inventory upon the dealer's request when the agreement required the dealer to maintain an inventory; the

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Virginia Heavy Equipment Dealer Act,²³ which establishes a “good cause” requirement for cancellation of a distribution agreement, provides notice and an opportunity to cure remediable grounds for termination and superimposes a specific requirement of reasonableness and good faith into all heavy equipment distributorship contracts; the Virginia Motor Vehicle Distributors Act,²⁴ which generally requires “good cause” to terminate an automobile distributorship;²⁵ and the Virginia Petroleum Products Franchise Act,²⁶ which requires “reasonable cause” to terminate a petroleum products distributor and imposes obligations on the dealer to act in good faith while carrying out the terms of the franchise.²⁷

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Most of these statutes provide a non-exhaustive list of events that constitute “reasonable” or “good” cause for termination, as well as an exhaustive list of standards that permit expedited termination of a distributor. If the reason for terminating a distributor does not fall within one of these statutory “safe harbors,” courts will analyze the stated rationale for the termination on a case-by-case basis.

Under similar statutes in other states, good cause frequently has been found for failure to meet uniformly applied and reasonable standards or performance criteria,²⁸ and for material violations of the law or the distributorship contract.²⁹

System-wide changes in marketing structure,³⁰ complete market withdrawal,³¹ taking on a competing line,³² and “economic necessity” on the part of the supplier³³ may or may not constitute “good cause” for distributor termination. On occasion, state Consumer Protection Acts (also known as “Little FTC Acts”) also have been successfully used to attack “unfair” or “deceptive” acts in distributorship terminations.³⁴ However, as the Virginia Consumer Protection Act applies only to consumer transactions,³⁵ this statutory source of relief is unavailable to the Virginia distributor.

Given the variety of different distributor protection statutes in force in different states, and the fact that these statutes often are outcome determinative, counsel must consider the potential applicability of the statutes of every state with a legitimate connection to the distribution relationship. Virginia courts customarily will enforce a contractual choice of law provision.³⁶ In the absence of a choice of law provision, the determination of when the contract was entered into usually will govern the choice of law decision.³⁷ The protective laws of the state where a distribu-

tor does business, but does not have its principal place of business, also have been successfully invoked on occasion.³⁸

Given the prevalence of stipulated choice of law provisions, and their increasing use by suppliers to avoid unfavorable distributor protection statutes, many states, including Virginia, have adopted provisions in certain of their distributor protection laws which prevent forum selection clauses within contracts from being enforceable.³⁹

Such provisions may override a choice of law provision expressly naming another jurisdiction’s substantive laws.⁴⁰

Federal and State Antitrust Laws

Serious consideration also must be given to potential antitrust challenges to the proposed termination decision. Principally, these challenges take the form of allegations that a competing distributor has conspired with the manufacturer to cause the termination of another distributor for anticompetitive reasons, usually to enforce an illegal resale price fixing scheme. The United States Supreme Court’s decisions have made it much more difficult for a terminated distributor to viably maintain such an antitrust claim.⁴¹ However, before proceeding to terminate a distributor, a supplier should rigorously and objectively analyze all contacts with competing distributors in the geographic area of the distributor targeted for termination.

Other potential antitrust claims may arise out of disparate treatment of other distributors on price, credit, or promotional allowances, under the Robinson-Patman Act.⁴²

Common Law Protections

In addition to the protections against arbitrary termination afforded to distributors by agreements with suppliers, applicable distributorship legislation, and/or antitrust laws, the common law also provides a significant source of legal protection in distributor termination disputes.

Under a variety of circumstances, the terms of the parties’ written or oral agreement may be modified or altered by the introduction of parol evidence. Even though Virginia remains a jurisdiction in which introduction of parol evidence is strictly limited, parol evidence is virtually always admissible to explain or clarify any ambiguity found in the parties’ agreement. Other exceptions to the parol evidence rule also may allow the introduction of oral testimony to vary or supplement the agreement of the parties.

In contracts for the sale of goods, the Virginia Commercial Code superimposes certain obligations upon the parties’ agreement, even though it may be written and contain an integration clause stating it is the entire agreement of the parties. For example, the Virginia Commercial Code imposes into all contracts an express obligation of good faith, defined as “honesty in fact and the observance of reasonable commercial standards of fair dealing in the trade.”⁴³ Similarly, the Virginia Commercial Code allows evidence of the parties’ course of dealing, and the custom and

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practice of the industry to explain and, in some circumstances, modify the parties' agreement.⁴⁴

A number of distributors have sought to claim the benefits of a fiduciary relationship with their suppliers, which would impose a stricter standard of fair dealing than the "good faith" requirement. Such efforts usually have been unsuccessful.⁴⁵

Virginia courts have, however, embraced the doctrine of recoupment, which implies a minimum term of sufficient length to allow the distributor to reasonably recoup its investment, even in an at-will distribution agreement.⁴⁶

Any significant investment made by the distributor in order to sell the supplier's products, may lay the necessary predicate for invoking the limited right to continue selling the supplier's products long enough to recoup the distributor's initial investment. In addition to the recoupment doctrine, increasingly sophisticated distributors, through their counsel, are pursuing a variety of common law causes of action. These actions include allegations of fraud and fraudulent inducement, tortious interference with existing and prospective contractual relationships, and equitable estoppel or promissory estoppel.⁴⁷

These extracontractual theories have been used increasingly by distributor's counsel, as the availability of effective antitrust remedies has waned.

The Practical Analysis

The potential termination of a distributor should be practically examined against the foregoing legal framework. The decision whether to terminate the distributor outright, to modify its behavior and bring it back into the system, or to negotiate an amicable disassociation, mixes business advice, legal considerations and litigation tactics. The following are practical points of advice for helping supplier and distributor counsel to understand the risks and benefits of these decisions.

Implement a Compliance Program. Virtually all clients with distribution networks would be well advised to implement a

policy for receiving complaints pertaining to the distribution process, and to create a streamlined procedure for realistically and objectively addressing such complaints. In fact, the implementation of such an informal dispute resolution mechanism, at the supplier level, typically pays tremendous dividends beyond litigation avoidance, in terms of customer loyalty and more efficient product distribution.

Involve counsel at the outset of any distributor dispute.

Early, active intervention may help solve distributor or supplier complaints before the parties settle upon antagonistic and unreasonable positions that fuel litigation. Distribution disputes too frequently arrive at the desk of counsel well past the early stage ideal for sympathetic communications to be used as a tool to defuse perceived or actual wrongs. This avenue should nonetheless be immediately explored, regardless of the time at which counsel becomes initially involved in the dispute. It helps immeasurably if your regular supplier clients will agree to notify you, in advance, of any problems with distributors that may ultimately result in their termination.

Be sure the supplier has a legitimate and honest reason for termination.

The absence of an objectively legitimate, honest, and reasonable explanation for termination of the distributor is virtually always fatal. A contrived justification for termination usually will be exposed during discovery. Accordingly, be sure the supplier has advanced an honest and justifiable reason for termination.

Insist upon receiving detailed client information and be objective and critical in analyzing whether that information supports the proposed termination decision.

By taking an interventionist posture, counsel can thoroughly review the supplier's files and interview pertinent employees, thus gaining a better understanding of the status of the distribution relationship targeted for termination. The supplier's counsel should insist on seeing virtually all documentary information pertaining to the distribution relationship targeted for termination (see sidebar box, "The Paper Trail"). In addition, counsel should strongly consider utilizing a summary checklist to obtain all pertinent non-documentary information regarding the factual background for, and impact of, the termination decision (see sidebar box, "Beyond the Paper Trail"). Finally, counsel should interview the employees of the supplier with responsibility for both the distributor targeted for termination and for the targeted distributor's direct competitors (who may have been demanding the targeted distributor's termination, raising potential antitrust problems).

This independent review permits counsel to intelligently assess the legitimacy and defensibility of the supplier's asserted basis for termination, under the existing record. Adverse decisions to suppliers most commonly result from a finding that the supplier contrived the stated basis for termination to mask another, illegitimate or unreasonable basis for termination. In short, at this early stage, if the supplier's management and files cannot convince you that the reason given for termination is honest and legitimate, you, or your litigation colleague, can expect to face an uphill battle convincing a jury of the reasonableness of the termination.

The Paper Trail

Supplier's counsel should generally exhaustively examine the following documents before completing an analysis of a potential distributor termination:

1. The written agreement governing the distribution relationship (be sure to review letter agreements and applicable terms and conditions of purchase orders and invoices);
2. All communications with the distributor;
3. Your client's internal file regarding the distribution relationship;
4. Any communications between the supplier and its other distributors regarding the distributor targeted for termination; and
5. Sales performance reports.

The distributor's counsel also should intervene early in the process to attempt to defend against termination. Upon receipt of any notice of potential termination, or even of performance problems, counsel should advise the distributor client to immediately and aggressively remedy the problems addressed in the notice. A distributor may be able to avert termination by negotiating performance criteria or other remedial steps that will allow the distributor to continue in business with the manufacturer.

Control the termination process and record. The advantage of finding an unstated basis for the termination, or of finding an inadequate record upon which to base termination, at an early stage, is that you may thereafter control the process to ensure that the termination decision is fully defensible on stated and legitimate rationale. In hindsight, a manufacturer's continuation with an uncooperative distributor for a few additional months, while a potentially major business inconvenience, will be almost

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universally preferred to protracted and expensive litigation over an unlawful or premature termination decision.

In the absence of a "good cause" requirement for termination, a supplier can terminate an "at will" distribution arrangement by simple notice, without providing any reason. However, the decision whether to supply a detailed notice of the basis for termination requires a balancing of competing risk factors. The absence of any stated reason for termination may make the decision appear arbitrary. Reliance on only a single stated reason for termination, however, may lock the supplier into an ultimately untenable position, or cause other, equally legitimate reasons for termination to be discounted as contrived.

The proper balancing of these factors varies in each individual case. However, a typical middle ground consists of sending a letter spelling out the primary reason(s) for termination, coupled with a statement that the reasons given are illustrative only and do not exhaust the grounds relied upon by the supplier for the termination decision.

The termination letter, as the document likely to occupy center stage in any resulting dispute, should be clearly drafted in plain language. It also affords an excellent opportunity for the supplier to offer concessions and accommodations to the distributor, such as assisting in the transition away from carrying the supplier's products. A prompt offer to fairly repurchase inventory will help to establish the fairness of the supplier's treatment of the distributor in any later dispute.

The termination letter should be drafted, or at least thoroughly reviewed, by competent counsel familiar with all of the potential ramifications of the distributor termination decision. A well-written letter—setting forth detailed and justifiable reasons for termination—can be a powerful document for use during negotiations and trial.

Stop non-essential client contact with the targeted distributor.

Once a decision to terminate the distributor has been reached, have the supplier immediately stop all nonessential business contact with the targeted distributor, and ensure that the termination is not discussed with any of the targeted distributors or their competitors. Specifically, all field personnel should be specifically instructed not to address further the status of the targeted business relationship with anyone. While business-related contacts probably have to continue, the nature of the contacts should be severely limited.

Analyze the full range of business negotiation options.

A decision to terminate a distributor does not take place in a business vacuum—both the supplier and the distributor face business considerations that are equally, if not more, important than the legal considerations in determining whether the termination decision will result in litigation. Counsel should use these business factors as a tool to explore disassociation of the supplier and distributor on mutually agreeable terms.

The business issues most commonly arising in termination situations include: whether the supplier will repurchase inventory from its distributor, and if so, upon what terms; the cessation of

Beyond the Paper Trail

The following checklist of information may not always be available in documents, but it should still be obtained from the supplier and reviewed as part of the analysis of a potential distributor termination.

1. Distributor's name, address, principal contact, territory, etc.
2. The terms of any oral arguments with the distributor.
3. Does the distributor have receivables owed or payables to the supplier? What is its past payment record?
4. What is the volume and condition of the distributor's inventory on hand?
5. How is the distributor's historical sales performance, vis-a-vis supplier's goals or quotas and/or the performance of other distributors?
6. Has the distributor made any direct or indirect investment in connection with selling the supplier's line?
7. What are the reasons for the proposed termination?
8. Have any claims been made against the supplier by this distributor or against the distributor by anyone else?
9. Interview the employees of the supplier who have responsibility for the distributor targeted for termination and the competitors of the distributor targeted for termination.

usage of trademarks, copyrights, and related intellectual property rights belonging to the supplier; the enforcement of noncompetition covenants or post-agreement term-restrictive covenants; the receipt by the supplier, of outstanding accounts receivable due it from the terminated distributor; and a time period to permit continued sales while an orderly transition of the distributor, away from the products of the supplier, can be accomplished.

For example, a distributor receiving a notice of termination from one of its major suppliers, in whose products it currently stocks \$100,000 of inventory, may call counsel to pursue injunctive relief and oppose termination, almost without regard to the legal merits of its position. Before pursuing an uphill legal claim, the distributor probably would prefer, however, to sell his inventory back to the supplier on fair and reasonable terms, and to negotiate a reasonable transition period (for the use of the supplier's trademarks and continued sale of its products) to enable it to locate and begin selling the products of a new supplier.

Negotiate a solution whenever possible. In most instances, and notwithstanding their insistence to the contrary, neither the

supplier nor the distributor is prepared for the diversion of management talent or the significant expense associated with full-blown distributor litigation. Accordingly, unless termination is absolutely necessary, explore in detail available options for salvaging the relationship. Even where termination is fully justified, a negotiated disassociation agreement, fairly treating the terminated distributor on issues such as inventory returns and a plan of transition, frequently will avoid litigation. ☞



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Kristin B. Burch, an associate with Kaufman & Canoles, in the preparation of this article.

ENDNOTES

- 1 This article will use the term "supplier" to mean the party selling goods, which would include not only a manufacturer selling to a distributor, but also a distributor selling to a dealer. The term "distributor" shall mean the party buying goods, which would include both the distributor buying from a manufacturer and a dealer buying from a distributor.
- 2 See, e.g., *Glaesner v. Beck/Arnley Corp.*, 790 F.2d 384, 389 (4th Cir. 1986) (upholding at-will termination).
- 3 See generally Banks, *Distribution Law, Business & Litigation Aspects* (1991), Appendix C for a listing of a variety of common, and some not so common, distribution agreement clauses.
- 4 See *McMullin v. Union Land & Management Co.*, 242 Va. 337 (1991) (arbitration provision); *Paul Bus. Sys., Inc. v. Canon U.S.A., Inc.*, 240 Va. 337 (1990) (forum selection clause); *Pendleton v. Pendleton*, 22 Va. App. 503 (1996) (choice of law).
- 5 See 15 U.S.C. § 2801-2806.
- 6 See 15 U.S.C. § 1221-1225.
- 7 See, e.g., *Calboun v. Exxon Corp.*, 64 F.3d 656, 1995 U.S. App. Lexis 21668 (4th Cir. Aug. 11, 1995) (table opinion) (dismissing PMPA claim because defendant complied with PMPA requirements when it failed to renew plaintiff's franchise); *Arnold v. Amoco Oil Co.*, 872 F. Supp. 1493 (W.D. Va. 1995) (granting summary judgment for defendant based on fact that there was no evidence that defendant failed to comply with PMPA).
- 8 See Va. Code §§ 13.1-557 through 13.1-574.
- 9 See *Crone v. Richmond Newspapers, Inc.*, 238 Va. 248 (1989) (dicta); *Erdmann v. Preferred Research, Inc. of Georgia*, 852 F.2d 788, 791 (4th Cir. 1988).
- 10 See *JGB Indus. Inc. v. Simon-Telelect, Inc. (In re JGB Indus., Inc.)*, 223 B.R. 901 (E.D. Va. 1997) (holding that Act does not apply because there was no written distribution agreement), *aff'd*, 221 B.R. 176 (E.D. Va. 1998); *Turner v. Subaru of America, Inc.*, 566 F. Supp. 143 (W.D. Va. 1983).
- 11 See Va. Code § 13.1-559(b)(3); see also *Ward's Equip., Inc. v. New Holland North America, Inc.*, 254 Va. 379, 386-87 (1997) (finding no facts to support allegation that franchising fee was paid). The term "franchise fee" is defined to exclude bona fide inventory purchases and other payments of fair market value for real property, fixtures, equipment and supplies necessary to maintain business. See Va. Code § 13.1-559(g). See related article in this issue, Caulkins, "Is Your Client's Distributorship A Franchise" at p. 18.
- 12 See Va. Code § 13.1-561; see also *Minor v. Gal-Tenn Corp.*, 47 Va. Cir. 53 (Scott County 1998).

- 13 See *Hubs & Wheels, Inc. v. Goodyear Tire and Rubber Co.*, Civil Action No. 86-0071-A (W.D. Va. 1988) (holding that Virginia Retail Franchise Act claim fails because Goodyear did not control dealer or otherwise sufficiently prescribe its marketing plan).
- 14 See Va. Code § 13.1-564.
- 15 See *Betsy-Len Motor Hotel Corp. v. Holiday Inns, Inc.*, 238 Va. 489, 492 (1989).
- 16 See Va. Code § 13.1-571.
- 17 See *id.* at § 13.1-559(B).
- 18 See *Crone v. Richmond Newspapers, Inc.*, 238 Va. 248 (1989).
- 19 See Va. Code §§ 4.1-500 through 4.1-517.
- 20 See *id.* at §§ 4.1-400 through 4.1-418.
- 21 See *Sims Wholesale Co., Inc. v. Brown-Forman Corp.*, 251 Va. 398 (1996) (holding that good cause does not always exist when a winery unilaterally cancels an agreement in good faith).
- 22 See Va. Code §§ 59.1-344 through 59.1-352.
- 23 See *id.* at §§ 59.1-353 through 59.1-363.
- 24 See *id.* at §§ 46.2-1566 through 46.2-1573.
- 25 If a franchise is subject to the provisions of the Act, it is not subject to the requirements of the Retail Franchising Act. See *id.* at § 46.2-1567.
- 26 See *id.* at §§ 59.1-21.8 through 59.1-21.18.1.
- 27 See *Crown Central Petroleum Corp. v. Hill*, 254 Va. 88 (1997) (holding that § 59.1-21.16:2(A) regulates inter-brand competition).
- 28 See, e.g., *L-O Distrib., Inc. v. Speed Queen Co.*, 611 F. Supp. 1569, 1580 (D. Minn. 1985) (failure to meet reasonable sales quotas); *Marquis v. Chrysler Corp.*, 577 F.2d 624 (9th Cir. 1978) (same); *Amoco Oil Co. v. Burns*, 437 A.2d 381 (Pa. Super. 1981) (unprofitability of dealership).
- 29 See, e.g., *Portaluppi v. Shell Oil Co.*, 869 F.2d 245 (4th Cir. 1989) (drug convictions of franchisee); *Crosthwait Equip. Co., Inc. v. John Deere Co.*, 992 F.2d 525 (5th Cir. 1993) (underreporting of income).
- 30 See *Remus v. Amoco Oil Co.*, 611 F. Supp. 885 (E.D. Wis. 1985), *aff'd*, 794 F.2d 1238 (7th Cir. 1986) (finding that system-wide marketing changes met good cause standard).
- 31 Compare *Lee Beverage Co., Inc. v. I.S.C. Wines of California*, 623 F. Supp. 867 (E.D. Wis. 1985) (good cause) with *Kealey Pharmacy & Home Care Servs. v. Walgreen Co.*, 761 F.2d 345 (7th Cir. 1985) (not good cause); see also *Morley-Murphy Co. v. Zenith Elec. Corp.*, 142 F.3d 373 (7th Cir. 1998).
- 32 Compare *Inland Printing Co. v. A. B. Dick Co.*, 2 Bus. Fran. Guide (CCH) ¶ 899 at 317-318 (W.D. Mo. 1987) (good cause) with *Reinders Bros., Inc. v. Rain Bird Eastern Sales Corp.*, 627 F.2d 44, 51 (7th Cir. 1980) (no good cause; contract did not require exclusive dealing).
- 33 Compare *Central GMC, Inc. v. General Motors Corp.*, 946 F.2d 327 (4th Cir. 1991) (supporting “economic necessity” defense) with *Solman Distrib., Inc. v. Brown-Forman Corp.*, 888 F.2d 170 (1st Cir. 1989) (rejecting a supplier’s economic necessity defense).
- 34 See, e.g., *Process Components, Inc. v. Baltimore Aircoil Co., Inc.*, 366 S.E.2d 907 (N.C. App.), *aff’d*, 374 S.E.2d 116 (N.C. 1988).
- 35 See Va. Code § 59.1-198 (defining consumer transactions as the “advertisement, sale, lease or offering for sale or lease, of goods or services to be used primarily for personal, family or household purposes”).
- 36 See, e.g., *Faltings v. International Bus. Machs. Corp.*, 854 F.2d 1316, 1988 WL 83316 (4th Cir. Aug. 4, 1988) (table opinion) (applying Virginia law to enforce a choice of law provision specifying New York law applies to a termination decision involving a New Jersey dealer); but see *Heating & Air Specialists, Inc. d/b/a A/C Service Co. v. Lennox Indus., Inc.*, 108 F.3d 923, 1999 WL 404669 (8th Cir. June 7, 1999) (table opinion).
- 37 See, e.g., *Ali v. Al-Faisal*, 73 F.3d 356, 1995 WL 761102, at *3 (4th Cir. Dec. 7, 1995) (table opinion); *International Chesapeake Supply & Equip. Co. v. J. I. Case Co.*, 700 F. Supp. 1415 (E.D. Va. 1988) (applying Maryland’s “at will” termination law rather than Virginia Heavy Equipment Dealer Act because last step in formation of dealer contract occurred in Maryland).
- 38 See *L-O Distrib., Inc. v. Speed Queen Co.*, 611 F. Supp. 1569 (D. Minn. 1985) (applying Wisconsin dealership law to protect Minnesota dealer when territory extended into Wisconsin).
- 39 See, e.g., Va. Code § 4.1-515 (conflict of law provision of Virginia Beer Franchise Act); Va. Code § 4.1-416(B) (conflict of law provision of Virginia Wine Franchise Act).
- 40 See, e.g., *To-Am Equip. Co., Inc. v. Mitsubisbi Caterpillar Forklift Am.*, 913 F. Supp. 1148, 1151 n.4 (N.D. Ill. 1995) (holding court “could apply Illinois law because the Franchise Disclosure Act’s antiwaiver provision trumps the Agreement’s choice of law arrangement”); *Cutter v. Scott & Fetzer Co.*, 510 F. Supp. 905 (E.D. Wis. 1981) (applying Wisconsin’s Fair Dealership law in face of conflicting choice of law provision); *Kolendo v. Jerell, Inc.*, 489 F. Supp. 983 (S.D. W. Va. 1980) (holding that West Virginia was the more appropriate forum to interpret and apply West Virginia law); *High Life Sales Co. v. Brown-Forman Corp.*, 823 S.W.2d 493 (Mo. 1992) (finding it unjust for plaintiff to have to pursue its action in Ohio).
- 41 See *Business Elec. Corp. v. Sharp Elec. Corp.*, 485 U.S. 717 (1988); *Monsanto v. Spray-Rite Serv. Corp.*, 465 U.S. 752 (1984).
- 42 See 15 U.S.C. § 13.
- 43 See Va. Code § 8.2-103(1)(b); see also Va. Code § 8.1-201(19) (defining good faith as “honesty in fact in the conduct or transaction concerned”).
- 44 See *id.* at §§ 8.1-205, 8.2-208.

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- 45 See, e.g., *Picture Lake Campground, Inc. v. Holiday Inns, Inc.*, 497 F. Supp. 858, 868-69 (E.D. Va. 1980) (finding no fiduciary relationship in franchise context); see also *Wells v. Entre Computer Ctrs., Inc.*, 915 F.2d 1566, 1990 WL 146981, at *5 (4th Cir. Oct. 5, 1990) (table opinion) (holding that plaintiff failed to establish triable issue as to existence of fiduciary relationship).
- 46 See, e.g., *Allied Equip. Co., Inc. v. Weber Engineered Prods., Inc.*, 237 F.2d 879 (4th Cir. 1956); *Jack’s Cookie Co. v. Brooks*, 227 F.2d 935 (4th Cir. 1955).
- 47 An excellent annotation dealing with termination of distributorship contracts which contain no express termination provision and summarizes the applicable law in a variety of fact situations is set forth in Annotation, *Termination by Principal of Distributorship Contract Containing No Express Provision for Termination*, 19 A.L.R. 3d 196 (1968).