Understanding the Grantor's Burden: Good Cause Under the Wisconsin Fair Dealership Law

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Good cause has been called the "heart and soul"[1] of the Wisconsin Fair Dealership Law[2] (WFDL), ensuring that successful and committed dealers can sleep easy at night knowing that their dealership cannot be arbitrarily terminated.[3] In *Talking Past Each Other: The Divergent Approaches to*

1. *See* Brian Butler & Jeffrey A. Mandell, The Wisconsin Fair Dealership Law § 6.1 (5th ed. 2022).
2. Wis. Stat. § 135.01 *et seq.*
3. While this article focuses solely on what constitutes "good cause" under the Wisconsin Fair Dealership Law, for more on good cause generally see, for example, Adi Ayal & Uri Benoliel, *Good-Cause Statutes Revisited: An Empirical Assessment*, 90 Ind. L.J. 1177 (2015); Uri Benoliel, *The Expectation of Continuity Effect and Franchise Termination Laws: A Behavioral Perspective*, 46 Am. Bus. L.J. 139 (2009); Boyd Allan Byers, *Making a Case for Federal Regulation of Franchise Terminations—A Return-of-Equity Approach*, 19 J. Corp. L. 607 (1994); Robert W. Emerson, *Franchise Terminations: "Good Cause" Decoded*, 51 Wake Forest L. Rev. 103 (2016); Rose Marie Reynolds, *Good Cause for Franchise Termination: An Irreconcilable Difference Between Franchisee Fault and Franchisor Market Withdrawal?*, 1992 BYU L. Rev. 785 (1992); Craig R. Tractenberg, Robert B. Calihan & Ann-Marie Luciano, *Legal Considerations in Franchise Renewals*, 23 Franchise L.J. 198, 19–200 (2004); Tracey A. Nicastro, Note, *How the Cookie Crumbles: The Good Cause Requirement for Terminating a Franchise Agreement*, 28 Val. U. L. Rev. 785 (1994).

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the Community of Interest Standard in Wisconsin's State and Federal Courts, the authors discussed the divergent issues that putative dealers must navigate in asserting protection under the statute in state and federal courts.[4] Proving the existence of a community of interest is the dealer's primary responsibility in any WFDL case.[5] But, once proven, the burden flips back to the grantor to prove the existence of good cause.[6] Read together, the community-of-interest inquiry is directed toward answering "who gets protection?" while good cause turns to "for how long?"

Despite fifty years of litigation under the WFDL, what constitutes good cause still is not always clear. As with the community-of-interest standard, case law has revealed that whether good cause exists is a fact-intensive inquiry ill-suited for summary judgment.[7] This article endeavors to provide greater clarity on the good-cause question as borne out in the WFDL's history, examining and offering detailed explanations for each of the three categories of good cause: definitional, per se, and judicially recognized.

To start, the article will discuss definitional good cause, which arises when a dealer fails to substantially comply with the grantor's essential, reasonable, and nondiscriminatory requirements, or engages in bad-faith conduct. Next, the article will discuss per se good cause, which relates to specific instances of financial irresponsibility. Last, the article will discuss a subset of judicially created instances of good cause and the recognition by state and federal courts alike that a grantor may have good cause for its action based on its own economic circumstances, regardless of a dealer's performance. For purposes of the discussion below, the authors assume that the parties are in a dealership relationship protected by the WFDL; the only focus here is on good cause, though the issues in any WFDL dispute are likely to be more numerous and complex.

4. Jeffrey A. Mandell, Isaac S. Brodkey & James B. Egle, *Talking Past Each Other: Divergent Approaches to the Community-of-Interest Standard in Wisconsin's State and Federal Courts*, 43 Franchise L.J. 23 (2024).

5. *Id.* at 25–29. Once a community of interest is proven, a dealer must also demonstrate that the grantor took an adverse action—i.e., termination, cancellation, non-renewal, or substantially changed the dealer's competitive circumstances—against the dealer. The adverse-action inquiry can be collapsed to the following question: Is the grantor attempting to end or substantially change the nature of the relationship? If the answer is yes, then the WFDL's good cause requirement is triggered. If the answer is no, then the WFDL is not implicated and the dealer's claim fails. *See* Butler & Mandell, *supra* note 1, § 7. As discussed within, courts, at times, have conflated the adverse-action inquiry with the good-cause inquiry. *See infra* Part III.A.iii. If a purported dealer derives at least five percent of its sales from intoxicating liquor produced by its purported grantor, then the dealer does not need to demonstrate a community of interest. *See* Wis. Stat. §§ 135.02(3)(b), 135.066.

6. Wis. Stat. § 135.03.

7. *See* Frieburg Farm Equip., Inc. v. Van Dale, Inc., 978 F.2d 395, 401 (7th Cir. 1992) ("[W]hether a grantor had good cause is a question of fact for a jury," to be taken away only in circumstances where "a reasonable person could arrive at only one conclusion.").

I. Definitional Good Cause

The WFDL defines "good cause" to terminate, cancel, fail to renew, or substantially change the competitive conditions of a dealership in two ways.[8] First, good cause may exist where a dealer fails to "comply substantially with essential and reasonable requirements imposed upon the dealer by the grantor, which requirements are not discriminatory as compared with requirements imposed on other similarly situated dealers either by their terms or in the manner of their enforcement."[9] Second, good cause may exist when the dealer acts in "bad faith . . . in carrying out the terms of the dealership."[10]

The first definition is commonly used in franchise and dealership statutes across the country.[11] It requires that the grantor issue ninety days' written notice detailing the grounds for the adverse action and provide a sixty-day opportunity to cure.[12] The second definition is less commonly featured in other statutes,[13] and, if a grantor seeks to take an adverse action upon the dealer's bad faith, the grantor's notice obligations may be obviated entirely. This section offers a framework to understand definitional good cause and explain what may constitute bad-faith conduct justifying termination.

A. *Failure to Substantially Comply with What?*

On first read, the primary definition of good cause is perplexing. Thankfully, the definition can be broken out into six component parts. For good cause to exist, the grantor must prove that (1) the dealer failed to comply (2) substantially with (3) essential, (4) reasonable, and (5) nondiscriminatory requirements (6) imposed or sought to be imposed.[14] Some courts have expressed disfavor with viewing good cause as an elemental test and have taken a "gestalt" approach to the inquiry.[15] Whether good cause exists is

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8. Wis. Stat. § 135.02(4).
9. *Id.*
10. *Id.*
11. Ayal & Benoliel, *supra* note 3, at 334 ("To date, only seventeen of the fifty states have adopted statutes requiring 'good cause' as a condition for the termination of a franchise contract by a franchisor. Under these statutes, good cause is commonly defined as a franchisee's failure to adequately comply with the requirements of the franchise agreement."); *see also* 2 W. Michael Garner, Franchise & Distribution Law & Practice § 10:22.
12. Wis. Stat. § 135.04.
13. As explained later, many state statutes identify specific instances of conduct justifying immediate termination or lessened notice and cure requirements, but the WFDL is unique in its generalized "bad faith" articulation. *See* Garner, *supra* note 11, § 10:25.
14. The authors build from the framework identified in Butler & Mandell, *supra* note 1, § 6.3.
15. For a detailed analysis of this point, see Kaeser Compressors, Inc. v. Compressor & Pump Repair Servs., Inc., 781 F. Supp. 2d 819 (E.D. Wis. 2011). There, Judge Griesbach writes:

> [The putative dealer's] argument is premised on the belief that there are two distinct "prongs" of the WFDL's good cause definition, both of which must be met before a dealer may terminate for good cause. Although the statute requires new requirements imposed by a grantor to be both essential and reasonable, courts have noted that these terms "are closely related and were clearly intended to be read together."

undoubtedly an inquiry that requires the factfinder to consider the totality of the parties' dealings; that truism, however, provides no reason to read any particular requirement out of the statute.[16] If a grantor can demonstrate each of these six elements, then definitional good cause exists, irrespective of whether good cause exists on another basis.[17]

i. Dealer's Fault

Definitional good cause contemplates a deficiency or failure of a dealer to perform to a certain level. In essence, the focus on the dealer's shortcomings is the fundamental protection provided by good-cause statutes: where a dealer performs, good cause does not exist to terminate; where a dealer fails to perform, good cause may exist, and the statute will not foreclose the grantor changing or ending the relationship. As a corollary, this approach to good cause generally means that a dealer cannot be terminated due to matters outside of its control.[18]

The Seventh Circuit's decision in *Frieburg Farm Equipment, Inc. v. Van Dale, Inc.*[19] demonstrates how a dealer may be protected by the WFDL even as it is significantly underperforming. There, the Seventh Circuit was tasked, *inter alia*, with assessing two important questions: (1) whether a protected dealership existed, and (2) whether the district court erred in declining to decide whether good cause existed as a matter of law.[20] After finding that a protected dealership existed,[21] the court turned to whether the grantor had good cause to terminate the parties' relationship. To start, the court found that whether good cause exists is a question of fact for a jury—not

> *Deutchland Enterprises, Ltd. v. Burger King Corp.*, 957 F.2d 449, 452 (7th Cir. 1992). In other words, a court need not determine whether each requirement imposed by a grantor is both "essential" and "reasonable;" [sic] it must instead analyze good cause as a whole. One reason for this *gestalt* approach, surely, is that very few proposed changes could be deemed "essential" to a grantor's business, that is, necessary to prevent imminent bankruptcy. For example, as [the dealer] notes, the mere fact that the parties had been doing business in a certain way for years would undercut the idea that the new language is actually essential to [the grantor's] business. The point of the statute, instead, is to allow grantors to make non-discriminatory changes in their dealership regime so long as those changes are reasonable and important to their overall business model. Accordingly, rather than determining whether the proposed new contract was actually "essential," I must determine whether it was a commercially reasonable requirement imposed by the grantor.

Id. at 822.

16. *See* Marotz v. Hallman, 734 N.W.2d 411, 418 (Wis. 2007) ("In interpreting a statute, courts give effect to every word so that no portion of the statute is rendered superfluous.").

17. *See infra* Parts II, III.

18. Ziegler Co. v. Rexnord, Inc., 433 N.W.2d 8, 15 (Wis. 1988) (Abrahamson, J., concurring) ("The majority's interpretation of the good cause requirement focuses on the grantor and therefore contravenes the plain language of sec. 135.02(4), Stats. which focuses entirely on the conduct of the dealer."). As explained later, Wisconsin courts have recognized that good cause may exist based on a grantor's own economic circumstances. *See infra* Part III.

19. Frieburg Farm Equip., Inc. v. Van Dale, Inc., 978 F.2d 395 (7th Cir. 1992).

20. *Id.* at 398–402.

21. For a discussion of the first question, see Mandell, Brodkey & Egle, *supra* note 4, at 40–41.

to be disturbed unless a "reasonable person could arrive at only one conclusion."[22] In this instance, the jury had found that there was no good cause. Van Dale argued that the jury verdict should be overturned for several reasons: (a) Frieburg failed to "meet established sales goals," (b) there was a "greater than forty percent decline in Frieburg's annual purchases of Van Dale products during the course of the dealership," and (c) Frieburg had increased its purchases from manufacturers competitive to Van Dale.[23] The court acknowledged that the grantor's arguments had "some merit," in that a dealer's deficient sales and purchasing performance *can* constitute good cause, but concluded that, in the circumstances at hand, the jury verdict was not unreasonable.[24]

Although the rationale is implicit, the *Frieburg* court seemingly relied primarily on the first part of the six-part definitional test—that any shortcomings of Frieburg were not the dealer's fault. Van Dale's claim regarding purchasing competitive products was deemed meritless because Frieburg adduced evidence demonstrating that Van Dale was unable to fill the dealer's orders.[25] As for the sales performance, the court found that Frieburg set forth evidence demonstrating that its sales of Van Dale products dropped steeply due to the grantor appointing three additional dealers in the two rural counties where Frieburg had operated exclusively.[26] It followed that Frieburg's ability to meet its sales and marketing obligations was not a matter entirely within its control, but suffered, in large part, due to its grantor's actions.[27]

ii. Substantial, Not Perfect

The WFDL does not require perfect compliance. Presumably borrowing from contract law,[28] the WFDL requires that a dealer substantially comply with its obligations under the dealership, meaning that a performance still can be considered complete if the essential purpose is accomplished, despite the dealer failing to precisely meet a particular requirement.[29] This doctrine

22. *Frieburg*, 978 F.2d at 401.

23. *Id.*

24. *Id.*

25. *Id.* at 401–02.

26. *Id.*

27. *But see*, *e.g.*, Aring Equip. Co. v. Link-Belt Constr. Equip. Co., Bus. Franchise Guide (CCH) ¶ 8906 (Wis. Cir. Ct. Cnty. 1987) (finding good cause for termination existed where dealer failed to meet sales goals).

28. Kreyer v. Driscoll, 159 N.W.2d 680, 682 (Wis. 1968) ("The doctrine of substantial performance is an equitable doctrine and constitutes an exception in building contracts to the general rule requiring complete performance of the contract. To recover on an uncompleted construction contract on a claim of having substantially, but not fully, performed it, the contractor must make a good faith effort to perform and substantially perform his agreement.").

29. *Cf.* Gen. Motors Corp. v. New A.C. Chevrolet, Inc., 91 F. Supp. 2d 733, 740 (D.N.J. 2000), *aff'd*, 263 F.3d 296 (3d Cir. 2001) ("'[S]ubstantial compliance' is surely something less than absolute adherence to every nuanced term of an agreement, but substantial compliance—at a minimum—requires that the franchisee refrain from acting in direct defiance of a term of the Agreement. This is especially true when, as here, the franchisee has received specific notice from the franchisor that its behavior is a violation of the agreement."); *see also Substantial-Performance*

ensures that the continuation of a dealership does not depend on a dealer's Levitical adherence to any particular terms and provides the dealer some slack in achieving its objectives. Naturally, whether a particular performance is sufficiently substantial is difficult to ascertain. On one end, a dealer missing its sale targets by a fraction of a decimal certainly seems to constitute substantial compliance, but instances like that are few and far between.[30]

A federal court's decision in *Brown Dog, Inc. v. Quizno's Franchise Co. LLC* demonstrates how substantial performance is an intricately fact-bound question.[31] There, Quizno's restaurants expanded throughout the country through the use of Area Directors.[32] An Area Director is a person (usually an existing franchisee) who purchases from the franchisor the right to develop franchises in a defined territory and agrees to open and maintain an "ever-increasing number of stores in [the] territory pursuant to a quarterly quota spelled out in the written contract."[33] In 2000, Brown Dog—a franchisee that already owned two restaurants—paid $75,000 for the right to be an Area Director in twenty-two counties in central and west-central Wisconsin.[34]

Like other Area Directors, under its Area Director Marketing Agreement (ADMA), Brown Dog was obligated to solicit franchisees for future Quizno's restaurants in the territory pursuant to a development quota.[35] The development quota increased on an annual basis, and during the parties' relationship the annual quota rose from one in the year 2000 to ten by the year 2004.[36] From 2000 through the first quarter of 2002, Brown Dog met or exceeded its quota, but began to struggle in subsequent quarters.[37] By the third quarter of 2002, despite Brown Dog only being one store behind on its quota, Quizno's sent Brown Dog notice requiring that Brown Dog cure its default within ninety days or Quizno's would terminate the ADMA.[38] Despite its efforts, Brown Dog failed to cure its default within that period, and, on September 23, 2003, Quizno's issued Brown Dog a termination notice, effective Christmas Eve of that year.[39]

Doctrine, Black's Law Dictionary (11th ed. 2019) ("The rule that if a good-faith attempt to perform does not precisely meet the terms of an agreement or statutory requirements, the performance will still be considered complete if the essential purpose is accomplished, subject to a claim for damages for the shortfall.").

30. *See* Edward R. Spalty & Todd C. Ditus, *Risky Business: Franchise Terminations for Failure to Meet Performance Quotas*, 6 Franchise L.J. 1, 20 (1987) ("For example, if a franchisee falls just slightly short of its performance quota, a court may find that such failure is nothing more than a technical violation of the franchise agreement. The franchise agreement may not be terminated for a mere technical violation due to the drastic effect of termination.").

31. Brown Dog, Inc. v. Quizno's Franchise Co. LLC, 2005 WL 3555425 (W.D. Wis. Dec. 27, 2005).

32. *Id.* at *1.

33. *Id.*

34. *Id.* at *6.

35. *Id.*

36. *Id.* at *10.

37. *Id.* at *7.

38. *Id.* at *8.

39. *Id.*

Having already decided at summary judgment that a protected dealership existed,[40] the court was tasked with determining whether Brown Dog substantially complied with its obligations under the ADMA and, if not, whether Quizno's discriminated against the franchisee by terminating the ADMA.[41] The court answered no to both questions. Importantly, the court found that Brown Dog failed to substantially comply with the development quota for nearly a year and a half and did not have only a bad quarter or two.[42] The court also took into account the "hyper-competitiveness of the fast food market" and "the criticality to Quizno's of constant, predictable growth" as well as Quizno's repeated efforts to bring Brown Dog into compliance in determining that Brown Dog's compliance fell below the substantial-compliance threshold.[43]

The upshot of the *Brown Dog* case is that substantial compliance turns heavily on the parties' actual interactions. Throughout the parties' relationship, the dealer either achieved its development quota or achieved eighty percent of its quota. Facially, this fact seems to be substantially complying with the dealership requirements. But when the importance of close compliance with the quota and the grantor's repeated demands for closer compliance are considered, it is apparent that the dealer's compliance was not aligned with the grantor's goals and expectations. Consequently, the court found that good cause existed to terminate.

iii. Essentiality

The WFDL requires that a grantor can take adverse action toward a dealer only if, *inter alia*, the dealer fails to meet its "essential" and "reasonable" requirements. Some courts have treated these conditions coextensively, noting that the terms "are closely related and were clearly intended to be read together."[44] This treatment fails to appreciate the difference between the two terms that are not always mutually inclusive. A requirement is "essential" if it is material to the continuation of a dealership, whereas a requirement is "reasonable" if it is fair and appropriate under the circumstances.

To illustrate, consider a heavy-farm-equipment dealer operating exclusively in Door County, Wisconsin. Pursuant to its agreement with its grantor, the dealer is obligated to have the highest sales of combine harvesters across the entire country. The obligation to sell the grantor's product is certainly essential, but requiring a small operation to lead the country in sales is certainly unreasonable under the circumstances. Or, consider if the same dealer were obligated to maintain ninety days' worth of inventory. Maintaining

40. *Id.* at *9.
41. *Id.*
42. *Id.* at *12.
43. *Id.*
44. *See, e.g.*, Deutschland Enters., Ltd. v. Burger King Corp., 957 F.2d 449, 452 (7th Cir.1992); Kaeser Compressors Inc. v. Compressor & Pump Repair Servs., Inc., 781 F. Supp. 2d 819, 822 (E.D. Wis. 2011); C.L. Thompson Co. v. Festo Corp., 708 F. Supp. 221, 227–28 (E.D. Wis. 1989).

inventory *may* be—but is not necessarily—essential, and, under the circumstances, ninety days' worth of inventory seems reasonable enough.

Essentiality is closely related to materiality,[45] but what is essential is generally subject to two viewpoints. From a dealer's perspective, sale of a grantor's product is the *raison d'être* of a dealership arrangement and thus termination is inappropriate where a dealer continues to successfully sell a grantor's products.[46] Grantors tend to take a broader perspective and evaluate a dealer's performance not strictly based on sales but also in terms of whether the dealer is marketing the products in a manner consistent with the grantor's mission and vision.[47] Under this perspective, a wayward dealer cannot skate by simply on sales performance, no matter how good that performance may be; it must also conduct its business in alignment with the grantor's objectives.

Wisconsin courts have generally considered the totality of the parties' dealings when determining if a particular requirement was essential to the parties' relationship. Where there is nationwide distribution, courts generally have found that uniformity in both the form and execution of the parties' contract is essential in that "it can streamline and standardize relationships with dealers across the country."[48] Standardization of dealer conduct is of particular concern where a distribution network is made up of dozens of small dealers heavily dependent on the use of the grantor's trademarks.[49]

45. For a discussion of what constitutes a material obligation, see Leon F. Hirzel, *An Analysis of Franchise Agreement Terminations and Nonrenewals for Failure to Meet Minimum Performance Standards*, 37 Franchise L.J. 123, 128–29 (2017).

46. Or, as Judge Randa put it, "[The WFDL] was primarily designed to prevent the 'evil' of termination where a dealer had successfully operated and invested in a franchise or dealership." Open Pantry Food Marts of Wis., Inc. v. Garcia's Five, Inc., Bus. Fran. Guide (CCH) ¶ 8072, at 14195 (Wis. Cir. Ct. Milwaukee Cnty. 1983). This concept is a driving maxim across the WFDL's history and is well-rooted in the state and federal courts' assessment of a grantor's "objectively ascertainable" need to implement a systemic change. *See supra* Part III.A.i.

47. *Cf.* Power Test Petroleum Distribs., Inc. v. Calcu Gas, Inc., 754 F.2d 91, 97 (2d Cir. 1985) ("This creation and perpetuation of goodwill depends on customer recognition. The nature of goodwill is dictated by the consumer's desire to do business with the same seller. The buyer expects the same experience with each purchase—this is the *reason d'etre* [sic] for the sale."); *see also* David Gurnick, *Some Maxims of Franchise Law*, 42 Franchise L.J. 271, 276 (2023) (noting the importance of a trademark in a franchise system); Scott Makar, *In Defense of Franchisors: The Law and Economics of Franchise Quality Assurance Mechanisms*, 33 Vill. L. Rev. 721, 729–31 (1988) (discussing intangible assets of a franchisor and a free rider problem where a franchisee fails to meet franchisor expectations and ultimately harms the system).

48. *Kaeser Compressors*, 781 F. Supp. 2d at 823; *see, e.g.*, McDonald's v. Werve, 392 N.W.2d 130 (Wis. Ct. App. 1986) (unpublished) (upholding jury's finding that the requirement for McDonald's franchise to exercise option before third year reasonable and essential); Moodie v. School Book Fairs, Inc., 889 F.2d 739, 745–46 (7th Cir. 1989) ("[W]e believe failure to sign the agreement constituted a failure to comply substantially with reasonable requirements. A company is entitled to maintain uniform contract terms with its many dealers."); Wis. Music Network, Inc. v. Muzak Ltd. P'ship, 5 F.3d 218, 224 (7th Cir. 1993) ("It is not unreasonable for Muzak to rewrite its license agreements in an orderly fashion, incorporating new terms as the agreements require renewal."); Re/Max N. Cent., Inc. v. Cook, 272 F.3d 424, 432 (7th Cir. 2001) ("Re/Max is entitled to maintain uniform contract terms with its dealers.").

49. *See* James B. Egle & Isaac S. Brodkey, *Encroachment in the Era of Digital Delivery Platforms: Impact of Delivery Apps on Brick and Mortar Exclusive Territories*, 41 Franchise L.J. 195, 209 (2021) ("When a franchisor fails to adequately police its trademark, it runs the risk of abandonment

That said, whether to enforce compliance with a particular provision places grantors in a difficult spot, weighing the importance of standard measures against the litigation and reputational risk that would follow from a termination.[50] This is a delicate balance.[51]

As for inessential requirements, not every term in a lengthy dealership or franchise agreement can be considered essential to the success and continuation of a dealership. For example, most dealership agreements provide sections detailing how each party must provide notice to the other. While important in some instances, it would be farfetched to believe that a dealer's failure to provide notice in the precise form outlined in a particular agreement would warrant terminating the parties' relationship under the WFDL.

iv. Reasonableness

Whether a requirement is reasonable depends on the expectations of a dealer in the circumstances. Most often, the question of reasonableness arises in the context of sales targets.[52] The requirements imposed by the grantor in *Chili Implement Co. v. CNH America, LLC*[53] proved to be a textbook example of unreasonable requirements. There, Chili Implement was a dealer of CNH's agricultural equipment.[54] In March 2010, CNH sent Chili Implement notice that it failed to achieve a satisfactory market share in selling CNH's products and failed to stock a sufficient level of inventory.[55] To avoid termination, CNH required that Chili Implement "meet or exceed 90% of the Wisconsin state market share" and "stock sufficient inventory conducive to achieving that market share."[56] Chili Implement failed to meet these goals, and CNH

of the mark. Naked licensing occurs when a licensor grants permission to use a mark without sufficient control over the licensee's goods or services. The Lanham Act requires that trademark holders, including franchisors, adequately maintain certain quality standards."); Stephanie Russ & Laura Kupish, *It's My Franchise Agreement, I'll Enforce It However I Want to—Maybe You Will, Maybe You Won't*, 37 Franchise L.J. 589, 589 (2018) ("A hallmark feature of any franchise system is uniformity, which begins with the franchise agreement and is supported by a system's operations manual. The franchise agreement sets forth the contractual rights and obligations of both the franchisee and the franchisor, and one of the franchisee's contractual obligations is to comply with the franchisor's standards, as described in the franchisor's operations manual. The existence of, and compliance with, the standards drives the uniformity that franchisors and franchisees seek."); *see also* Joseph Schumacher, Edward Wood Dunham & G. Adam Schweickert III, *Retaining and Improving Brand Equity by Enforcing System Standards*, 24 Franchise L.J. 10 (2004); Craig Tractenberg, Jean-Philippe Turgeon & Stéphanie Destrempes, *The Franchisor's Duty to Police the Franchise System*, 36 Franchise L.J. 87 (2016).

50. *See* Spalty & Ditus, *supra* note 30, at 1.

51. Mark J. Burzych & Emily L. Matthews, *Selective Enforcement of Franchise Agreement Terms and System Standards*, 23 Franchise L.J. 110 (2003) (discussing concerns regarding the selective enforcement of certain requirements); *see infra* Part I.A.iv.

52. *See* Hirzel, *supra* note 45.

53. Chili Implement Co. v. CNH Am., LLC, 2015 WI App 43, 362 Wis. 2d 540, 865 N.W.2d 885 (2015) (unpublished, per curiam).

54. *Id.* ¶ 4. The issue of whether a dealership existed was a matter decided by a jury and was not appealed. *Id.* ¶ 4, n. 1.

55. *Id.* ¶ 5.

56. *Id.*

terminated.[57] Six months after termination, Chili Implement sued CNH, alleging that it had been terminated in contravention of the WFDL.[58]

At trial, Chili Implement was able to prove both that a dealership existed and that CNH lacked good cause to terminate.[59] Relevant to this article,[60] on appeal, CNH did not contest that a dealership existed and focused on the good-cause finding. Despite Chili Implement's potentially poor performance, the appellate court concluded that good cause did not exist because the requirements imposed were unreasonable on account of Chili Implement's size as a dealer and ultimately discriminatory actions against the dealer.[61]

The reasonableness of a particular requirement is a fact-bound inquiry. It seems wholly unreasonable to require a small dealer in a small territory to lead the country in overall sales. At the same time, if that dealer possesses the best market for the grantor's products, perhaps it is not entirely unreasonable to expect a higher level of performance than other dealers within the grantor's distribution network.

v. Non-Discriminatory

Nondiscriminatory treatment is a critical aspect of good-cause protection, which is designed to protect dealers from arbitrary treatment.[62] The statute plainly provides that the requirements imposed or sought to be imposed by a grantor must be nondiscriminatory by their terms or in the manner of their enforcement as compared to the requirements imposed on other "similarly situated dealers."[63] Although there is much to unpack, commentators have distilled the rule down to the following:

> If a grantor wishes to terminate a dealer protected by [the WFDL] on the basis of default in a given area, the grantor must be prepared to show either that all other dealers in its organization whose performances in that area are as bad as or worse than that of the candidate for termination have themselves been threatened with termination or that the grantor has a good reason for treating differently any who have not been.[64]

At a high level, this prohibition is plain: a grantor cannot treat its dealer in La Crosse substantially differently from its dealer in Janesville (or from a dealer outside of Wisconsin). But identifying a similarly situated dealer is not always an easy exercise, as it is a rarity for two dealers to operate under

57. *Id.* ¶ 6.
58. *Id.*
59. *Id.* ¶ 8.
60. Much of the court's opinion is dedicated to assessing a statute of limitations question. *Id.* ¶¶ 9–21.
61. *Id.* ¶¶ 26–28.
62. Emerson, *supra* note 3, at 589 ("'Good cause' requirements in franchising have developed to compel franchisors to treat their franchisees equally and fairly.").
63. Wis. Stat. § 135.02(4).
64. Butler & Mandell, *supra* note 1, § 6.44.

identical market conditions and circumstances.[65] Nonetheless, as a federal judge noted when assessing whether evidence regarding the grantor's treatment of purportedly similarly situated dealers could be admitted at trial, "precise equivalence is not required; the parties must be comparable, not clones."[66]

Generally, the greater the number of dealers in a distribution network, the easier it is to identify an appropriate foil for a particular dealer.[67] The reverse is true as well; where there are only a handful of authorized dealers in the country, it is generally more difficult to compare their circumstances against one another.[68] That said, in *Deutchland Enterprises, Ltd. v. Burger King Corp.*,[69] the Seventh Circuit found a Burger King franchisee was not discriminated against when the franchisor terminated the relationship due to the franchisee taking on competing franchises, despite the franchisor permitting the other franchisees to do the same.[70] There, the purported dealer was not "similarly situated" to the other franchisees that were, unlike the dealer, publicly traded corporations and confronted the issue ten years before the dealer's lawsuit.[71]

Where a grantor acts consistently in its treatment of its dealership network, it is less likely to be found to act discriminatorily. For example, in *L-O Distributors, Inc. v. Speed Queen Co.*,[72] the U.S. District Court for the District of Minnesota found the grantor's decision to terminate due to poor sales performance was not discriminatory under the WFDL because, in part, the grantor has a "clear policy of terminating distributorships that fail to increase their market share."[73] A similar finding was made with respect to a grantor terminating a dealer for refusing to operate its store twenty-four hours a day as required for all of the grantor's stores.[74] In *Brown Dog*, a federal magistrate judge found that Quizno's termination of the dealership was not discriminatory because Quizno's made an "across-the-board decision to enforce more

65. *Id.* ("Rarely, if ever, will two dealers be operating under identical circumstances. Typically, they will be selling in different areas, each of which has different market characteristics. They will have different levels of experience with the grantor's products. They may be facing different levels of competition.").

66. Am. Dairy Queen Corp. v. Universal Inv. Corp., No. 16-CV-323-WMC, 2017 WL 4083595, at *2 (W.D. Wis. Sept. 15, 2017) (quoting Andy Mohr Truck Ctr., Inc. v. Volvo Trucks N. Am., 869 F.3d 598, 604 (7th Cir. 2017) (assessing claims under Indiana Franchise Disclosure Act and Indiana Deceptive Franchise Practices Act)).

67. For example, a national fast-food franchisor is likely to have enough franchisees in its network to appropriately assess an individual dealer.

68. For example, if a grantor has just five dealers covering the entirety of the United States, there is a significantly greater chance that the dealers are dissimilar.

69. Deutchland Enters., Ltd. v. Burger King Corp., 957 F.2d 449 (7th Cir. 1992).

70. *Id.* at 453.

71. *Id.*

72. L-O Distribs., Inc. v. Speed Queen Co., 611 F. Supp. 1569, 1581 (D. Minn. 1985).

73. *Id.*

74. Tiesling v. White Hen Pantry, 121 Wis. 2d 701, 361 N.W.2d 311 (Wis. Ct. App. 1984) (unpublished).

diligently the terms of the contracts that its [dealers] already had signed."[75] By contrast, in *Advanced Agri-Systems, Ltd. v. Southwestern Porcelain, Inc.*, the U.S. District Court for the Western District of Wisconsin found that the grantor's failure to terminate other dealers whose performance was worse than the dealer's demonstrated that the grantor discriminated against the dealer when it attempted to terminate the dealer for failing to meet its sales quotas.[76] All told, the nondiscrimination requirement necessitates consistency, but not necessarily homogeneity.[77]

vi. Imposed

The WFDL requires that the grantor can terminate on the dealer's failure to substantially comply with only those requirements that it has actually imposed or intends to impose on a dealer. The grantor cannot manufacture good cause on the assumption that a dealer will not be able to comply with a particular provision, nor can a grantor terminate a dealer because it "failed to do something that it did not know it was supposed to do."[78] The WFDL requires that the grantor bring the requirements "home" to the dealer in order for good cause to exist.[79]

This issue most commonly arises where a grantor asks its dealer to sign a new agreement that varies from the parties' previous dealings. As alluded to above, in many instances, a grantor has a legitimate interest in maintaining uniform contracts with its dealership network. Friction often arises when a grantor seeks to bring its dealership network into uniformity, particularly when the grantor seeks to formalize a long-standing handshake agreement or update the contracts of dealers with older contracts at renewal.

The case law on when a grantor can impose new uniform terms on a dealer is closely related to the systemic-change exception to good cause. In *Wisconsin Music Network v. Muzak*,[80] the Seventh Circuit found that a grantor requiring its dealers to participate in a new marketing program was justified as the dealer failed to demonstrate that it would suffer customer loss or decreased profits on behalf of the new program, whereas the grantor was able to demonstrate the economic necessity of its decision.[81] At summary judgment in the *Kaeser Compressor, Inc. v. Compressor & Pump Repair Services*,

75. Advanced Agri-Systems, Ltd. v. Sw. Porcelain, Inc., 2005 WL 3555425, at *14 (W.D. Wis. Dec. 27, 2005).

76. Advanced Agri-Systems, Ltd. v. Sw. Porcelain, Inc., No. 81-C-352 (W.D. Wis. Mar. 30, 1982) (unpublished).

77. Open Pantry Food Marts of Wis., Inc. v. Garcia's Five, Inc., Bus. Fran. Guide (CCH) ¶ 8072, at 14194–95 (Wis. Cir. Ct. Milwaukee Cnty. 1983) (holding a franchisor's toleration of some financial irresponsibility among its network did not preclude it from terminating an insolvent dealer); *see also* Original Great Am. Chocolate Chip Cookie Co. v. River Valley Cookies, Ltd., 970 F.2d 273, 279 (7th Cir. 1992) ("The fact that the Cookie Company may, as the Sigels argue, have treated other franchisees more leniently is no more a defense to a breach of contract than laxity in enforcing the speed limit is a defense to a speeding ticket.").

78. Butler & Mandell, *supra* note 1, § 6.39.

79. *Id.*

80. Wis. Music Network v. Muzak, 5 F.3d 218, 224 (7th Cir. 1993).

81. *Id.* at 224.

Inc. case, a federal judge determined that whether good cause existed for a grantor to require a dealer to commit to a new agreement already agreed upon by every other dealer in the network was a jury question due to the grantor failing to demonstrate the economic necessity and proportionality of the need for the dealer to undertake the proposed changes.[82] The grantor's attempt to impose the new agreement was assessed by the court through the systemic-change exception rather than the definitional good-cause test.[83]

This issue also arises in instances where grantors rely on the implicit imposition of a requirement. A course of dealing between the parties may reveal certain obligations and functions that differ or are not fully addressed even in the most detailed dealership agreements. Where no dealership agreement exists, it is markedly more difficult for grantors to "impose" a requirement on a dealer, and it is commonly more strenuous for parties to identify what is expected from the dealer.[84] As a result, grantors should be cautious when taking adverse action against a dealer for failing to comply with an implicit requirement.[85]

B. *Bad Faith*

Bad faith is an issue rarely litigated under the WFDL, but nevertheless serves an integral protection for grantors. Although not defined by the statute, bad faith can be understood as intentional actions undertaken by a dealer subversive to carrying out the dealership. Unlike many other state franchise relationship statutes,[86] the WFDL does not explicitly allow a grantor

82. Kaeser Compressors, Inc. v. Compressor & Pump Repair Servs., Inc., 781 F. Supp. 2d 819, 827 (E.D. Wis. 2011). Judge Griesbach explains that determining whether good cause exists is not always a comfortable exercise for judges:

> This is not to say that the above exercise is a comfortable one. The Fair Dealership law was designed to give a particular class of citizens—dealers—a leg-up in their relationships with mostly out-of-state manufacturers, who were viewed to have outsized bargaining power and an ability to exploit local distributors. But though the law may have been well-intentioned, it has sometimes required judges and juries to sit as economic commissars intermediating disputes between business entities or opining on the wisdom of various corporate structures (or even Girl Scout councils). Judges and juries, of course, have little training in assessing whether business activities are "reasonable" or "essential," and the costs and time involved in reaching a final decision are a product of the law's inherent uncertainties, many of which are on display in this case. Despite these concerns, I conclude that a trial will be required to determine the questions posed here.

Id.

83. *See infra* Part III.

84. *See supra* Part I.A.iii. (discussing essentiality).

85. Butler & Mandell, *supra* note 1, § 6.42.

86. Jason J. Stover, *No Cure, No Problem: State Franchise Laws and Termination for Incurable Defaults*, 23 Franchise L.J. 217 (2004) (observing that one commentator has noted, "most state franchise relationship statutes . . . provide that the franchisor may terminate the franchisee immediately or on very short notice if the franchisee has committed a severe or incurable breach. While every state defines a severe breach differently, common examples mirror those spelled out in most franchise agreements and include abandonment, conviction of a serious crime, declaration of bankruptcy, fraud, multiple breaches over a fixed period of time, or a violation that threatens public health or safety.") (collecting statutes); *see also* Chad J. Doellinger,

to immediately terminate a relationship if the dealer acts in bad faith, but, when a dealer frustrates the fundamental purposes of the dealership, case law from Wisconsin and elsewhere teaches that the relationship is irreparably vitiated, and thus immediate termination may be justified.

The U.S. District Court for the Eastern District of Wisconsin's decision in *Harnischfeger Corp. v. Superior Crane Corp.*[87] is the seminal WFDL case on bad faith. There, Superior Crane was a distributor for Harnischfeger—a designer and manufacturer of material handling equipment and parts.[88] During the course of the relationship, Superior Crane began to manufacture and sell pirated Harnischfeger parts without Harnischfeger's knowledge, authority, or approval.[89] The products were sold in a manner that would leave end consumers believing that they were purchasing genuine Harnischfeger products.[90] In addition to producing and selling counterfeit products, Superior Crane also misappropriated Harnischfeger's drawings and furnished such materials to third parties.[91] Harnischfeger sued, alleging a series of violations of the RICO Act, the Lanham Act, and Harnischfeger's common law and statutory trade secret rights, among other claims.[92] Superior Crane countersued under the WFDL alleging that Harnischfeger violated the statute by failing to provide Superior an opportunity to cure.[93]

The court viewed the main issue in this case as whether a dealer "who commits acts so egregious and so destructive of the dealership . . . waives his right to remedy the act or whether the acts create a harm which is incapable of being cured."[94] The court found that the "type of bad faith conduct displayed by Superior Crane and admitted by Superior Crane cannot be protected by the Wisconsin Fair Dealership Law," and thus Harnischfeger had the "right to terminate" the parties' relationship without an opportunity to cure."[95]

More recently, in *Rustic Retreats v. Pioneer Log Homes of British Columbia*,[96] a federal magistrate judge reaffirmed that "direct and incontrovertible evidence of serious bad-faith conduct at the time a grantor terminates a dealership may negate the notice requirement" under the WFDL.[97] But, at the preliminary-injunction stage, Pioneer Log Homes, unlike Harnischfeger, did

Incurable Breaches: A Fresh Look at an Old Problem, 32 Franchise L.J. 119 (2013) (discussing, *inter alia*, when criminal conduct, dishonesty and self-dealing, and failure to use best efforts may be deemed incurable).

87. Harnischfeger Corp. v. Superior Crane Corp., No. 94-c-1244, 1995 Bus. Franchise Guide (CCH) ¶ 10,618, at 26,468 (E.D. Wis. Feb. 13, 1995).

88. *Id.* at 26,469.

89. *Id.*

90. *Id.*

91. *Id.* at 26,470.

92. *Id.* at 26,470.

93. *Id.*

94. *Id.* at 26,471.

95. *Id.*

96. Rustic Retreats v. Pioneer Log Homes of British Columbia, 2020 WL 3415645, at *7 (E.D. Wis. June 22, 2020).

97. *Id.* at *7 (citing Wis. Stat. § 135.04).

not demonstrate that the dealer's use of its proprietary designs was bad faith as opposed to a "good-faith misunderstanding of or disagreement about the terms of the Agreement."[98]

The common thread across these cases and others[99] is that, once torn, the trust between the dealer and grantor cannot be patched up by the dealer merely expressing willingness to work with the grantor to rectify its actions. Some conduct is, by definition, legally incurable. While affording substantial protections for performing dealers, it seems inconsistent with the statute's purpose to force a grantor, like Harnishfeger, to continue working with a dealer that has used its position to undermine the grantor's ability to sell its products. It follows that, when conduct is so egregious to significantly harm a grantor's operations and goodwill, then bad faith likely exists and immediate termination is justified. That said, to date, there is no published state-court opinion on whether bad faith allows for immediate termination of a dealer.

II. Per Se Good Cause

The WFDL, like many franchise and dealership statutes,[100] recognizes that good cause may exist on account of the specific instances of a dealer's financial (ir)responsibility. First, good cause may exist when a dealer fails to pay sums owed under the parties' relationship; second, good cause may exist

98. *Id.*

99. *See*, *e.g.*, H&R Block, Inc. v. Otto, No. 80-cv-7409 (Wis. Cir. Ct. Dane Cty. May 5, 1980) (holding termination without notice was justified where a dealer undermined the foundation of grantor's business and reputation); Olin v. Cent. Indus., Inc., 576 F.2d 642, 648 (5th Cir. 1978) (termination without notice appropriate where a distributor misappropriated the grantor's products).

100. Garner, *supra* note 11, §§ 10:29-31 ("Under most states' relationship statutes, the franchisee's institution of insolvency or bankruptcy proceedings, or the assignment of the franchisee's assets for the benefit of creditors, is grounds for immediate termination of the franchise agreement. In those states where it is not a ground for immediate termination, it will certainly be upheld as ground for termination for cause, since insolvency or bankruptcy means that the franchisee cannot operate the business."). In addition to financial irresponsibility, many state statutes list other instances of per se good cause. *See* Robert W. Emerson, *Franchise Terminations: Legal Rights and Practical Effects When Franchisees Claim the Franchisor Discriminates*, 35 Am. Bus. L.J. 559, 582–84 (1998) ("(1) failure to pay when due all or some of the royalties or fees owed to the franchisor; (2) giving false reports to the franchisor; (3) abandoning or otherwise ceasing to do business at the specified location; (4) failure to correct defects in products or services; (5) failure to meet franchise standards and specifications, or repeated violations of any contractual conditions; (6) impairment of the franchisor's trademark; (7) conviction for a crime; (8) a court finding of bankruptcy, or otherwise having bankruptcy proceedings instituted against the franchisee; (9) general assignment of business assets to creditors; (10) having a receiver or designee take over franchise operations; (11) failure to adhere to the terms of any lease, mortgage, promissory note, installment loan, security agreement, or other financial instrument the franchisor holds over either the franchise itself or the business premises; (12) loss of the right to occupy the premises of the franchised business; (13) government seizure of or a creditor's foreclosure on the franchised premises; (14) operating the franchise in a manner imminently endangering public health and safety; (15) repeatedly failing to comply with lawful franchise agreement provisions; and (16) making a material misrepresentation to the franchisor."); *see also* Stover, *supra* note 86, at 217 n.2 (collecting statutes identifying when per se good cause exists).

where the dealer becomes insolvent, declares bankruptcy, or is otherwise assigned for the benefit of creditors. The notice and cure requirements for adverse actions undertaken pursuant to these changes is shorter than they are for actions taken pursuant to definitional good cause.

A. *Failure to Pay*

Under most dealership arrangements, a dealer will make payments toward a grantor for the right to sell or distribute its goods or services, or to use the grantor's trade symbols,[101] and such payments under such agreements are material to the continuation of the relationship.[102] Reflecting the importance of such payments, the WFDL has little sympathy for the failure of a dealer to pay sums owed and abbreviates the grantor's cure requirements. In *White Hen Pantry v. Buttke*,[103] the Wisconsin Supreme Court held that a grantor may terminate a dealership on ninety days' notice, but need provide only ten days, rather than the ordinary sixty days, to cure the default in the case of a monetary default.[104] But where the parties contract for more protection for the dealer than afforded under the WFDL—e.g., thirty days, instead of ten days, to cure a failure to pay—courts may follow the contract's protection.[105]

B. *Insolvency, Bankruptcy, and Assignment for the Benefit of Creditors*

The WFDL's notice and cure provisions do not apply when a grantor seeks to terminate, cancel, or fail to renew due a dealer's "insolvency, occurrence of an assignment for the benefits of creditors or bankruptcy."[106] Colloquially, the

101. Not every dealership arrangement requires payment from a dealer to a grantor. Indeed, the statute only requires: "A contract or agreement, either expressed or implied, whether oral or written, between two or more persons, by which a person is granted the right to sell or distribute goods or services, or use a trade name, trademark, service mark, logotype, advertising or other commercial symbol, in which there is a community of interest in the business of offering, selling or distributing goods or services at wholesale, retail, by lease, agreement or otherwise." Wis. Stat. § 135.02(3)(a). In *Benson v. City of Madison*, the Wisconsin Supreme Court made plain that a protected dealership existed despite the golf professionals not making any payment to the municipality. 2017 WI 65, ¶53, 376 Wis. 2d 35, 897 N.W.2d 16 (2017); *see also* Girl Scouts of Manitou Council, Inc. v. Girl Scouts of U.S. of Am., Inc., 549 F.3d 1079 (7th Cir. 2008); JusticePoint v. City of Milwaukee, Case No. 2023CV5026 (Wis. Cir. Ct. Milwaukee Cnty.) (temporary restraining order granted in similar circumstances; denial of temporary injunction currently on appeal).

102. *See* Taizhou Yuanda Inv. Grp. Co. v. Z Outdoor Living, LLC, 522 F. Supp. 3d 476, 490 (W.D. Wis. 2021) ("The primary purpose of the Cooperation Agreement was to sell furniture, so Z Outdoor's failure to pay for substantial amounts of that furniture qualifies as a material breach."); *see also* Prof'l Serv. Network, Inc. v. Am. All. Holding Co., 238 F.3d 897, 901 (7th Cir. 2001) (incomplete payment constituted material breach); *see also* Emerson, *supra* note 3, at 111 (identifying failure to pay as been among the principal reasons that courts have accepted good cause for the termination of franchise agreements).

103. White Hen Pantry v. Buttke, 301 N.W.2d 216, 220 (Wis. 1981).

104. *Id.* at 219–20.

105. *See* Badgerland Truck Repair, Inc. v. R&S Truck Body Co., Inc., Case No. 99-C-1275 (E.D. Wis. Dec. 8, 2000) (unpublished) ("Of course, if parties to a contract so desire, they may agree to provide each other with more protection than is mandated by law. That is exactly what happened . . ." where dealer was afforded thirty days' notice under the parties' agreement to cure payment defaults.).

106. Wis. Stat. § 135.04.

authors consider insolvency, bankruptcy, and the assignment for the benefit of creditors to be the proverbial "all roads lead to Rome:" the company is going down. Legally, each of these terms carries a different connotation.

In Wisconsin, unlike in other jurisdictions, insolvency "does not mean the inability of the concern or person giving the alleged preference to meet current obligations as they become due in the regular course of business," nor "does it mean that the company or person is presently operating its business at a loss."[107] Rather, insolvency "simply means that the assets of the alleged insolvent are insufficient, at a fair valuation, to pay his debts."[108] The case law on insolvency is limited, but that which exists supports the "fair valuation" approach to whether a dealer is insolvent.[109]

Unlike insolvency, both bankruptcy and the assignment for the benefit of creditors refer to legal status. A dealer is bankrupt when it is able to file for bankruptcy under the Bankruptcy Code or be forced into bankruptcy by creditors.[110] What the grantor can and cannot do during the bankruptcy proceeding is a tricky question best handled by a specialist in the area.[111] Outside of federal bankruptcy, Wisconsin, like many states,[112] has allowed its courts to supervise proceedings where a party is assigned for the benefit of creditors under what is now known as a Chapter 128 receivership.[113] As with bankruptcy, a Chapter 128 receivership provides a mechanism for a party to liquidate its assets in an ordinary fashion. In the case of insolvency, bankruptcy, or the assignment for the benefit of creditors, the WFDL allows the grantor to terminate immediately.[114]

107. Schmitz v. Wis. Soap Mfg. Co., 235 N.W. 409, 411 (Wis. 1931).

108. *Id.*; *accord* Beloit Liquidating Tr. v. Grade, 2004 WI 39, ¶39 n.16, 270 Wis. 2d 356, 677 N.W.2d 298 (2004). Wisconsin is an outlier in adopting such a limited definition of insolvency. Generally, insolvency has two commonly accepted definitions: (1) "insolvency refers to the inability of a debtor to pay its debts as they mature" and (2) where a company's debts exceed its assets. *See* 15A Fletcher Cyc. Corp. § 7360.

109. Open Pantry Food Marts of Wis., Inc. v. Garcia's Five, Inc., Bus. Fran. Guide (CCH) ¶ 8072 at 14194–95 (Wis. Cir. Ct. Milwaukee Cnty. 1983) (finding good cause where dealer had a negative net worth of $45,031.74 and its assets could not cover its debts).

110. 11 U.S.C.A. § 109.

111. *See* Garner, *supra* note 11, § 10:29, Institution of insolvency or bankruptcy proceedings. For more discussion on bankruptcy in the franchise and dealership space, see, for example, Alan M. Anderson & Renee L. Jackson, *The Dischargeability of Claims for Injunctive Relief after Bankruptcy*, 21 Franchise L.J. 134 (2002); William J. Barrett, *Counterpoint: Bankruptcy and Assignment of Franchise Agreements over Franchisor's Objection*, 32 Franchise L.J. 247 (2013); Matthew J. Burne, *The Effect of Franchisor Bankruptcy on Executory Supply Contracts: Does the Franchisee Have A Remedy?*, 18 Barry L. Rev. 191 (2012); Craig R. Tractenberg, *What the Franchise Lawyer Needs to Know About Bankruptcy*, 20 Franchise L.J. 3 (2000).

112. Robert Richards & Nancy Ross, *Practical Issues in Assignments for the Benefit of Creditors*, 17 Am. Bankr. Inst. L. Rev. 5, 6 (2009) (discussing assignment for the benefit of creditor statutes and noting that in recent years, such statutes "have been used frequently in some states, such as California, Florida, Illinois, Massachusetts and Wisconsin."); Sharyn B. Zuch, *Alternatives to Franchisee Bankruptcy: Workouts, Compositions of Creditors, Assignments for the Benefit of Creditors, and Receiverships*, 33 Franchise L.J. 359, 368–71 (2014) (discussing assignment for the benefit of creditor statutes).

113. Kristin K. Beilke et al., Collections and Bankruptcy in Wisconsin, § 2.16 (3d ed. 2022); Wis. Stat. § 128.001 *et seq.*

114. *Id.*

III. Judicially Created Good Cause

While definitional good cause and good cause per se exhaust the grounds in the statutory text that justify otherwise-restricted conduct on the part of a grantor, courts interpreting the WDFL have found another kind of good cause. To do so, they have looked outside the statute's plain language and recognized that a grantor may have good cause to undertake an adverse action due to its own economic circumstances. There are two forms of judicially recognized good cause: (1) where a grantor acts pursuant to a nondiscriminatory systemic change, and (2) where a grantor withdraws from a market entirely.[115] Although commonly conflated, market withdrawals and systemic changes are different forms of good cause, with the critical difference being that a systemic change affects the operations of the existing distribution system, while a market withdrawal contemplates a grantor leaving a position within the marketplace. To illustrate, a grantor requiring a dealer to pay an increased royalty on widgets sold by the dealer is a systemic change, whereas a grantor stopping to sell completely widgets in the dealer's territory is withdrawing from the market. Together, these two exceptions ensure that a grantor be able to respond to and accommodate for its own economic problems, while ensuring that its dealers are not hung out to dry.

A. *Systemic Change*

The authors' previous article discussed at length the *Ziegler Co. v. Rexnord Inc.*[116] decision in which the Wisconsin Supreme Court set forth the judicial framework for determining when a community of interest exists.[117] There, the court reversed the grant of summary judgment and remanded the proceeding for a jury trial on the community-of-interest question, entitling Ziegler to protection under the statute.[118] Within a year of that decision, the dispute between the parties was again before the Wisconsin Supreme Court, and, this time, the court was tasked with determining whether good cause existed.[119]

In *Ziegler II*, the parties disagreed as to whether the grantor's decision to discontinue or modify the relationship from a dealership to a "tight agency" was an "attempt to increase its profitability" or to "stem ruinous losses."[120]

115. When a market withdrawal constitutes good cause to terminate a dealership or franchise is a matter that has been a hotly contested. *See, e.g.*, Michael Dady, *The Olds Market Withdrawal: Is What's Past, Prologue?*, 21 Franchise L.J. 65 (2001); Edward Wood Dunham, *Two Sides to Every Story*, 22 Franchise L.J. 3 (2002); Leonid Feller, *The Case for Federal Preemption of State Dealer Franchise Laws: Lessons Learned from General Motors' Oldsmobile Litigation and Other Market Withdrawals*, 11 U. Pa. J. Bus. L. 909 (2009); Garner, *supra* note 11, § 10.24; Michael J. Lockerby, *Revisionist History? Kicking the Tires of J. Michael Dady's Market Withdrawal Cases*, 21 Franchise L.J. 177 (2002); Michael J. Lockerby, *Market Withdrawal: Judges and Juries Aren't Buying What Terminated Dealers Are Selling*, 22 Franchise L.J. 151 (2003).

116. Ziegler Co. v. Rexnord Inc., 407 N.W.2d 873 (Wis. 1987).

117. Mandell, Brodkey & Egle, *supra* note 4, at 33–37.

118. Ziegler, 407 N.W.2d at 882.

119. Ziegler Co. v. Rexnord, Inc., 433 N.W.2d 8, 10 (Wis. 1988) (*Ziegler II*).

120. *Id.*

The court understood the "real issue" to be whether a grantor may "alter its method of doing business with its dealers . . . to accommodate its own economic problems" or whether the grantor "must subordinate those problems—regardless of how real, how legitimate, or how serious—in all respects and permanently if the dealer wishes to continue the dealership."[121]

Addressing that issue, the court found that a "grantor's economic circumstances may constitute good cause to alter its method of doing business with its dealers, but such changes must be essential, reasonable and nondiscriminatory" and "objectively ascertainable."[122] The court deemed the contrary position to be "unjust and unreasonable" and determined that the "Wisconsin legislature could not have intended to impose an eternal and unqualified duty of self-sacrifice upon every grantor that enters into a distributor-dealership agreement."[123] This holding was further supported by existing federal case law, which held that it was "common sense" to allow a grantor the ability to make certain changes to its distribution network in response to its own economic needs.[124]

The *Ziegler II* decision is ideologically aligned with a series of federal cases applying the WFDL to instances of systemic changes and market withdrawal. The driving rationale of these decisions is best exemplified in *Remus v. Amoco Oil Co.*,[125] where the Seventh Circuit questioned the extent of the statute to prohibit systemic changes where a grantor sought to implement a discount for a cash marketing program.[126] There, Judge Posner noted, in dicta:

> The statute may go somewhat further than we have suggested and protect dealers against new competition that has substantially adverse although not lethal effects. The statute is primarily designed to benefit existing dealers (it cannot benefit new dealers much, for they will have to compensate their franchisors for any favorable terms that the statute requires be included in the franchise). . . . We hesitate to conclude that the Wisconsin legislature meant to go further still . . . to prevent franchisors from instituting nondiscriminatory system-wide changes without the unanimous consent of the franchisees. Not only would such a law completely transform the relationship of franchisor and franchisee . . . but it would not serve the interests of the franchisees as a whole. Even if most of them would benefit from a proposed system-wide change, a handful of dissenters might be able to block it by suing under the Fair Dealership Law, especially if . . . they can use the class action device to increase the impact of the suit.[127]

In *Morley-Murphy Co. v. Zenith Electronics Corp.*,[128] the Seventh Circuit distilled the *Ziegler II* decision into a three-part test: a grantor may have good cause for a proposed change if there is "(1) an objectively ascertainable need

121. *Id.* at 11.
122. *Id.* at 11, 14.
123. *Id.* at 11.
124. *Id.* (citing Remus v. Amoco Oil Co., 794 F.2d 1238 (7th Cir.1986)).
125. *Remus*, 794 F.2d 1238.
126. *Id.* at 1238–40.
127. *Id.* at 1241 (cleaned up).
128. Morley-Murphy Co. v. Zenith Elecs. Corp., 142 F.3d 373 (7th Cir. 1998).

for change, (2) a proportionate response to that need, and (3) a nondiscriminatory action" to implement that response.[129] In that case, Zenith sought to overhaul its distribution network due to losing over $300 million in the five years immediately preceding the termination dispute and begin selling directly to retail outlets, which meant terminating Morley-Murphy, which had been one of its distributors.[130] Despite Zenith's significant losses, the Seventh Circuit still found that whether good cause existed was a jury question that could not be resolved as a matter of law.[131] The test, as clarified by *Morley-Murphy*, remains the standard for when a grantor may have good cause through a systematic change, yet each element is teeming with nuance.

i. Objectively Ascertainable Need for Change

For a change to be "objectively ascertainable," the grantor must demonstrate that its proposed change is well supported by its own economic circumstances. The U.S. District Court for the Eastern District of Wisconsin's decision in *Builder's World, Inc. v. Marvin Lumber & Cedar, Inc.*[132] exemplifies the grantor's burden. There, Marvin Lumber sought to change its dealership network by adopting a dealer-direct sales model within Builder's World's exclusive territory in eastern Wisconsin.[133] Builder's World sought to enjoin Marvin Lumber from undertaking such an action because the change posed would significantly hamper its ability to sell Marvin Lumber products in the territory.[134] In turn, Marvin Lumber argued that it had good cause to undertake this change due some of its competitors eliminating their two-step distribution systems and selling direct to dealer and due to several large dealers seeking to purchase directly from Marvin Lumber.[135]

The federal district court rejected Marvin Lumber's argument. According to the court, Marvin Lumber presented no evidence that its dealers would turn to competitors' products if Marvin Lumber did not make the change.[136] Additionally, Marvin Lumber presented no evidence that, but for the proposed change, it would suffer financially.[137] Instead, as the court notes, Marvin

129. *Id.* at 378.
130. *Id.* at 374–75.
131. *Id.* at 378. The *Morley-Murphy* decision is most commonly referenced regarding its purported prohibition on the recovery of extraterritorial damages under the WFDL. *See, e.g.*, Brava Salon Specialists, LLC v. Swedish Haircare, Inc., No. 22-cv-695, 2023 WL 1795512, at *3 (W.D. Wis. Feb. 7, 2023); Track, Inc. v. ASH N. Am., Inc., No. 21-cv-786, 2023 WL 2733679, at *5 (W.D. Wis. Mar. 31, 2023); Brio Corp. v. Meccano S.N., 690 F. Supp. 2d 731, 745 n.5 (E.D. Wis. 2010); Generac Corp. v. Caterpillar, Inc., 172 F.3d 971, 976 (7th Cir. 1999). But the U.S. Supreme Court's recent decision in *National Pork Producers Council v. Ross*, 143 S. Ct. 1142 (2023) triggers reconsideration of that premise. *See* Jeffrey A. Mandell & Isaac S. Brodkey, *Recent U.S. Supreme Court Decision Shows That the Dormant Commerce Clause Does Not Preclude Wisconsin Fair Dealership Law Damages for Sales Beyond State Borders*, 2023 Wis. L. Rev. Forward 1 (2023).
132. Builder's World, Inc. v. Marvin Lumber & Cedar, Inc., 482 F. Supp. 2d 1065, 1075 (E.D. Wis. Apr. 3, 2007).
133. *Id.* at 1069.
134. *Id.*
135. *Id.* at 1074–75.
136. *Id.* at 1075.
137. *Id.*

Lumber's financial condition had never been better prior to its proposed changes, experiencing "record sales and record profits" in Builder's World's territory.[138] It follows that Marvin Lumber was unable to demonstrate that it had an objectively ascertainable need to implement its changes.[139]

A critical aspect of the *Marvin Lumber* decision is the inability of the grantor to show that it would suffer economic harm if prohibited from undertaking its proposed changes.[140] The importance of demonstrating as much has been repeatedly found to be a persuasive factor in assessing the legitimacy of a proposed change.[141] That said, significant economic harm is by no means the only way for a grantor to demonstrate that it is acting in response to a legitimate need for change. Judge Griesbach explained that "a grantor need not show that the change is necessary for the grantor's very survival as a business[; it] is enough if [the grantor] proves that the proposed [change] was a nondiscriminatory and proportionate means of allowing the company to stay competitive in its market."[142]

ii. Proportional Response

Naturally, the proportionality inquiry is closely linked to the determination of whether the grantor has an objectively ascertainable need for change. The most detailed discussion of the proportionality inquiry is found in the Seventh Circuit's decision in *Girl Scouts of Manitou Council, Inc. v. Girl Scouts of the United States of America*.[143] There, the Girl Scouts of Manitou Council sued the Girl Scouts of the United States of America (GSUSA) under the WFDL due to the national organization's proposed reduction of the council's territory.[144] GSUSA argued that it had good cause to undertake such changes under the systemic-change exception, arguing that it needed to compress its council structure to address "unfavorable trends [in] membership, brand image and program effectiveness."[145] The Seventh Circuit rejected its argument for failing to demonstrate an objective need for the proposed reduction and proportionality in response to that need.[146]

138. *Id.*

139. *Id.*

140. *Id.* at 1074–75.

141. *See, e.g.*, Morley-Murphy Co. v. Zenith Elecs. Corp., 142 F.3d 373, 375 (7th Cir. 1998); Brava Salon Specialists, LLC v. REF N. Am., Inc., 2023 WL 7709310 (W.D. Wis. Nov. 15, 2023) ("Absent some meaningful showing of actual, material harm to its sales, profitability or long-term economic health, defendant has made little effort to show either 'an objectively ascertainable need for change' or 'a proportionate response to that need.'").

142. Kaeser Compressors, Inc. v. Compressor & Pump Repair Servs., Inc., 832 F. Supp. 2d 984, 996 (E.D. Wis. 2011). In the summary judgment decision, Judge Griesbach noted that "[p]resumably a grantor could also cite a pressing economic opportunity it wants to seize." *See* Kaeser Compressors, Inc. v. Compressor & Pump Repair Servs., Inc., 781 F. Supp. 2d 819, 827 n.3 (E.D. Wis. 2011).

143. Girl Scouts of Manitou Council, Inc. v. Girl Scouts of the United States of Am., 549 F.3d 1079 (7th Cir. 2008).

144. *Id.* at 1084–85.

145. *Id.* 1099.

146. *Id.* at 1098–1100.

Regarding proportionality, the court noted that GSUSA sought to form fewer councils, "each with a larger size," but that, in the present circumstance, reducing the territory from the Manitou council will not change the number of councils in Wisconsin.[147] Instead of fewer, larger councils, as applied, GSUSA would have the "same number of local councils, at least one of which [Manitou] will have a reduced capacity."[148] Therefore, according to the court, if GSUSA's reason were taken at face value, its response to that need is inconsistent.[149]

The GSUSA decision teaches that a grantor's response must be carefully tailored to the objective need and the mere existence of a need cannot justify any response. Stated differently, a need for change is not carte blanche for a grantor to undertake any action it so chooses. This concept is well-rooted in *Ziegler II*, where the grantor was suffering economic loss from the current arrangement and, rather than fully terminate the relationship, sought to change the relationship to a "tight agency"; whether this change was proportionate to Rexnord's needs was a matter left up to the factfinder after trial.[150]

Unlike the modifications to an existing dealership as found in *Girl Scouts* and *Ziegler II*, the *Morley-Murphy* court faced the question whether the complete termination of a dealership network was proportionate to the grantor's worsening financial condition. The court ultimately found that whether the response was proportionate was a matter for the jury to decide. At first blush, the complete termination of a dealership network seems not to be a tailored, proportionate response, but the holding is tenable considering the overwhelmingly severe harm suffered by Morley-Murphy prior to its attempted overhaul.

iii. Nondiscriminatory Action

Much like the nondiscrimination element of the definitional-good-cause test, for the systemic-change exception to apply, a grantor must demonstrate that its proposed change is not discriminatory. That said, a grantor is not required to show that all of its dealers or distribution partners would experience an equal effect due to that change. Rather, the grantor is required to show that none of its dealers or distribution partners was singled out by the grantor's decision—either preferentially or uniquely disadvantaged as compared to others in the network. To that end, much can be learned from a series of federal cases that provide that "non-discriminatory, system-wide changes" may not trigger WFDL protection.

Consider the Seventh Circuit's discussion of the nondiscrimination principle in its *East Bay Running Store, Inc. v. NIKE, Inc.* decision.[151] There,

147. *Id.* at 1099.
148. *Id.*
149. *Id.*
150. Ziegler Co. v. Rexnord, Inc., 433 N.W.2d 8, 14 (Wis. 1988).
151. E. Bay Running Store, Inc. v. NIKE, Inc., 890 F.2d 996 (7th Cir. 1989). After nearly forty years in business, East Bay closed its doors in 2022, but left a lasting legacy. *See, e.g.*, Joseph Pisani, *Sneakerheads Mourn Eastbay, Whose Catalog Was the Bible of Athletic Shoes*, Wall St. J.

Nike informed East Bay (and all of Nike's other dealers) that Nike would no longer offer Nike Air products for resale by mail, catalog, or electronic means in an effort to ensure that end-consumers "receive personal individualized attention."[152] At the time, East Bay was overwhelmingly dependent on its mail-order sales operations—sales of Nike Air products accounted for twenty-nine percent of East Bay's total sales.[153] East Bay sued, alleging that Nike's purported change was a substantial change to its competitive circumstances, contrary to the WFDL.[154]

The court rejected East Bay's argument, finding that the record demonstrated that Nike implemented the policy for "all of its retailers in the United States on an across-the-board, system-wide, non-discriminatory fashion."[155] East Bay was neither terminated as a Nike dealer nor deprived of its ability to sell Nike Air products: East Bay could simply no longer market the product in its mailings and catalogs.[156] The court found no malicious intent or "ploy by Nike to appropriate the good will established by East Bay in marketing the Nike Air products in [the] region."[157] Instead, Nike simply wanted to reconfigure how a particular product line was sold.[158] Consequently, "[b]ased on the non-discriminatory nature of [Nike's] 'no mail-order' policy," the court found that the WFDL was not violated in the first instance, and thus the grantor was not obligated to prove good cause.[159] In subsequent years, courts have made similar findings,[160] although the authors doubt whether *East Bay* is consistent with the Wisconsin Supreme Court's *Jungbluth v. Hometown Inc.* decision[161]—and therefore whether the outcome would have been the same were the case litigated in state, rather than federal, court.

(Dec. 31, 2022), https://www.wsj.com/articles/sneakerheads-mourn-eastbay-whose-catalog-was-the-bible-of-athletic-shoes-11672511699; Dan Woike, *Commentary: Eastbay Catalog Memories: It's Where a Generation Went to Look at Sneakers—and Dream*, L.A. Times, (Feb. 14, 2019), https://www.latimes.com/fashion/la-ig-sneakers-memories-of-eastbay-catalog-20190214-story.html.

152. *East Bay*, 890 F.2d at 998.

153. *Id.*

154. *Id.* at 998–99.

155. *Id.* at 1000.

156. *Id.*

157. *Id.* at 1001.

158. As explained later, this was not a product line termination because Nike Air products remained available for sale. *See infra* Part III.B.

159. *East Bay*, 890 F.2d at 1001.

160. *See, e.g.*, Queen v. Wineinger, 2022 WL 3027004 (W.D. Wis. Aug. 1, 2022); Conrad's Sentry, Inc. v. Supervalu, Inc., 357 F. Supp. 2d 1086, 1098 (W.D. Wis. 2005).

161. Jungbluth v. Hometown Inc., 548 N.W.2d 519 (Wis. 1996). There, the parties' contract provided that the grantor may replace the dealer's fuel tank and remodel its service station. *Id.* at 525. The change proved to have a dramatic effect on the dealer's business, and, although justified under the contract, the court found that it was a substantial change to is competitive conditions, triggering the grantor's obligations to provide proper notice. *Id.* at 524. Before the no-mail order rule, East Bay derived twenty-nine percent of its sales from Nike Air products, and, if implemented, East Bay would lose much of that percentage. In a vacuum, that is a "substantial change to the competitive conditions," even if Nike was justified for implementing the change. The *East Bay* court conflated the adverse-treatment inquiry with the good-cause inquiry. The result is a divergent series of cases that do not track how substantial changes are treated by Wisconsin courts. *See also* Astleford Equip. Co. v. Navistar Int'l Transp. Corp., 632 N.W.2d 182 (Minn. 2001). *But see* Builder's World, Inc. v. Marvin Lumber & Cedar, Inc., 482

While *East Bay* holds that the WFDL is not implicated because there was no substantial change in the competitive conditions of the dealer, the decision also sheds light on how the nondiscrimination principle functions with respect to nationwide changes. East Bay was affected more severely than other dealers in the network, but, nevertheless, Nike did not discriminate against the dealer when it applied its no-mail order rule to its entire network.

B. *Market Withdrawal*

Ziegler II's determination that a grantor's own economic circumstances could constitute good cause for a particular action was partially sourced from a series of federal court decisions dealing with market withdrawal.[162] Conceptually, market withdrawal can be broken into two categories: (1) withdrawal from a marketplace, and (2) product-line terminations. What constitutes good cause in either circumstance is not subject to a defined test, like the systemic-change exception, but is not void of form. In both instances, a grantor must demonstrate an abandonment of a market position.

To date, there is no published Wisconsin state-court opinion on whether a market-withdrawal defense is viable under the WFDL, but the defense is well-established in the Seventh Circuit and elsewhere. In *St. Joseph Equipment v. Massey-Ferguson, Inc.*,[163] the U.S. District Court for the Western District of Wisconsin was tasked with determining whether a grantor's decision to withdraw from the construction-machinery market in North America was a violation of the WFDL.[164] In answering this question, the court presented a series of rhetorical questions:

> Is a company with a poorly-selling product compelled to keep making and/or selling it, even at a loss, because s 135.03 won't permit it to drop the product? Must a company desirous of withdrawing from a particular geographic market—the entire North American continent, for example—continue operating in that market, even at a loss, because the effect of such a withdrawal on dealerships would be impermissible under the Act? Because the Act's prohibitions extend also to non-renewals, would a company in the above situations be compelled to renew dealerships in perpetuity or until its ultimate financial ruin? Should dealers such as the plaintiff be permitted to extract damage awards from corporate grantors simply because those grantors have become victims of a business downturn?[165]

According to the court, answering any of these questions affirmatively "would surely be to let the tail wag the dog" and "[m]ore seriously, it has the potential to precipitate some formidable constitutional questions."[166] The court further explained that it would be inconsistent with the statute's purposes for

F. Supp. 2d 1065, 1074–75 (E.D. Wis. 2007) (addressing whether a substantial change occurred separately from whether a grantor was justified in implementing a systemwide change).

162. For a detailed discussion of the pre-*Ziegler II* market-withdrawal cases, see Ann Hurwitz, *Franchisor Market Withdrawal: "Good Cause" for Termination?*, 7 Franchise L.J. 3 (1987).

163. St. Joseph Equip. v. Massey-Ferguson, Inc., 546 F. Supp. 1245 (W.D. Wis. 1982).

164. *Id.* at 1246.

165. *Id.* at 1247–48.

166. *Id.* at 1248.

"fair business relations" or the "'continuation of dealerships on a fair basis' to force a grantor to endure substantial financial loss to enable a dealer to continue selling certain products."[167] And, while the WFDL's underlying purposes govern where a grantor's motivations for termination are larger than a question of performance, the court concluded that "where . . . a grantor makes a nondiscriminatory product withdrawal over a large geographic area, that, without more, is not a violation of the WFDL."[168] Accordingly, while the court found that the grantor's decision to withdraw from the market was not a violation of the WFDL, notably, the court held the statute still required proper notice.[169]

The Seventh Circuit's *Kealey Pharmacy & Home Care Services, Inc. v. Walgreen Co.*[170] decision is sometimes cited for the premise that there is no market-withdrawal defense under the WFDL. While the *Kealey Pharmacy* court notes that the defense is not provided for in the statute, it is important to evaluate the court's holding in context. There, Walgreen was not withdrawing from the marketplace, but instead sought to "maintain and increase its own stores in the same marketing area in competition with plaintiffs who helped build up the Walgreen reputation and image" in the market.[171] The court found no basis in Wisconsin law that would allow for the "withdrawal from a geographic marketing area *such as undertaken by Walgreen*."[172] Later, in *Remus*, Judge Posner noted that "Walgreen . . . was trying to eliminate the dealers who had built its reputation in Wisconsin, so that it could open its own stores and appropriate the goodwill that the dealers had created," which is "just the sort of conduct that the Wisconsin legislature had wanted to prevent."[173] Thus, it seems reasonable to interpret the *Kealey Pharmacy* holding as the Seventh Circuit snuffing out a grantor attempting to supplant its dealership network with company-owned stores under a market-withdrawal argument, opposed to conclusively holding that there cannot be a market-withdrawal exception.

As for product lines, in *Lee Beverage Co. v. I.S.C. Wines of California, Inc.*,[174] a grantor's discontinuation of certain product lines was found to be good cause.[175] There, Lee Beverage distributed alcoholic beverages for United Vinters, Inc., which decided to sell certain product lines to I.S.C.[176] In turn, I.S.C. decided to bid the distribution rights for those products out to other distributors.[177] Lee Beverage sued, alleging that United Vinters unlawfully

167. *Id.*
168. *Id.*
169. *Id.* at 1250.
170. Kealey Pharmacy & Home Care Servs., Inc. v. Walgreen Co., 761 F.2d 345 (7th Cir. 1985).
171. *Id.* at 350.
172. *Id.*
173. Remus v. Amoco Oil Co., 794 F.2d 1238, 1241 (7th Cir.1986).
174. Lee Beverage Co. v. I.S.C. Wines of Cal., Inc., 623 F. Supp. 867 (E.D. Wis. 1985).
175. *Id.* at 871.
176. *Id.* at 868.
177. *Id.*

terminated the parties' agreement, and, in response, United Vinters claimed good cause.[178] The U.S. District Court for the Eastern District of Wisconsin sided with United Vinters, finding that good cause may exist "where the profitability of wide-scale sales of a product line has sunk to such a point that a sale or discontinuation of the product line is justified for the good of the corporation."[179] Despite being justified under the WFDL to drop the product line, the grantor still violated the WFDL by failing to provide proper notice.[180]

While both of these exceptions are underdeveloped, each reflects the fundamental principles underlying any grantor-based good cause: the WFDL cannot be interpreted to require that a grantor perpetually maintain its presence in a marketplace. Rather, the WFDL places requirements on grantors when they enter a marketplace and utilize dealers to distribute goods and services to consumers therein. Principal to these protections is preventing a grantor from terminating a dealer and appropriating the goodwill and market created by the dealer. But, where a grantor desires to completely leave a given market or cease selling a product altogether, no misappropriation has occurred, and thus the WFDL cannot be used as a trap to freeze a grantor into an unproductive relationship forever.

IV. Conclusion

The Wisconsin Fair Dealership Law was enacted to "promote the compelling public interest in fair business relations between dealers and grantors, and in the continuation of dealerships on a fair basis."[181] That is precisely the balance struck by the good-cause requirement, protecting dealers from unfair treatment while not handcuffing grantors to unsuccessful dealers.[182] Despite the abundant case law on the issue, whether good cause exists in a particular circumstance is rarely an easy determination and turns heavily on the facts of a particular action.

178. *Id.*
179. *Id.* at 869.
180. *Id.* at 871.
181. Wis. Stat. § 135.025(2)(a).
182. Jeffrey A. Mandell & Isaac S. Brodkey, *Wisconsin Fair Dealership Law Turns 50: Developments Lawyers Should Know*, 97 Wis. Law. 10, 16–18 (Mar. 2024).