This edition of *Annual Franchise and Distribution Law Developments* covers decisions issued from August 1, 2016 through July 31, 2017. It was a busy year for the courts, as the volume of decisions issued during this period shows. If, as Ambrose Bierce said in *The Devil’s Dictionary*, litigation is “a machine which you go into as a pig and come out of as a sausage,” then quite a few sausages were made this year.

The chapters of *Annual Developments* have been revamped a bit this year. Consistent with the current focus in franchise law, this edition adds a chapter (No. 7) on control-related liability of franchisors. And if you search for the prior chapter on antitrust issues, you will not find it; instead, this topic has been folded into the chapter (No. 6) on other federal and state law issues (which combines previously separate chapters on federal and state issues). The topic of industry-specific statutes affecting the franchise relationship, which has seen high activity over the past year, is now a separate chapter (No. 3). And the prior chapter on common law has been incorporated in the chapter (No. 4) on disputes regarding performance, termination, and transfers.

This year’s International chapter covers recent developments in jurisdictions deemed most noteworthy by the Forum’s International Division, including Australia, Canada, the European Union, Kuwait, South Korea, and the United Kingdom.

The case summaries do *not* make note of the fact that a case may be unpublished, on the theory that if a summary suggests to you that the decision is worth reading in full, you will note the unpublished status and determine its meaning in the relevant jurisdiction. The case summaries do disclose any involvement by any of the authors in any particular case.

**Themes of the Year**

This year was not marked by any single bellwether decision, such as *Iqbal* on the standard for pleading, or *Winter* on injunctive relief, or *Atlantic Marine* on venue provisions. Instead, a collection of decisions was notable for courts’ and litigants’ efforts to test the boundaries of franchisors’ liability to franchisees’ employees, to franchisees themselves, and to third
INTRODUCTION

parties. The class action plaintiffs bar was particularly active on this front this year. Complaints alleging violations of labor and employment laws took center stage, involving every type of franchisee and employee, from restaurant workers to hotel workers to pizza delivery drivers to window cleaners and janitors. Beyond labor and employment, a wide range of other class action complaints covered a wide range of other activities in which franchisors had varying degrees of involvement, asserting claims for setting the tax rate too high on sales of bulk coffee beans, for failing to prevent a data breach that compromised hotel guests’ personal information, for advertising a one-hour massage that lasted less than an hour, for engaging in a text messaging campaign to promote pizzas, and for marketing “clean diesel” vehicles equipped with “defeat device” software designed to cheat emissions tests.

But despite a good deal of hand-wringing over the specter of far-reaching franchisor liability – whether direct, contributory, or vicarious – the courts’ decisions did not signal any rush to judgment against franchisors. Courts applied the unique facts of each case to the law of each case, with mixed results for franchisors, franchisees, and third parties.

This year was notable for a bumper crop of decisions in the area of motor vehicle dealer laws, with franchisee-dealers seeking relief from what they deemed to be unfair changes to their market areas, discriminatory incentive programs, and onerous requirements to make improvements to their dealerships. They had mixed success with these claims. Disputes regarding performance, termination, renewals, and transfers were, as ever, plentiful, and for every claim there was a counterclaim.

Whether in litigation or arbitration or both, the parties fought hard and often over procedural issues before getting to the merits of their disputes, eventually, if ever. In disputes over arbitrability – and there were many – the parties seeking to compel arbitration seemed to win more often than not.

Finally, both in the United States and abroad, data privacy and security issues are coming to the forefront. All eyes are on the European Union’s new General Data Protection Regulation (GDPR), deemed the most stringent and far-reaching data protection regime in the world. If a franchise system does business in the EU, advertises in the EU, has a website accessible in the EU, delivers products or services to the EU, or accepts reservations from the EU, among other things, then it is likely to be subject to the GDPR.
Introduction

As the world grows smaller and more complex, the need to learn about legal developments such as these grows correspondingly larger. The authors hope you will find this book useful for doing just that.