In a year in which the world was turned upside down, there was no upheaval in the area of franchise and distribution law. That’s not to say that nothing happened at all. The length of this book – summarizing some 372 decisions along with developments abroad – is testament to the fact that the legal system marches on, even during times of chaos and unrest. But unlike the last two years, when the saga of Browning-Ferris, the bombshell of Dynamex, and the controversial passage of AB5 sent the franchise bar into a frenzy, there were no shockwaves during the reporting period spanning from August 1, 2019 to July 31, 2020.

So what did happen? Well . . . lots of things. Although the outcomes were not unsurprising, there were a number of federal appellate decisions involving franchising issues. Many turned on arbitration, as courts continue to grapple with whether parties delegated the question of arbitrability to the arbitral decisionmaker, or, in the case of the Ninth Circuit, whether the parties had an agreement to arbitrate at all in the face of the California form of addendum provision that states such an agreement may not be enforceable. Other appellate decisions focused on whether franchisors are proper parties to class action suits involving employees of their franchisees – and at what stage of a proceeding it is appropriate to make that determination.

There were also a number of decisions interpreting state franchise sales and relationship statutes. The FranChoice decisions assessed whether sales brokers could be liable under the Minnesota, New York, Illinois, and Michigan franchise statutes for alleged misrepresentations made during the sales process. The Minnesota act came under particular scrutiny in that case, and other cases, as courts differed in opinion as to whether the law protects franchisees located outside of Minnesota. And the Brewer v. Money Mailer decision from the Washington Supreme Court undermined claims that a franchisor violates the Washington Franchise Investment Protection Act if charges a franchisee more than its own costs – or even double its costs – for goods sold to the franchisee.

Of course, there were also the routine breach of contract, fraud, encroachment, and holdover franchisee cases. And numerous cases addressing procedural issues, such as personal jurisdiction (particularly over
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franchisors in third-party claims), forum selection and venue, and arbitration-related issues. They’ve all been dutifully summarized, along with a smattering of PMPA and automobile dealer cases, business opportunity act claims, vicarious liability suits, and even a few Constitutional issues. Our goal was to identify all of the cases involving a franchise or distribution relationship, or that had an impact on those relationships. We think we covered the waterfront, and then some.

But we made some changes this year because, well, this year is different. Instead of summarizing cases in which a court entered default judgment, granted an unopposed preliminary injunction motion, or simply confirmed an arbitration award involving a franchise dispute (without any analysis of the underlying substance), we decided not to include those decisions because their value is minimal (even if meaningful to the litigants). We also elected to dispense with lengthy discussions for cases involving more common issues and analyses. This resulted in summaries of only a sentence or two, where we summarize the main holding because that’s really all that was worth reporting. Finally, we avoided lengthy descriptions of factual background or procedural posture in most summaries, only including that depth of description in cases where an understanding of the facts and posture were necessary, or the case was just that interesting.

A few other notes. We included cases that involve traditional distribution relationships that are not “franchise” cases. We found that the principals in these cases are applicable to the franchise relationship, however, and therefore potentially material to a franchise practitioner. So if you read a summary and think “what the heck does that have to do with franchising?”, we hope you will see the value in the legal principles or factual scenario that might be similar to what could arise in a franchise dispute. We also wrote a single summary for most decisions to be included in the chapter most relevant to the main issue in the case. However, you will note that there are cross references in other chapters or sections of the book – one to two sentence summaries with a reference to where the full case summary appears in the book. Given the length of this book, no one would ever have guessed we actually attempted to make it shorter!

As is the case every year, our summaries are just that. Because a summary might omit a critical fact that distinguishes the underlying case from a particular factual situation, practitioners should review the full case before citing it to opposing counsel or a court. We also did not designate unpublished opinions, so practitioners should check to ensure that a case we’ve summarized is actually a case that can be cited as precedent.