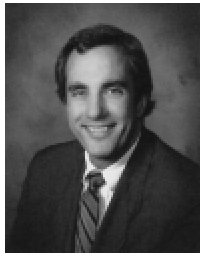
The Long and Winding Road: Automobile Dealers' Day in Court Act Turns 50



Gene J. Brockland[1]

I. Introduction

The Automobile Dealers' Day in Court Act,[2] a federal statute under which auto dealers can sue the manufacturers whose cars they sell, turned 50 in 2006. This article provides an overview of the act and the body of law that has developed under it during the last 50 years.

II. Overview of the Act

The legislative history of the act demonstrates that Congress fully intended to provide valuable assistance to automobile dealers in their business relationships with automobile manufacturers. Congress cited the "vast disparity in economic power and bargaining strength" that existed between dealers and manufacturers.[3] That disparity existed in 1956, and still does today, because the dealers are "with few exceptions, completely dependent on the manufacturer for their supply of cars."[4] Given the inequality of bargaining power, Congress enacted legislation that, upon first inspection, appears broad enough to drive a full-sized Hummer through. On closer inspection, though, the opening is more the size of a Mini Cooper.

The act provides that a dealer may sue to recover damages and costs of suit due to the failure of the manufacturer to act in good faith: (1) "in performing or complying with . . . the terms . . . of the franchise; or (2) "in terminating, canceling, or not renewing the [dealer's] franchise."[5] This seemingly broad language has spawned much litigation. Dealers have used it to address a variety of issues, with varying degrees of success. A few of the most important of these issues, or the most frequently litigated, will be discussed in Section V below.

III. Limitations in the Act

As broad as the act is, there are certain inherent limitations in its scope. First and foremost, the act requires a finding of coercion in order for a dealer to prevail. The coercion requirement arises through the definition of good faith. The act defines "good faith" as acting "in a fair and equitable manner . . . so as to guarantee . . . freedom from [actual or threatened] . . . coercion or intimidation."[6] Outside of the act, good faith generally means acting "honestly, openly, sincerely, [and] without fraud."[7] Because of the coercion requirement, however, the definition of good faith in the act is much narrower than it is in ordinary legal usage.[8] As a result, the dealer's burden is greater than it first appears.

Second, the act does not specifically provide for injunctive relief. In many situations, the dealer has an ongoing business relationship with the manufacturer that it hopes to continue, although perhaps with some changes in the manufacturer's practices. As such, injunctive relief is often a desired remedy. Although the act does not specifically provide for injunctive relief, a federal court construing the act still has inherent authority to grant such relief.[9] Perhaps because the act does not specifically provide for injunctive relief, most dealers in need of injunctive relief will look beyond the act, typically to state law. In Missouri, the Motor Vehicle Franchise Practices Act,[10] which will not be discussed here, can provide that remedy. For various reasons beyond the scope of this article, if injunctive relief is needed, the Missouri statute is preferable to the act.[11]

IV. Procedural Matters

The act provides for venue in the federal district court in which the "manufacturer resides, or is found, or has an agent."[12] A manufacturer is found, at the very least, where the dealer is located. Thus, a dealer can easily bring suit on its home court.

Over the years, a number of manufacturers imposed binding arbitration provisions on their dealers. Congress responded to this in 2002, amending the act to provide that arbitration provisions in dealer agreements are effective only if all parties "consent in writing to use arbitration" *after* the controversy arises.[13] Thus, a mandatory arbitration clause in a dealer agreement will not control to the extent that the dispute arises subsequent to the effective date of the agreement, which is virtually always the case.

V. Significant Case Law

Because a finding of lack of good faith requires a finding of coercion or intimidation, much of the litigation under the act turns on whether or not certain acts by the manufacturer rise to that level. Often, though, the acts that are alleged to be coercive center around the allocation of vehicles. That is, dealers file suit claiming either that they cannot get enough desirable vehicles, or, on the flip side, that they are required to accept too many undesirable vehicles from the manufacturer in order to receive a sufficient supply of desirable vehicles. Beyond allocation problems, another major area of litigation under the act centers around termination or non-renewal. Each of these areas will be discussed below.

A. Coercion or Intimidation

As stated above, a manufacturer has not violated its duty of good faith unless it has acted with coercion or intimidation. "Coercion under the Act [generally] consists of an either-or demand," such as, "You will triple the size of your showroom, or we will not provide you with our hot new car that everyone wants." Stated another way, "an either-or demand [is one] that will result in sanctions if not complied with."[14] "In addition, most courts have [required more,] that the coercive demand [itself is] wrongful, unfair, or inequitable."[15] Thus, in the example given above, a dealer would have to prove that tripling the size of its showroom is wrongful, unfair or inequitable in order to

prevail. Some courts require, however, that the manufacturer take into account the dealer's economic interests in making decisions that affect the dealer.[16] Failure to do so can result in a finding of a violation of the act. Fortunately for dealers, they do not need to present direct evidence of coercion or intimidation, which might be difficult to obtain. Coercion or intimidation can be "inferred from a course of conduct."[17] A "manufacturer's wrongful demand can be implicit" in the manufacturer's overall conduct, "without a showing of a [coercive], formal demand."[18]

Determining whether or not a manufacturer's actions amount to coercion or intimidation is a fact intensive exercise. An aggrieved dealer must closely and objectively analyze all the relevant facts. It is difficult to draw general conclusions from the case law. On balance, however, if the manufacturer has sound reasoning behind its actions, it is highly unlikely that a court will find coercion. On the other hand, if it appears that a dealer is being singled out and treated worse than other similarly situated dealers, a finding of coercion is likely.

Disputes between dealers and manufacturers typically escalate gradually over time. Rarely do they occur suddenly. Because of this, a manufacturer will often build its case over time, usually documenting its position with detailed letters to the dealer. These should be treated seriously by the dealer. To the extent they are able, the dealer should respond in writing with equal detail, not allowing the manufacturer to later present a very one-sided record.

B. Allocation

The proper allocation of vehicles is one major key to any dealer's success. Dealers want to be assured that they can get a sufficient supply of their manufacturer's desirable vehicles. At the same time, if the manufacturer is turning out some dogs that do not sell well, the dealer wants to avoid having to accept delivery of those vehicles. Not surprisingly, much of the litigation under the act centers around these two types of allocation issues.

Dealers have challenged allocation schemes with mixed success. Many allocation plans have withstood challenges from unhappy dealers. Where the allocation plan appears to be objectively reasonable and is applied evenly across all dealers, it likely will withstand a challenge. Allocation plans have survived challenges brought by dealers under the act where:

• one dealer received more cars that its competitor during a period of production shortage;[19]

• one dealer received a higher percentage of certain cars allotted than another received;[20]

• a dealer could not get all of the "fast-moving" vehicles it wanted; and[21]

• there were delays in deliveries, but no showing of willfulness or arbitrariness.[22]

On the other hand, certain allocation plans have not passed muster. Allocation challenges by dealers have been successful under the act where:

• a dealer had to order cars it did not want in order to get cars it did want;[23]

• the manufacturer allocated more desirable automobiles to new dealers than it did to existing dealers; and[24]

• the manufacturer curtailed the supply of new vehicles in order to “suppress price competition” and maintain prices at a desired level.[25]

In summary, where the allocation plan appears arbitrary, or where it appears to have been used to punish a dealer, it likely will support a finding of a violation of the act. On the other hand, if there is a rational basis for it, and it is applied evenhandedly, then the allocation plan will likely survive a challenge under the act.

C. Termination

Termination and non-renewal is another area of frequent litigation. The act was not meant to “tilt the balance of power so heavily in favor of dealers as to handcuff a manufacturer to an undesirable and unproductive dealer.”[26] Terminations often survive judicial scrutiny because, as one court said, “A franchise is not a marriage for life.”[27] Under the act, terminations have been found to be warranted in cases where:

• the dealer historically operated in financial difficulty and ultimately was unable to satisfy its creditors;[28]

• the dealer failed to meet the manufacturer’s goals and other dealers in similar, though worse, circumstances had been terminated;[29]

• the dealer added an unauthorized franchise to its premises; and[30]

• the dealer acknowledged having inadequate facilities, and failed to meet sales goals.[31]

On the other hand, termination has been found unjustified under the act where the dealer’s failure to meet the manufacturer’s goals had continued for a considerable length of time without a termination.[32] On balance, the reported cases reveal far more instances of terminations surviving judicial scrutiny than instances of terminations being found unjustified.

VI. Conclusion

The Automobile Dealers’ Day in Court Act, when it was enacted 50 years ago, seemed to promise great protections for dealers. Fifty years of litigation, however, has shown those protections to be somewhat limited.

Footnotes

1 Gene J. Brockland is a partner in the law firm of Herzog Crebs LLP. He graduated from the University of Virginia and obtained his J.D. from Washington University in 1985.

2 15 U.S.C. §§ 1221, *et seq.*

3 S. Rep. No. 2073, 84th Congress, 2nd Sess. 2 (1956).

4 *Id.*

5 15 U.S.C. § 1222.

6 15 U.S.C. § 1221(e).

7 *See, e.g., State ex rel. West v. Diemer*, 164 S.W. 517 (Mo. 1914).

8 *Bob Maxfield, Inc. v. American Motors Corp.*, 637 F.2d 1033, 1038 (5th Cir. 1981).

9 *See, e.g., Miller Plymouth Center, Inc. v. Chrysler Motors Corp.*, 286 F. Supp. 529 (D. Mass. 1968); *Bateman v. Ford Motor Co.*, 302 F.2d 63 (3d Cir. 1962).

10 Sections 407.810-407.835, RSMo. 2006.

11 For a full discussion of the Missouri statute, see Gene J. Brockland, *Leveling the Playing Field for Auto Dealers: Missouri Motor Vehicle Franchise Practices*, 62 J. MoBar 12 (2006).

12 15 U.S.C. § 1222.

13 15 U.S.C. § 1226.

14 *North Broadway Motors, Inc. v. Fiat Motors of North America, Inc.*, 622 F. Supp. 466 (N.D. Ill. 1984).

15 *Id.*

16 *Id.*

17 *Marquis v. Chrysler Corp.*, 577 F.2d 624, 634 (9th Cir. 1978), *citing* "H.Rep., [1956] U.S. Code Cong. & Admin. News at 4603" *Id., Autohaus Brugger, Inc. v. Saab Motors, Inc.*, 567 F.2d 901, 911 (9th Cir. 1978).

18 *Marquis v. Chrysler Corp.*, 577 F.2d 624, 634 (9th Cir. 1978), *citing Diehl & Sons, Inc. v. Int'l Harvester*, 426 F. Supp. 110, 124 (E.D. N.Y. 1976).

19 *Globe Motors, Inc. v. Studebaker-Packard Corp.*, 328 F.2d 645 (3d Cir. 1964).

20 *Leach v. Ford Motor Co.*, 189 F. Supp. 349 (N.D. Cal. 1960).

21 *Bateman v. Ford Motor Co.*, 204 F. Supp. 357 (E.D. Pa. 1962).

22 *General Motors Corp. v. Mae Company*, 247 F. Supp. 723 (D. Colo. 1965).

23 *American Motors Sales Corp. v. Semke*, 384 F.2d 192, 195 (10th Cir. 1967).

24 *Fox Motors, Inc. v. Mazda Distributors (Gulf), Inc.*, 806 F.2d 953 (10th Cir. 1986).

25 *Randy's Studebaker Sales, Inc. v. Nissana Motor Corp.*, 533 F.2d 510 (10th Cir. 1976).

26 *Carroll Kenworth Truck Sales, Inc. v. Kenworth Truck Co.*, 781 F.2d 1520, 1525 (11th Cir. 1986).

27 *Bateman v. Ford Motor Co.*, 302 F.2d 63, 66 (3d Cir. 1962).

28 *Hanley v. Chrysler Motors Corp.*, 433 F.2d 708, 711 (10th Cir. 1970).

29 *Sam Goldfarb Plymouth, Inc. v. Chrysler Corp.*, 214 F. Supp. 600, 602 (E.D. Mich. 1962).

30 *General Motors Corp. v. New A.C. Chevrolet, Inc.*, 91 F. Supp.2d 733 (D. N.J. 2000).

31 *Milos v. Ford Motor Co.*, 317 F.2d 712, 717 (3d Cir. 1963).

32 *Marquis v. Chrysler Corp.*, 577 F.2d 624 (9th Cir. 1978).