Mr. GOSSETT. I would think so, sir. And I would think the same situation would apply where we did not terminate him, but left him in and put another dealer in.

The CHAIRMAN. I think he could go into court, but he would not have much remedy.

Mr. GOSSETT. That is a question of fact for a jury to decide, sir, in his community. And the dealers stand pretty well in their communities, and justifiably.

The CHAIRMAN. You forget that there is a judge that presides, too.

Mr. GOSSETT. But the judge cannot decide the facts in a situation like this. I would think—I hope they will interpret the bill that way, but I would not think so.

The CHAIRMAN. Have you no faith in the jury system?

Mr. GOSSETT. Sir, I have the same faith in the jury system that you, as a distinguished and experienced lawyer, have. [Laughter.]

The CHAIRMAN. We see to it that the judges give proper instructions. And in the Federal Courts, you know that the judges have an extensive degree of power in that regard.

Mr. GOSSETT. I would hope that in the case cited, the judge would instruct the jury, but I would not have confidence in it, and I would like to have that cleared up as a matter of legislative interpretation. Certainly the bill does not clear it up.

. . . . .

The CHAIRMAN. It will take time for a legislative interpretation by the courts of the words that we announce by statute to develop.

Mr. GOSSETT. Mr. Chairman, how would you like to have a jury decide how to run your clients' business?

The CHAIRMAN. That is not the case here.

Id. at 382.

The CHAIRMAN. In order to protect your company and similar companies, we welcome from you any suggestions as to language so that you would not be hampered in your appointment of new dealers.

Mr. GOSSETT. Mr. Chairman, you said that if we were prevented by this statute from appointing new dealers—I think you said getting rid of an inefficient dealer—it would be a barbarous law, I think it would be barbarous. I think in many cases—let's assume, Mr. Chairman, that this dealer about which we have been talking here, suppose we went to the end of the franchise and we tried to straighten him out and get him back on his feet and tried to get him to go to work. Let's assume that he was being outsold 3 to 1 by the competition, with a car that was no better than ours.

Now, then, we go to the end of the franchise period, and we say, "The franchise is terminated, and we are going to replace you." Then he has a right to go to the jury and have the jury decide whether that is fair to him and equitable in the light of all the past circumstances.

The CHAIRMAN. I would say that the statute would be barbarous if you couldn't get rid of an inefficient dealer.

Id. at 384.

Mr. GOSSETT. . . .

The term "good faith" shall mean the duty of each party to any franchise and all its officers, employees, or agents thereof to act in a fair, equitable, and nonarbitrary manner toward each other so as to guarantee one party freedom from coercion, intimidation, or threats of coercion or intimidation from the other party.

Now let's assume that the manufacturer has a 5-year contract and he has complied with all of the terms of the contract.

The dealer has had trouble, and the manufacturer suggests to him certain changes. He suggests he hire more salesmen, he suggests that he increase his facilities and personnel for service and warranty work and the dealer complies with all the suggestions.

He gets down at 8 o'clock in the morning and he leaves late at night. He works very hard and he acts in good faith. But he does not do a good job. He is being outsold, he is inefficient. He is the inefficient dealer to which you have referred, Mr. Chairman.

law would require the manufacturers to spell out in their franchises detailed descriptions of the duties of dealers and keep careful records on each dealer so that a dealer could not say he was being coerced if a manufacturer insisted on performance of any of these duties.[368] Finally, although he opposed enactment, he asked:

> But could you not take the risk out of this from our standpoint without doing violence to the purposes of the statute by saying in so many words that nobody could misunderstand, that so long as the manufacturer was acting under the provisions of the contract and so long as he was using normal persuasive selling methods, that he is not subject to a charge of bad faith?[369]

Chairmen Celler asked Gossett to make suggestions later as to the language that would accomplish this apparently simple and reasonable request.[370] Many dealers who sought to use the statute that was ultimately passed would regret Gossett's request and the chairman's acceptance of it. Assuming there had to be a statute, the manufacturers won a major victory at this point.[371]

The NADA, Senators O'Mahoney and Monroney and Chairman Celler were faced with the threat of a presidential veto and a per-

Now then, what is the situation?

The manufacturer decides that as a last resort he must terminate the dealer and he so advises him.

Maybe he, a couple of times says to him, "if you don't do those things, we have no alternative but to terminate you."

In the first place he gets charged with coercion. In the second place, he gets charged with bad faith or lack of good faith for having suggested these things and done these things, and that has to be decided by a jury.

Now if you have a contract and the manufacturer fails to perform the contract, then I can understand that would have to go to a jury.

Of [*sic*] if the dealer fails to perform the contract or is inefficient, the manufacturer terminates, the only issue then is whether there has been performance or nonperformance of contract.

But when you get before a jury with terms like this where the question of fairness and equity are involved, in a fair, equitable and nonarbitrary manner are involved, you do not know where you are coming out. . . .

And even though the manufacturer has performed his obligations under the contract to the letter he gets charged with having acted in bad faith.

The CHAIRMAN. I would not view it that way. In the case that you have cited, I don't see how the manufacturer could be charged with either being unfair or inequitable or arbitrary. I don't think so.

Mr. GOSSETT. But that is up to the jury, is it not?

The CHAIRMAN. Yes.

Id. at 444.

368 *Id.* at 447.

369 *Id.* at 445.

370 *Ibid.*

371 Chairman Celler, a proponent of the bill, ended Mr. Gossett's presentation by saying, "I just want to offer my compliments to you on a very cogent and most illuminating statement." *Id.* at 457. It is my opinion that Gossett's presentation was extremely able and greatly influenced the committee.

suasive argument from Ford. Moreover, Celler had a lawyer's distaste for the imprecision of the Senate bill and was worried that it would protect even a clearly inefficient dealer. Compromises had to be made. The Good Faith bill was then amended so that it made both the Antitrust Division of the Department of Justice and the Ford Motor Company happier. First, the "equities of the automobile dealer" language was deleted. Second, a proviso that had been drafted by the legal department of the Ford Motor Company[372] was added to the definition of "good faith." It now read:

> The term "good faith" shall mean the duty of each party to any franchise . . . to act in a fair and equitable manner toward each other so as to guarantee the one party freedom from coercion, intimidation, or threat of coercion or intimidation from the other party: *Provided,* that recommendation, endorsement, exposition, persuasion, urging or argument shall not be deemed to constitute a lack of good faith.[373]

The Department of Justice and the Federal Trade Commission had no objection to the bill in this form.[374] However, as future court decisions would show, its sponsors had paid a high price for this neutrality.

On July 23, the amended bill was passed by the House by a vote of 146 to 45.[375] Debate was limited, and the committee report on the bill was available only thirty minutes before the debate began.[376] One Congressman predicted that the bill would raise car prices.[377] Congressman Charles Halleck[378] pressed Chairman Celler for a statement that the bill applied only to coercion and was not broader; Celler conceded that the bill was limited to coercion[379] and made some legislative history, which was valuable or damning depending on how you view the bill.

On July 25, the Senate agreed to the House amendments,[380] thus sending the "Dealers Day in Court Act of 1956" to the President. During this debate, Senator Bennett of Utah argued against the bill since he thought it would bar manufacturers from controlling dealers who "bootlegged" cars by selling them to used-car dealers.[381] The Senator, a former Ford dealer, accepted the position of the Dearborn dealers. The bill's proponents would spend much time denying this charge after its passage.[382]

President Eisenhower was to sign or veto the bill on August 8. The Department of Justice and the FTC had withdrawn their objections,[383] but the arguments of Secretary of Commerce Weeks against the bill were still as valid as they ever were. The supporters of the bill were concerned. The President left for a round of golf without making an announcement, and the NADA was worried.[384] However, he signed the bill with some reluctance.[385] The NADA assumed it had won a significant victory. Whether it really had is still debatable.

Senator Monroney's Omnibus bill, with its FTC regulation and other provisions, died with the adjournment of the 84th Congress, and the 85th Congress was to be occupied with the impact of Sputnik and a new view of the Soviet Union rather than with domestic issues. However, the *Automotive News* reported that the real purpose of Senator Monroney's bill was "to serve as a warning to the auto industry to either clean its own house or face the prospect of federal controls."[386] The effectiveness of this type of threat also is debatable.

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372 "Thereafter, Ford Motor Company submitted to Mr. Maletz, Chief Counsel for the Committee, the language that become ensconsed in the statute at the proviso to the definition of 'good faith'." Brief for Defendant, p. 50, Milos v. Ford Motor Co., 206 F. Supp. 86 (W.D. Penn. 1962), *aff'd*, 317 F.2d 712 (3d Cir.), *cert. denied*, 375 U.S. 896 (1963).

373 15 U.S.C. § 1221(e) (1963). The entire statute is now 15 U.S.C. §§ 1221-25 (1963). Section 1222 provides:

> An automobile dealer may bring suit against any automobile manufacturer engaged in commerce, in any district court of the United States in the district in which said manufacturer resides, or is found, or has an agent, without respect to the amount in controversy, and shall recover the damages by him sustained and the cost of suit by reason of the failure of said automobile manufacturer from and after August 8, 1956 to act in good faith in performing or complying with any of the terms or provisions of the franchise with said dealer: *Provided,* That in any such suit the manufacturer shall not be barred from asserting in defense of any such action the failure of the dealer to act in good faith.

Clearly, the definition of "good faith" is the key to the act.

374 Automotive News, July 16, 1956, p. 1, col. 1.

375 102 CONG. REC. 14078 (1956).

376 *Id.* at 14072-73.

377 *Id.* at 14074 (remarks of Congressman Scott).

378 Congressman Halleck is a Republican from Indiana.

379 Mr. HALLECK. Mr. Speaker, will the gentlemen yield?
Mr. CELLER. I yield to the gentleman from Indiana.
Mr. HALLECK. It strikes me that subsection (e) on page 4 is probably the heart of this matter. That is the subsection that defines the term "good faith." May I inquire of the gentleman whether or not that is so written as to really define "good faith" as freedom from coercion, intimidation, or threats of coercion or intimidation?
Mr. CELLER. The gentleman indicates what "good faith" means. It is limited to the duty to act in a fair and equitable manner so as to guarantee freedom from coercion or intimidation, or threats of coercion or intimidation.
Mr. HALLECK. In other words, while the words "fair and equitable" are used, speaking of the relationship between the parties, those words "fair and equitable" would be limited, as this language is contained in the bill, to "coercion and intimidation?"
Mr. CELLER. That is correct.
102 CONG. REC. 14070 (1956).

380 *Id.* at 14376-78.

381 *Id.* at 14374.

382 See, *e.g.*, Automotive News, Oct. 29, 1956, p. 3, cols. 3-4.

383 *Id.*, July 16, 1956, p. 1, col. 1.

384 Ullman, *Automotive Washington, id.*, Aug. 20, 1956, p. 10, cols. 1-3.

385 N.Y. Times, Aug. 9, 1956, p. 21, col. 5.

386 Automotive News, July 23, 1956, p. 1, col. 2.

On August 16, the Democratic Party attempted to use the plight of the automobile dealers and the battle for the Good Faith bill in their 1956 platform as evidence of the Republican Administration's concern with favoring big business and neglect of small business.[387] Needless to say, this issue failed to decide the election.

Almost two years later the "Automobile Information Disclosure Act"[388] was passed. This statute required manufacturers to affix to the side window of any new automobile a label which states a number of things. Most significantly, it states the name of the dealer and where he takes delivery, the method of transportation from the manufacturer to the dealer, and the retail delivered price of the automobile, optional equipment, and accessories. Disclosure of the "list price" inhibits "packing" since it is more difficult to give unrealistically high trade-in allowances and add the difference to the quoted prices. Disclosure of the original dealer and the method of transportation allows the consumer to see whether his car has been towed or driven across country with the speedometer disconnected. However, it also makes it easy to spot which dealers are "bootlegging" and for manufacturers to insist that the practice be stopped if they desire to do so.[389] Moreover, the effect of the price sticker statute when added to the Good Faith Act is to deter manufacturers' field representatives from suggesting that dealers "pack" or "bootleg" to meet artificially high sales quotas.

D. The Fourth Stage: Truce, Response, and Change by Manufacturers and Dealers

Once a statute is passed, its proponents can hope for changes caused by voluntary compliance and usually there is some amount of this. To a great degree the manufacturers complied with both state and federal statutes, and they attempted to do much more by taking steps to end the problems that prompted the dealers to turn to the government for help. Probably the extensive federal hearings were responsible for most of the changes although it is clear that the statutes had some effect. The NADA also made changes. In this section we will consider the re-establishment of diplomatic relations between the manufacturers and dealers, the internal changes made by the manufacturers, and the new franchises given to dealers.

387 N.Y. Times, Aug. 16, 1956, p. 13, col. 1.

388 Now 15 U.S.C. §§ 1231-33 (1963).

389 Senator Monroney talked about a price sticker bill in 1956, primarily in terms of a measure to stop "bootlegging." See *S. Hearings, Marketing Practices, Monroney* 120.

1. COMMUNICATIONS ARE RE-ESTABLISHED

Even before its congressional victory, the NADA attempted to re-establish good relations with the officials of the manufacturers. These officials were more than willing, and the ultimate result was the creation of an atmosphere where both sides could talk to one another. The NADA board met with factory and government officials at a formal dinner in Washington on June 14, 1956, while the legislative battle was still going on. Admiral Bell there praised the new era of good feeling.[390] The presidents of the major American automobile manufacturers addressed the next NADA convention in February 1957, and Admiral Bell introduced each one in glowing terms including his former major antagonist, Harlow Curtice.[391] However, at the end of 1958, Bell was forced to resign as NADA executive vice-president because of differences with the NADA board of directors about such things as whether or not NADA should fight for a territorial security statute, Bell's $70,000 a year salary, and his concept of his role with NADA.[392] Apparently Bell's exit further helped good relations. "There was considerable animosity in factory circles toward Bell. Many factory executives were convinced that he was an agitator of dealers rather than a spokesman for them."[393] At a dinner in July 1959, Chrysler's president, L. L. "Tex" Colbert, said "I think that the NADA is to be congratulated on having in Jim Moore [Bell's successor] an executive officer who can get results *through* mutual understanding . . . ."[394] The contrast with Bell was implicit.

NADA organized to take advantage of its new opportunity to talk with the top officials of the manufacturers and have its requests seriously considered. It had several committees to work with the manufacturers; at present there is the Industry Relations Committee. This group holds meetings throughout the year and meets with the manufacturers regularly. It considers matters that cross manufacturer or divisional lines. For instance, in 1964, the committee talked with manufacturers about such things as the discount, or markup, given dealers, compensation for warranty work, ending subsidies from manufacturers to fleet and leasing companies, ending factory owned dealerships, revisions of the franchises of all manufacturers, and the attitude of manufacturer field personnel toward dealers.[395] The committee has been successful in solving some dealer problems.[396]

390 NADA Magazine, Aug. 1956, p. 24.

391 *Id.*, Feb. 1957, p. 22 *passim.*

392 See Automotive News, Dec. 22, 1958, p. 1, cols. 2-3; *id.*, Jan. 12, 1959, p. 1, cols. 4-5.

393 *Id.*, Dec. 22, 1958, p. 1, cols. 2-3.

394 NADA Magazine, July 1959, pp. 36, 37.

395 Address by Sam H. White, *Report of the NADA Industry Relations Committee*, 48th Annual NADA Convention and Exhibition, Feb. 3, 1965.

396 we enjoyed a fine atmosphere in which to meet with the top factory officials . . . .

2. INTERNAL CHANGES IN THE ORGANIZATIONAL STRUCTURE OF MANUFACTURERS

In discussing the tactics the manufacturers used in attempting to block federal legislation, I noted many changes in the internal structure of these corporations that were announced with the hope of persuading Congress that legislation was unnecessary. Most of these changes were put into effect and were not simply public relations stunts. For example, communications now can move more freely from dealer to the top management and the conduct of the manufacturers' field personnel is subject to detailed review. While there are some complaints from the dealers, it is generally agreed that the situation is greatly changed for the better.[397]

a. Communications

Basic changes have been made in the operation of company dealer councils so that these groups are more representative and so management will hear about the actual views of the dealers rather than what the dealer representatives think will please the companies' sales staffs. All four American manufacturers now have elected dealer councils for each division of their companies—there is a Chevrolet and Buick council in General Motors and a Plymouth and Dodge council in Chrysler, for example. Typically, regional council members are elected by all the dealers selling a make in a particular area. There is an attempt to have metropolitan, small-town, and rural dealers represented. The members tend to be established dealers who have been in business long enough to be known favorably to others who sell the same make of car. A maverick will not often be elected. The members of the regional council then elect one man to be a member of the make's national council. The manufacturers have taken steps to create independent and free discussion since they find the meetings a valuable source of information about the health of their organization. These councils consider problems of particular interest to those who sell a certain car. They can talk about such things as problems in the design of a car that are causing trouble, problems concerning distribution and allocations, and even problems concerning the operations of a zone or district representative of the factory. The manufacturer's men at these meetings listen and many, but not all, of the councils' suggestions are adopted. Many dealer trade association managers think that the councils are very effective.[398]

In addition to the dealer councils, there have been organizational changes to bring the dealers' views to the management. General Motors and Chrysler have appointed committees of dealers that advise the presidents of these corporations.[399] The Chrysler group has considered the appearance of Chrysler cars to appear in the future, long an area closed to dealers.[400] Undoubtedly these groups have ready access to the most important people in their corporation. However, some dealer organizations dislike the fact that these groups are appointed rather than elected. They assert that at times discussion is stopped in, for example, a Pontiac dealer council meeting because the matter affects all of the divisions of General Motors and is not just a Pontiac problem. Then the problem must move to a body that is not responsible to an electorate.[401]

General Motors established a vice-president in charge of dealer relations apart from the sales staff so that conflicting interests would be avoided. Ford created its Dealer Policy Board that is composed of top executives with broad experience.[402] This group is available for conferences with any dealer about any subject he wants to raise. Ford also brings many dealers to Dearborn for training programs, and they have an opportunity to talk with company executives about problems.[403]

b. Review of Decisions to Terminate a Franchise

The manufacturers have created elaborate procedures to cancel a franchise that are designed to protect both their interests and the dealer's. The automotive sales vice-president of American Motors Corporation described its approach to termination as follows:

We work with the dealer for as long as we feel it is necessary

. . . we feel a real sense of acomplishment that the views expressed, discussions held, decisions made and actions taken were done without recourse of "going to Government" . . . this is the way a great industry should approach its problems and find solutions.

Galles, *The NADA Task Force Report*, NADA Magazine, March 1963, p. 30.

397 Interviews with trade association managers.

398 All of the material in this paragraph is based on interviews. See also Automotive News, May 7, 1962, p. 4, col. 1; *id.*, March 14, 1960, p. 2, cols. 1-3.

399 *Id.*, April 4, 1960, p. 2, cols. 1-3; *id.*, Nov. 13, 1961, p. 1, col. 2, p. 44, cols. 1-3.

400 *Id.* at 44, cols. 1-2.

401 See *id.*, April 4, 1960, p. 2, cols. 1-3.

402 Benson Ford, chairman of the Dealer Policy Board, said, "We have no direct sales responsibility, as far as the corporation goes, and so dealers can come in to us on anything and we consult with the divisions on various things that they bring up, and we have had some division policies changed because of what some of the dealers have brought in . . . ." *Id.*, May 23, 1960, p. 22, col. 3. A dealer does not have to go through the chain of command—through district, region and division—to talk with the Board but can come directly to it. *Ibid.* The division is not informed unless appropriate and then not until after the dealer has talked with the Board. *Id.* col. 4. The Board also conducts surveys of dealer opinion. *Id.* col. 1.

403 See *id.*, May 22, 1961, p. 1, col. 5; *id.*, May 7, 1962, p. 4, col. 1.

to come to a conclusion as to whether he is going to represent Rambler properly.

If we think he isn't, we tell him so but he still gets "one last day in court." We sit down with him and the zone manager in an attempt to work out the problem.

This isn't a method of termination, it's a method of helping the dealer to cut the mustard.[404]

Ford has an elaborate system for handling dealers who fail to meet sales quotas or other requirements. (1) The field manager requests management assistance for the dealer. Specialists "in all phases of the retail business are employed at our field offices, and their services as consultants are offered without charge to any dealer who may need them."[405] A program is developed for the dealer by Ford's staff. Often the dealer is given deadlines by which he must adopt the program and remedy the situation. (2) If the problem is not solved by the deadline, the field manager may recommend termination. (3) The district staff meets to evaluate the dealer's performance and to see that the file shows both inadequate performance and all reasonable help has been offered. (4) The district staff may recommend termination and forward the file to the regional office. (5) The regional office reviews the file and a representative visits the dealer. He is interested in the dealer's attitude and the help that has been offered by the field manager and the district staff. (6) The regional office may recommend termination and send the file to the head office in Dearborn, Michigan. (7) The Ford General Sales Office reviews the recommendation as does the vice-president in charge of sales. (8) The dealer is sent a termination notice.[406] The process may be stopped at any point if the official questions the judgment of his subordinates.[407] While such an official is unlikely to overrule a subordinate very often because of the obligation to back up one's staff, the official's own action may subject him to criticism from his superiors. As a result, the process requires the field managers to build a careful file to protect their own reputation and for each decision maker to comply with Ford policy as interpreted by his superiors. Clearly, all this "red tape" makes capricious judgments to cancel a dealer rather unlikely.

All of the American manufacturers have still another step in their internal cancellation procedure. All have some type of court of last resort to which the dealer may appeal after he receives a termination notice.[408] General Motors, as a result of the criticism

404 *Id.*, Feb. 3, 1964, p. 10, col. 1, at 10, col. 5.
405 Letter from official of Ford Motor Company.
406 Brief for Appellant, p. 47-48, Kotula v. Ford Motor Co., 338 F.2d 732 (8th Cir. 1964), *cert. denied*, 380 U.S. 979 (1965); *S. Hearings, Marketing Practices, Monroney* 980.
407 *Ibid.*
408 See *id.* at 20-21, 694; Automotive News, May 23, 1960, p. 22, cols. 1-5.

voiced in the O'Mahoney hearings, moved this function from a group of the top executives of the corporation to an impartial umpire and appointed a retired federal judge to the job.[409] This avoids any suspicion that the proceeding is a sham because the umpire should feel very little pressure to back up the sales staff to keep up morale or to keep up the pressure for sales. A General Motors official said that the umpire has decided relatively few cases but that some have been decided in favor of the dealer.[410] Ford and Chrysler dealers probably could have had an independent umpire if they had pressed for one in the 1950's after General Motors had led the way. However, these dealers did not see an umpire as particularly valuable because they could always take cases to the federal courts under the Good Faith Act.[411] One should consider this decision after the cases interpreting that act are discussed later.

Ford's Dealer Policy Board will review terminations if the dealer asks it to. This board has no sales responsibility and reports only to the company's board of directors.[412] A Ford official has said, "Historically, the Board has set aside Notices of Termination in approximately one-third of the cases brought before it, and given the dealers an additional period of time in which to improve."[413] However, many trade association officials said that it is very hard to win a case before the board and hard to get action quickly.[414]

An example partially based on a report of an actual case will indicate the kind of situation in which the board may offer some relief.[415] A Ford dealer had been in business for many years in a

409 N.Y. Times, June 1, 1956, p. 36, col. 2.
410 Automotive News, June 13, 1960, p. 2, cols. 1-2.
411 "For cancellations are relatively rare and the [Ford] dealers feel little need for an umpire, as GM will soon provide. Ford dealers said the U.S. courts could handle the few chores an umpire might perform." *Id.*, March 19, 1956, p. 82, col. 3. Plymouth and DeSoto "dealers also rejected an umpire for adjudicating cancellations, apparently feeling that this was no problem." *Id.*, March 26, 1956, p. 58, col. 3.
412 Letter from official of Ford Motor Company.
413 *Ibid.*
414 Interviews.
415 For an interview with the members of the Ford Dealer Policy Board about its operations, see Automotive News, May 23, 1960, p. 22, cols. 1-5, p. 28, cols. 1-5, p. 30, cols. 3-5. It was reported that a member of the Board said that

> In the field of contract terminations . . . the board has sometimes agreed with the car division. In other cases, it has rescinded the termination or has recommended that the division give the dealer further opportunity to improve his performance.
>
> . . . .
>
> "There is no rubber stamping of a division's recommendations. We know full well that if we ever fail to hear out a dealer or lose our impartiality, we would lose our reason for existing."

Id., May 22, 1961, p. 1, col. 5, at 13, col. 1.

smaller city. He had always had adequate sales. A Chevrolet dealer was established in his town by Motors Holding Corporation —a subsidiary of General Motors which finances a man who wants a dealership but has insufficient capital. The new Chevrolet dealer received especially favorable allocations of the best selling models immediately after that year's car was introduced. He had new facilities opened with money obtained by Motors Holding credit. He was able to arrange unusually favorable financing terms for his customers from General Motors Acceptance Corporation, another subsidiary. Finally, to establish himself the Chevrolet dealer was willing to take a very low rate of return on his and Motors Holding's investment. The effect of this Chevrolet campaign was to cut Ford sales drastically. The Ford dealer's facilities were not new, he did not have unusual numbers of the best models and he could not offer nearly so favorable financing terms. Moreover, the Chevrolet dealer's low return was largely on General Motors' money; the Ford dealer was playing with his own. The Ford dealer's franchise was cancelled for poor sales and an unwillingness to invest heavily in new facilities and to cut prices to compete. All of the sales division's chain of command review relied heavily on the field man's reports. The Dealer Policy Board conducted an independent investigation and reversed the decision as it viewed the case as one where Ford had not done enough to aid the dealer. In effect, the board created new policy on the company's responsibility to meet this kind of attack from General Motors.[416]

c. *The Revised Franchises*

It will be recalled that General Motors announced sweeping revisions of its dealer selling agreements so that the O'Mahoney and Monroney committees could discuss at their hearings General Motors' future virtues rather than its alleged past sins.[417] The other manufacturers responded to both the hearings and the Good Faith Act as well as to the leadership of General Motors by reworking their standard form "contracts" with their dealers.[418] This was a significant example of the fourth stage—compliance with the demands of the legal system without the necessity of enforcement.

i. THE FUNCTIONS OF A FRANCHISE

To understand the significance of the changes that were made in the franchises, we must ask whether the language used in these

[416] The case presented in the text is based on several examples obtained through interviews. Of course, I do not know that General Motors has ever given any particular Motors Holding dealer so many advantages. Some Ford dealers think that General Motors has.

[417] See note 265 *supra* and accompanying text.

[418] See Automotive News, April 29, 1957, p. 1, cols. 1-3, p. 6, cols. 3-5, p. 8, cols. 2-4.

documents makes any difference. Many dealers say that they never read their franchise because "if I do the job, I will be all right."[419] The road men who talk with dealers seldom discuss problems in terms of a failure to perform paragraph 2(a)(i) of the sales agreement; rather they talk about a failure to sell enough cars.[420] Some have said that everything turns on the views and attitudes of the dealer and the factory representatives who decide whether or not the dealer is selling enough cars, has adequate facilities, and has enough capital invested in his business. While undoubtedly this is all true, these documents do have functions. Most simply the selling agreement is a symbol of the relationship, and the dealer needs one to be in business. As a result, the factory can impose conditions on giving the dealer one or renewing an existing one. Often, the dealer will have to sign a letter drafted by the company in which "he states" that his sales or facilities are inadequate and that he will take steps such as hiring more salesmen or building a new showroom.[421]

Moreover, the words used in these documents have significance. In the words of a Ford official, "a termination cannot help but to engender motivations apart from purely business considerations, including pride."[422] As a result, a cancelled dealer has strong

[419] Interview. See also *S. Hearings, Marketing Practices, Monroney* 1410.

[420] Interview.

[421] See, *e.g.*, Milos v. Ford Motor Co., 317 F.2d 712, 714 n.2 (3d Cir.), *cert. denied*, 375 U.S. 896 (1963).

[422] Letter from official of Ford Motor Company. See also the following comments:

> There are many reasons why a dealer will object to termination of its dealer agreement by the manufacturer. Perhaps there are as many reasons as there are dealers facing such termination. I personally believe one of the most important reasons is purely pysychological; that a dealer does not want to feel "defeated" by having been terminated. Most people who become automobile dealers, in my opinion, are strong-minded individualists who enjoy the position of being an independent business man in their communities. Of necessity, they must have confidence in their own ability or they would not be willing to take the risk of entering into business for themselves. Therefore, I believe they view termination by a manufacturer as a substantial blow to their own self-confidence or self esteem.
>
> Many individuals operate automobile dealerships as one of several business enterprises. Whether or not their automobile dealership is substantially profitable may or may not be important to them, if they have adequate revenues from other sources. Under such circumstances an individual may operate an automobile dealership because he enjoys the business. Others, I believe, will "hang on" out of sheer desperation, since they may have all of their available investment funds tied up in the business or may even be substantially in debt to a bank or finance company for the capital which was required to begin operating as an automobile dealer. Their continuing operation is the only possible means they have of meeting their obligations.
>
> The above are my personal opinions based on some degree of experience but again do not reflect any study of the question.

Letter from official of Chrysler Corporation.

reasons to seek revenge in court, where contract language may be crucial. Since the document must serve this function, it may become the focus for considering and defining many company policies relating to the dealers. In effect, the words used in the document set the outer limits and define the points where the field staff's discretion begins. Also, some dealers do read the document and all will read it when there is trouble. Thus the terms and conditions do tend to create expectations, both by being read and by influencing the actions of the company's personnel whose conduct in turn causes dealers to make assumptions about their rights.

ii. THE INTERESTS OF THE PARTIES

Assuming that the document will serve some functions, what might manufacturers and dealers hope to achieve through the language used in the franchise? The manufacturers may seek several things. They want to create a relationship in which they can promote sales. They want to define and limit their exposure to all risks they can foresee so that these risks can be planned for or avoided. They want, finally, to establish efficient procedures for ending their relationship with a dealer. In many ways, the most rational selling agreement from this point of view was the type used in the 1930's. This document typically was relatively short; required, in effect, that the dealer keep the company satisfied with his sales, service, facilities, and personality; carefully said that the company was not promising to fill any of the dealer's orders for cars or parts and that the dealer was not an agent for the company; and allowed either party to terminate at will. The dealer had no contract rights that could be enforced in court, third parties would have trouble holding the company responsible for the dealer's actions, and the company could press for greater sales by being hard to satisfy and using its right to terminate at will as a sanction.[423]

While this document expressed the manufacturers' interests nicely, it did little for the dealers. They have sought over the years to add provisions which would cost the companies many of the benefits of the 1930 model agreement.[424] Dealers want their risks and expenses minimized. For example, a dealer must buy a stock of cars, but his inventory loses value when new models are introduced. Dealers want the manufacturer to assume this loss. Dealers want recognition of their control over their own businesses. For example, they want the right to leave the business to a son or sell the going business to a third party. Dealers also want security in the existence and profitability of their business. For example, termination at will is an insecure foundation for an

[423] See, *e.g.*, FORD MOTOR COMPANY, FORD SALES AGREEMENT (1938).
[424] See, *e.g.*, *S. Hearings, Marketing Practices, Monroney* 173.

investment of several hundred thousand dollars and demands to build new facilities or double the sales force strain the ability of the enterprise to produce a satisfactory return on a dealer's investment.

iii. THE CHANGES IN THE FRANCHISES AND THE EFFECT ON THE INTERESTS OF THE PARTIES: THE MANUFACTURERS' POWERS

The changes in the 1956 and 1957 franchises represent some movement from a selling agreement that maximized the manufacturers' interests to one that recognized more of the dealers' interests, but the manufacturers did not give up all of their power. Much of a manufacturer's power comes from its ability to end the relationship at less cost to itself than to the dealer. This provides the starting point in our survey of how much power the manufacturers gave up. Realistically, why might a manufacturer, or some of the people working for it, want to end the business relationship with a particular dealer? (1) Most commonly the dealer is not selling enough cars, as measured by the factory's view of the potential of his area. Since each man in the manufacturer's sales staff is judged by the sales in his area of responsibility, the failure of a dealer to maximize sales may hurt those in the chain of command above him. Most directly injured is the road man who talks with dealers. He will want to replace all dealers in his area who are below the mark and cannot be rehabilitated quickly so that his area can set records and win him promotion. (2) The dealer may have smaller or older facilities or less capital devoted to the business than the factory thinks appropriate. (3) The dealer's business may have been disrupted by any number of personal problems such as illness or withdrawal of a partner. The dealer may be in jail after conviction of a crime. The dealer may not be opening his business regularly during normal business hours. He may be a step away from bankruptcy. (4) The manufacturer may want to punish the dealer for taking on the franchise of another maker's car or buying parts from independent suppliers rather than the manufacturer. (5) A "better" dealer may be available. He may have more capital or skill. He may be willing to move the dealership to a new suburban location to keep up with population trends. He may be a relative of top factory officials or an executive who wants to move from Detroit to a profitable dealership. (6) The dealer may be disliked by some people who work for the manufacturer who want to do him harm for purely personal reasons.[425]

[425] See the following comments: "The most common specific reasons for cancellation are inadequate sales performance, inadequate service performance, inadequate facilities, inadequate inventory and inadequate working capital." Letter from official of American Motors Corporation.

While I have not made any study of the question, I believe the

Under the new franchises, can the manufacturers end their business relationship with the dealer for any or all of these reasons? In one sense, the answer is that they can. Under the terms of most franchises, a manufacturer can wait until it expires and refuse to renew without giving reasons.[426] While most American Motors selling agreements run for only one year,[427] General Motors offers dealers a choice of one or five year terms and most have elected the five year agreement.[428] Ford offers its dealers a one or five year selling agreement or an agreement for an indefinite term cancellable at will on 120 days

most common specific reasons for our terminating a Direct Dealer Agreement are death of the principal owner or manager and poor sales performance by the dealer. There are, of course, many other reasons such as dealer's insolvency or bankruptcy or a change of principal owners in a dealer corporation. Also, dealers occasionally relocate their place of business or lose occupancy of acceptable facilities, and we find their new facilities unacceptable. Termination for other reasons is much less common than for the above reasons.

Letter from official of Chrysler Corporation.

[426] Ford offers its dealers a choice of a one or five year contract cancellable only for cause or an indefinite contract that Ford may terminate at will upon 120 days notice. Letter from official of Ford Motor Company; FORD MOTOR COMPANY, FORD SALES AGREEMENT, FORD DIVISION § 17(a)(6) (1962). General Motors offers its dealers a choice of a five-year contract cancellable only for cause or an indefinite contract that General Motors may cancel at will. Letter from official of General Motors Corporation; GENERAL MOTORS CORPORATION, DEALER SELLING, AGREEMENT, CHEVROLET MOTOR DIVISION § 4 (1962).

On the other hand, Chrysler Corporation gives its dealers an indefinite term contract which, as a matter of its express terms, can be cancelled only for cause. See CHRYSLER CORPORATION, DIRECT DEALER AGREEMENT, DODGE DIVISION § 5 (1964). At the other extreme, almost all American Motors Corporation dealers are on a one year contract but a few outstanding dealers have three year contracts. Letter from official of American Motors Corporation; AMERICAN MOTORS SALES CORPORATION, AUTOMOTIVE DEALER FRANCHISE AGREEMENT § 5 (1962).

Consider the following comments by the former general counsel of General Motors about nonrenewals:

> Let us assume a dealer who has performed all the terms and conditions of his contract quite well—he has lived up to his agreement, he has done a good job as a dealer within the confines of the agreement—but the man, because of personal misconduct on his part, we don't consider him very desirable—or let us say that he is a man that just doesn't agree with the policies of the corporation. Now, it is just the same as an employee after a while if you are not getting along it is better for him to leave and it is better for us to let him go, and give him the thing that he is entitled to—the separation allowance, if that is in the picture.
>
> Now, we do the same thing here, under our contract, on nonrenewal. We are not happy with this man, he is not happy with us, so the best thing, after 5 years—and you have given it a pretty good twirl for 5 years—so you want to part company.

H.R. Hearings, Dealer Franchises, Celler 539.

[427] Letter from official of American Motors Corporation.

[428] Letters from officials of General Motors Corporation and Ford Motor Company.

notice.[429] Most Ford dealers have elected the indefinite term selling agreement.[430] Chrysler agreements have no expiration date.[431] Thus, in the early years of the term, Ford and General Motors would not have this easy way to get rid of the dealer, and Chrysler might not have it at all.[432] In most instances, Ford would be able to cancel at will.

Most of the new franchises cannot be terminated at will by the company, but all of them can be terminated for cause.[433] The first three reasons for wanting to cancel might constitute cause as it is defined in these documents. All allow termination for inadequate sales.[434] Before the 1956 and 1957 revisions, some franchises said no more than that the dealer would sell to the manufacturers' satisfaction.[435] Other franchises did not mention adequate sales.[436] However, these franchises could be cancelled at will,[437] and this power was used when sales did not meet the national penetration percentage formula.[438] Under this formula if Buick sold eight per cent of the cars nationally, a Buick dealer had to sell eight per cent of the cars sold in his area.[439] Now

[429] Letter.

[430] *Ibid.*

[431] CHRYSLER CORPORATION, DIRECT DEALER AGREEMENT, DODGE DIVISION § 5 (1964).

[432] Under § 2-102 of the Uniform Commercial Code, a manufacturer-dealer selling agreement might be said to involve "transactions in goods" and thus come within article 2. If this is true, § 2-309(2) would apply to the Chrysler Direct Dealer Agreement. It provides, "Where the contract provides for successive performances but is indefinite in duration it is valid for a reasonable time but unless otherwise agreed may be terminated at any time by either party."

Even if a dealer franchise is not covered by article 2 of the Uniform Commercial Code, courts might construe a selling agreement of indefinite duration as terminable at will. See 1 CORBIN, CONTRACTS § 96 (rev. ed. 1963).

Apparently, Chrysler's indefinite term arrangement was desired by its dealers. They may have thought that as a result of this form, the franchise ran forever unless it were cancelled for cause. See Automotive News, March 26, 1956, p. 58, col. 3.

[433] AMERICAN MOTORS, DEALER FRANCHISE PROVISIONS, AUTOMOTIVE DIVISION §§ 16, 26(c) (1962); CHRYSLER CORPORATION, DIRECT DEALER AGREEMENT, DODGE DIVISION §§ 7, 21 (1964); FORD MOTOR COMPANY, FORD SALES AGREEMENT, FORD DIVISION § 2(a)(i) (1962); GENERAL MOTORS CORPORATION, DEALER SELLING AGREEMENT, CHEVROLET MOTOR DIVISION §§ 9, 18B(2) (1962).

[434] AMERICAN MOTORS, DEALER FRANCHISE PROVISIONS, AUTOMOTIVE DIVISION §§ 16, 26(c) (1962); CHRYSLER CORPORATION, DIRECT DEALER AGREEMENT, DODGE DIVISION §§ 7, 21 (1964); FORD MOTOR COMPANY, FORD SALES AGREEMENT, FORD DIVISION §§ 2(a)(i), 17(a)(1); GENERAL MOTORS CORPORATION, DEALER SELLING AGREEMENT, CHEVROLET MOTOR DIVISION §§ 9, 18B(2) (1962).

[435] *E.g.*, GENERAL MOTORS CORPORATION, DIRECT DEALER TERMS AND CONDITIONS, CHEVROLET MOTOR DIVISION § 16 (1955).

[436] *E.g.*, FORD MOTOR COMPANY, FORD SALES AGREEMENT (1949).

[437] *Id.* § 10.

[438] See, *e.g.*, *S. Hearings, Marketing Practices, Monroney* 270.

[439] See discussion at note 54 *supra.*

more complicated formulas are expressly set out in all[440] but the American Motors franchise.[441] For example, a Ford dealer's sales performance is measured by first comparing the dealer's sales to (1) the total registrations of all cars in his locality, (2) the sales objectives established by Ford for his locality, (3) the sales of Chevrolet, Plymouth, and Rambler in his locality. Secondly, the dealer's sales are compared to (1) those of three other Ford dealers of comparable size in the nearest comparable areas, and (2) the average of all Ford dealers in his zone, district, region, and nationally. In making these comparisons Ford will also consider (1) the history of the dealer's sales performance, (2) the availability of cars, and (3) "special local conditions that might affect the Dealer's sales performance."[442] Both General Motors

[440] CHRYSLER CORPORATION, DIRECT DEALER AGREEMENT, DODGE DIVISION § 7 (1964); FORD MOTOR COMPANY, FORD SALES AGREEMENT, FORD DIVISION § 2(a)(i); GENERAL MOTORS CORPORATION, DEALER SELLING AGREEMENT, CHEVROLET MOTOR DIVISION § 9 (1962).

[441] Dealer shall assume the responsibility for developing sufficient sales volume of Manufacturer's products in Dealer's market area to meet the sales planning potential from time to time determined by the Zone . . . . Dealer's sales performance shall be evaluated on the basis of comparison of Dealer's sales of new motor vehicles to such sales planning potential. The evaluation shall be based on records and considerations generally accepted by the automobile industry. AMERICAN MOTORS, DEALER FRANCHISE PROVISIONS, AUTOMOTIVE DIVISION § 16 (1962).

[442] FORD MOTOR COMPANY, FORD SALES AGREEMENT, FORD DIVISION § 2(a)(i) (1962). A Ford official has explained how his company uses this formula to measure dealer performance:

> In strengthening the dealer organization, McLaughlin said, the first step is to determine the weakest district and to go to the weakest dealers in the district.
>
> Determining what district or dealers are weak is a complicated process, based on performance in relation to the national average market penetration of the make. But there are many other factors to be considered, he said.
>
> To illustrate, he said that in the Dallas district in 1961, Ford sales accounted for 25 percent of the cars sold, compared with a national average penetration of 23 percent.
>
> At first glance, McLaughlin said, this looks very good. However, a breakdown of model sales showed that Falcon was selling very well, Thunderbird about average, but Galaxie sales were low. Thus action was indicated where at first glance it wasn't.
>
> Other factors which must be considered in evaluating district and dealer performance, he said, include:
>
> 1. How many people in the district already own Fords? He said that 60 to 70 percent will purchase the same make again, thus an area with many Ford owners should automatically do better than one with few.
> 2. The regional market must be considered. Compacts will generally sell better on both coasts than in the Midwest. Sports models and convertibles usually sell better in warm areas, such as Florida and California.
> 3. The effect of special laws. For example, a high tax on eight-cylinder cars for many years in Chicago put Ford at a disadvantage with its V-8s against other makes which offered sixes.
>
> Having determined that a dealer is weak, McLaughlin said there are four steps the company may take:
>
> 1. It may advise on management techniques and encourage the dealer to expand sales.
> 2. It may relocate a dealership.
> 3. In rare cases, it may add a dealership to an area.
> 4. As a last resort, it may replace the dealer.
>
> After steps have been taken to strengthen the dealer, his performance is then measured against his earlier performance to determine whether the action has had any effect.
>
> It is not enough that sales go up McLaughlin said, since they might have anyway because of a general rise in the market. On the other hand, the dealer may show an improvement even though sales go down.
>
> McLaughlin said the dealer's performance in sales, penetration and profits is compared with the balance of the district for a base period of 12 months before the change was made.
>
> The dealer's relative strength is then compared in these three areas with the rest of the district after the changes were made.
>
> Besides giving a true measure of the dealers effectiveness, McLaughlin said, it also allows the company to determine how good its district manager is in spotting weaknesses and correcting them.

Automotive News, May 7, 1962, p. 8, cols. 1-2, p. 51, col. 1.

and Chrysler also consider these special circumstances in their formulas.[443] Undoubtedly, dealers gained some security and tenure when the new formulas were substituted for the old.[444] Yet some have pointed to the broad discretion the factory has to increase the sales objectives for an area as it conducts new surveys, to select the nearest comparable areas for comparison, and to judge both whether cars were available and whether there were local conditions that affected sales. Some would conclude that if a manufacturer honestly is unhappy with sales, it can cancel for cause without much trouble under such a formula.[445] In short, it has not given up much in this area in terms of its rational business interests.

No real gain was made by the dealers relating to the second reason for cancelling. The franchises still require facilities and capital to be adequate, with little definition of what is demanded, and allow cancellation for cause if they are inadequate.[446] For example, General Motors requires the dealer to have a "place of business satisfactory as to appearance and location, and adequate

[443] CHRYSLER CORPORATION, DIRECT DEALER AGREEMENT, DODGE DIVISION § 7 (1964); GENERAL MOTORS CORPORATION, DEALER SELLING AGREEMENT, CHEVROLET MOTOR DIVISION § 9 (1962).

[444] In 1956, some viewed General Motors' abandonment of a rigorous national average requirement for the minimum satisfactory performance as a major and significant change in policy. Now dealers must do only as well as those in their own area, but, of course, this could impose a higher standard on a dealer if those in his area did better than the national average. See Automotive News, Feb. 20, 1956, p. 8, cols. 1-5.

[445] *Id.* col. 5; *id.*, March 19, 1956, p. 82, cols, 1-2; *id.*, April 1, 1957, p. 1, col. 2, p. 52, cols. 1-3; *id.*, April 29, 1957, p. 6, col. 5.

[446] AMERICAN MOTORS, DEALER FRANCHISE PROVISIONS, AUTOMOTIVE DIVISION §§ 13, 26(c) (1962); CHRYSLER CORPORATION, DIRECT DEALER AGREEMENT, DODGE DIVISION §§ 7, 21 (1964); FORD MOTOR COMPANY, FORD SALES AGREEMENT, FORD DIVISION §§ 2(b)(c), 17(a)(1); GENERAL MOTORS CORPORATION, DEALER SELLING AGREEMENT, CHEVROLET MOTOR DIVISION §§ 6, 7, 18B(2) (1962).

in size and layout for new motor vehicle sales operations, service operations, parts and accessory and used car sales . . . ."[447] Chrysler tells the dealer to have "the amount of net working capital and net worth necessary for DIRECT DEALER successfully to carry out DIRECT DEALER'S undertaking in this agreement . . . ."[448] There is also broad freedom to cancel for the third reason: The franchises all have long and detailed lists of such disruptive elements as grounds for cancellation.[449] The manufacturers have carefully reserved this power for obvious reasons.

The fourth, fifth and sixth reasons—a desire to punish for becoming a dual dealer or to substitute a better dealer and personal dislike—are not covered expressly. Of course, if the manufacturer thinks that a dealer's second franchise is diluting effort or that an area has a potential for more sales than the present dealer is making and that a substitute dealer would better realize that potential, probably it could cancel for inadequate sales.[450] However, if a manufacturer cannot show that the second franchise is costing sales, if the substitute dealer is being given a franchise only because he is the friend of the right people or if some person in the company's staff dislikes the present dealer, there is no way to cancel him openly. It is true that the present dealer might be persuaded to sell his dealership in exchange for some benefit, the

[447] *Id.* § 6.

[448] CHRYSLER CORPORATION, DIRECT DEALER AGREEMENT, DODGE DIVISION § 7 (1964).

[449] (2) The Company may terminate by notice given to the Dealer, effective immediately, in any of the following events: . . . (v) a disagreement between or among managers named in paragraph F, principals, partners, officers or stockholders of the Dealer which in the opinion of the Company may affect adversely the ownership, operation, management, business or interest of the Dealer or the Company; (vi) conviction in a court of competent jurisdiction of Dealer, or a manager named in paragraph F, partner, principal officer or major shareholder for any violation of law tending, in the Company's opinion, to affect adversely the operation or business of the Dealer or the good name, good will or reputation of the Company, COMPANY PRODUCTS or the Dealer; or (vii) submission by the Dealer to the Company of false or fraudulent reports or statements . . . .

(3) Either party may terminate by notice given to the other, effective immediately, in any of the following events: (i) dissolution of the Dealer if the Dealer is a corporation or partnership; (ii) insolvency of the Dealer, filing by the Dealer of a voluntary petition in bankruptcy, adjudication of the Dealer as a bankrupt pursuant to an involuntary petition, appointment by a court of a temporary or permanent receiver, trustee or custodian for the Dealer or the Dealer's business, or an assignment by the Dealer for benefit or creditors . . . .

FORD MOTOR COMPANY, FORD SALES AGREEMENT, FORD DIVISION §§ 17(a)(2)-(3) (1962). See AMERICAN MOTORS, DEALER FRANCHISE PROVISIONS, AUTOMOTIVE DIVISION § 26(e) (1962); CHRYSLER CORPORATION, DIRECT DEALER AGREEMENT, DODGE DIVISION § 21 (1964); GENERAL MOTORS CORPORATION, DEALER SELLING AGREEMENT, CHEVROLET MOTOR DIVISION § 18(4) (1962).

[450] See note 440 *supra*.

franchise might be allowed to expire by its own terms and not be renewed, or grounds for cancellation might be trumped up. Actually, the dealer's protection from cancellation for any of these reasons comes from a variety of sources in addition to the terms of the franchise. The manufacturer's insistence on exclusive dealing in its products may violate the antitrust laws[451] or the Good Faith Act.[452] For many reasons such an insistence is likely to be against company policy as are cancelling to install someone's brother-in-law as a dealer or cancelling to further personal dislike. The elaborate company internal review procedures probably would block a clear-cut case of cancellation based on any of these reasons.[453] It is in these areas that the dealers have received the greatest gains as a result of the events of the mid-1950's. At least, it is far more difficult to cancel now.

One new factor in the situation is the federal and state legislation.[454] To some extent, all of the manufacturers have sought to meet this threat to their sovereignty by draftsmanship. All manufacturers have expanded the definitions of the dealers' duties so that one cannot assert that a demand for performance of one of these duties is evidence of bad faith—rather it is merely an insistence on getting what is the company's right under a "contract."[455] All manufacturers have made some effort to make their selling agreements look fair.[456] However, the Ford Motor Company has done the most elaborate job of drafting in an attempt to keep a free hand. Its sales agreement begins with a three page preamble that states the company's reasons for its policies concerning sales, termination and the like.[457] The preamble is a brief that reads much like Ford's statements to congressional committees,[458] and it skillfully attempts to convince the reader that

[451] See, *e.g.*, Englander Motors, Inc. v. Ford Motor Co., 267 F.2d 11 (6th Cir. 1959); 37 BNA ANTI-TRUST & TRADE REG. REP. A-14 (March 27, 1962); 42 *id.* at A-2, A-3 (May 8, 1962); Kessler & Stern, *Competition, Contract, and Vertical Integration*, 69 YALE L.J. 1 (1959).

[452] 15 U.S.C. §§ 1221-25 (1963).

[453] See note 406 *supra*.

[454] See notes 127-49, 385 *supra*.

[455] In 1957, the general manager for group marketing for Chrysler said, "if you are going to have 'causes', you have to define them . . . the purpose of the 'minimum sales responsibility' is to terminate a dealer, if necessary." Automotive News, April 22, 1957, p. 1, col. 2, at 52, col. 3. See also *H.R. Hearings, Dealer Franchises, Celler* 447.

[456] See, *e.g.*, AMERICAN MOTORS, DEALER FRANCHISE PROVISIONS, AUTOMOTIVE DIVISION 2 (1962) ("Purposes and Mutual Objectives"): "the economic fate of the Manufacturer in the authorized Dealer's market area is entrusted by the Zone to the Dealer. Failure of the individual Dealer to obtain satisfactory sales volume can work to the detriment of such Dealer, the Zone, the Manufacturer and ultimately other authorized Dealers."

[457] *Preamble* to FORD MOTOR COMPANY, FORD SALES AGREEMENT (1962).

[458] *Cf.*, Henry Ford II's statement in *S. Hearings, Marketing Practices, Monroney* 973-74. The parallel was suggested by Professor Monroe H. Freedman of George Washington University Law School.

the duties required of dealers make good economic sense and benefit the dealer, the company, and consumers.[459] Since the preamble is part of the contract signed by the dealer, arguably he has "agreed" to this view of the situation.[460] Also the agreement states that Ford will give the dealer "a reasonable opportunity to cure any failure by the Dealer to fullfill or perform"[461] such duties as sales, facilities and capital "prior to giving the Dealer notice of termination based upon such failure." Certainly, this is a consideration of one of the equities of the dealer. Another paragraph states:

> In the interests of maintaining harmonious relationships between the parties to this agreement, the Dealer shall report promptly in writing to the Chairman of the Company's Dealer Policy Board . . . any act or failure to act on the part of the Company or any of its representatives, which the Dealer deems not to have been, or that the Dealer proposes to use in support of a claim that the Company has not acted, in good faith as to the Dealer. For the purposes of this subparagraph . . . the term "good faith" shall mean the Company and its representatives acting in a fair and equitable manner toward the Dealer so as to guarantee the Dealer freedom from coercion, intimidation, or threats of coercion or intimidation, from the Company.[462]

This paragraph allows Ford to argue that claims of bad faith which have not been sent to the Dealer Policy Board should not be considered by courts and administrative agencies—a kind of exhaustion of administrative remedies position. Still another paragraph states that the dealer agrees not to claim that termination or nonrenewal constitutes evidence of coercion or intimidation or action not in good faith, if it is based on the reasonable belief that certain things have occurred.[463] Examples of these things are bankruptcy, failure of the dealer to function in the ordinary course of business, disagreement among the principals of the dealer's business or death, or physical or mental incapacity of the dealer. Finally, the dealer, by signing the four page agreement

[459] At the time the franchise was introduced it was reported that, "Some dealers also were curious about the meaning of the contracts' 'Preamble' which spelled out at much greater length than the previous agreement the company's problems and the dealer's responsibilities." Automotive News, April 1, 1957, p. 52, col. 3.

[460] One can wonder if a court would allow the "Preamble" to serve as evidence of the "manner of operation of the automotive industry, the nature of the relationships among the automotive manufacturer, its dealers and the public, and the interdependence of the success of the manufacturer and the dealer," (*Preamble* to FORD MOTOR COMPANY, FORD SALES AGREEMENT (1962)) to influence a court's appraisal of the reasonableness of the conduct of Ford representatives.

[461] FORD MOTOR COMPANY, FORD SALES AGREEMENT, FORD DIVISION § 17(c) (1962).

[462] *Id.* § 2(g).

[463] *Id.* § 17(b).

that incorporates by reference the twenty-eight page standard provisions, is said to acknowledge,

> that this agreement has been entered into by him without fear and with freedom from coercion, intimidation, or threats of coercion or intimidation from the Company, and that the terms and conditions of this agreement, and each of them, are reasonable and fair and equitable.[464]

The document also contains a carrot and stick approach in response to the federal and state laws. To get termination benefits such as the repurchase of cars and help in disposing of premises, a cancelled dealer must give Ford a general release from all liability within fifteen days after Ford tenders these benefits.[465] If Ford is skillful in release drafting, dealers will have great trouble in taking termination benefits and then suing for damages for some act alleged to be in bad faith. As a result, such suits will be a gamble. The dealer must weigh the costs and chances of getting a favorable judgment against the certain termination benefits. Certainly Ford has done all it can to maximize its interests and ward off the effects of the state and federal statutes.

iv. THE CHANGES IN THE FRANCHISES AND THE EFFECTS ON THE INTERESTS OF THE PARTIES: THE DEALERS' BENEFITS

The 1956 and 1957 franchises also gave greater recognition to the dealers' interests than was given before, but the manufacturers have not given the dealers all that they want. Dealers want a profitable operation with minimal risks. However, they are still dependent on the company to design and advertise a car so that it will sell. The franchise gives them no significant part in this process. Dealers also are still dependent on the company's policies concerning distribution. Under all of the franchises the dealer submits orders for the models he wants that may or may not be accepted by the manufacturer.[466] Even if these orders are accepted, the manufacturers do not promise to deliver these cars. For example, American Motors Corporation's agreement says that it is not liable for failure to deliver because of a long list of circumstances, including American Motors' "allocation of motor vehicles and other products to and among Dealers and other customers on such basis as [American Motors] . . . may determine . . . ."[467] No other factory makes any greater promise to deliver

[464] *Id.* § 25.

[465] *Id.* § 23.

[466] AMERICAN MOTORS, DEALER FRANCHISE PROVISIONS, AUTOMOTIVE DIVISION §§ 3-4 (1962); CHRYSLER CORPORATION, DIRECT DEALER AGREEMENT, DODGE DIVISION § 10 (1964); FORD MOTOR COMPANY, FORD SALES AGREEMENT, FORD DIVISION § 2(i) (1962); GENERAL MOTORS CORPORATION, DEALER SELLING AGREEMENT, CHEVROLET MOTOR DIVISION § 3(c) (1962).

[467] AMERICAN MOTORS, DEALER FRANCHISE PROVISIONS, AUTOMOTIVE DIVISION § 4 (1962).

to the dealer the cars he wants within a reasonable time.[468] Yet the new franchises did minimize some risks and shift some expenses from the dealers to the manufacturers. Some manufacturers allow their dealers to return unwanted parts and accessories.[469] All make provision for allowances to help dealers dispose of last year's models when the new models are announced.[470] The manufacturers also assumed a greater amount of the cost of making warranty repairs.[471]

There is somewhat greater protection of the dealer's investment and going business where longer franchises are given which cannot be cancelled at will.[472] Moreover, if the dealer loses his franchise, he may have the blow softened by more generous termination benefits. All four manufacturers provide benefits if they cancel a dealer,[473] but only Ford and American Motors ex-

[468] CHRYSLER CORPORATION, DIRECT DEALER AGREEMENT, DODGE DIVISION § 10 (1964); FORD MOTOR COMPANY, FORD SALES AGREEMENT, FORD DIVISION § 4 (1962); GENERAL MOTORS CORPORATION, DEALER SELLING AGREEMENT, CHEVROLET MOTOR DIVISION § 3(c) (1962).

[469] AMERICAN MOTORS, DEALER FRANCHISE PROVISIONS, AUTOMOTIVE DIVISION § 12 (1962); GENERAL MOTORS CORPORATION, DEALER SELLING AGREEMENT, CHEVROLET MOTOR DIVISION § 4E (1962).

Ford offered a parts obsolescence plan to its dealers which would have allowed a dealer to return 4% of his parts at the end of every year. The "National Ford Dealer Council unanimously turned it down because the company, in return, demanded that the dealers give up their traditional semi-monthly 2 percent cash rebate on parts and accessories. GM dealers do not receive this rebate." Automotive News, April 1, 1957, p. 52, col. 2.

[470] AMERICAN MOTORS, DEALER FRANCHISE PROVISIONS, AUTOMOTIVE DIVISION § 11 (1962); CHRYSLER CORPORATION, DIRECT DEALER AGREEMENT, DODGE DIVISION § 13 (1964); FORD MOTOR COMPANY, FORD SALES AGREEMENT, FORD DIVISION § 7 (1962); GENERAL MOTORS CORPORATION, DEALER SELLING AGREEMENT, CHEVROLET MOTOR DIVISION § 3J (1962).

[471] The manufacturers, following General Motors' action, adopted what was called a 100% warranty plan. Previously all manufacturers paid 60% of the labor charge and invoice cost of the parts, plus 10%. Under the mid-1950's plans, the manufacturers paid 100% of the labor charge and the same rate as before for parts. See Automotive News, Feb. 20, 1956, p. 1, cols. 2-3; AMERICAN MOTORS, DEALER FRANCHISE PROVISIONS, AUTOMOTIVE DIVISION § 24 (1962); CHRYSLER CORPORATION, DIRECT DEALER AGREEMENT, DODGE DIVISION § 19 (1964); FORD MOTOR COMPANY, FORD SALES AGREEMENT, FORD DIVISION § 10 (1962); GENERAL MOTORS CORPORATION, DEALER SELLING AGREEMENT, CHEVROLET MOTOR DIVISION § 14D (1962). It was reported that, in effect, this was a price cut of about $100 per car without the problems of a price cut. Automotive News, Feb. 20, 1956, p. 1, cols. 2-3; *S. Hearings, Marketing Practices, Monroney* 919.

A Dodge-Plymouth dealer said, "This warranty clause is easily the biggest item GM gave its dealers." Automotive News, March 19, 1956, p. 82, col. 4. However, since then dealers have been dissatisfied with the close scrutiny and delays in getting reimbursed for warranty claims and with the companies' manner of computing labor charges and paying for parts. See, *e.g.*, *id.*, Aug. 10, 1964, p. 16, cols. 1-3.

[472] See text accompanying note 433 *supra*.

[473] AMERICAN MOTORS, DEALER FRANCHISE PROVISIONS, AUTOMOTIVE DIVISION § 28 (1962); CHRYSLER CORPORATION, DIRECT DEALER AGREEMENT, DODGE

pressly make their benefits applicable to a failure to renew.[474] The benefits can be viewed as a kind of carefully restricted compensation for, in Fuller and Perdue's terms, "essential reliance" loss.[475] The dealer loses any going business value his dealership might have had or anticipated profits. He is given compensation for many of the expenditures he had to make to carry out his duties under the franchise. All manufacturers will buy back "all new, unused and undamaged current model motor vehicles . . . ." But the cars must be of the current model; leftover cars from last year's model are not covered,[476] and this could be a problem if termination comes soon after the new models come out. All manufacturers will repurchase some accessories and parts from the cancelled dealer's stock.[477] Ford and Chrysler require that accessories be for use in the current models and purchased within twelve months prior to termination.[478] American Motors shortens the period to six months.[479] General Motors does not require that the accessories be designed for use in the current models.[480] All but American Motors will take parts listed in their current catalogues;[481] American Motors Corporation will take parts for the current and the three next preceeding models.[482]

DIVISION § 21 (1964); FORD MOTOR COMPANY, FORD SALES AGREEMENT, FORD DIVISION § 21 (1962); GENERAL MOTORS CORPORATION, DEALER SELLING AGREEMENT, CHEVROLET MOTOR DIVISION § 21 (1962).

[474] AMERICAN MOTORS, DEALER FRANCHISE PROVISIONS, AUTOMOTIVE DIVISION § 28 (1962); FORD MOTOR COMPANY, FORD SALES AGREEMENT, FORD DIVISION § 21 (1962).

[475] Fuller & Perdue, *The Reliance Interest in Contract Damages*, 46 YALE L.J. 52 (1936).

[476] AMERICAN MOTORS, DEALER FRANCHISE PROVISIONS, AUTOMOTIVE DIVISION § 28(a)(1) (1962); CHRYSLER CORPORATION, DIRECT DEALER AGREEMENT, DODGE DIVISION § 21(a) (1964); FORD MOTOR COMPANY, FORD SALES AGREEMENT, FORD DIVISION § 21(a) (1962); GENERAL MOTORS CORPORATION, DEALER SELLING AGREEMENT, CHEVROLET MOTOR DIVISION § 21(1) (1962).

[477] AMERICAN MOTORS, DEALER FRANCHISE PROVISIONS, AUTOMOTIVE DIVISION §§ 28(a)(2)-(3) (1962); CHRYSLER CORPORATION, DIRECT DEALER AGREEMENT, DODGE DIVISION §§ 21 (b)-(c) (1964); FORD MOTOR COMPANY, FORD SALES AGREEMENT, FORD DIVISION §§ 21(b)(i)-(ii) (1962); GENERAL MOTORS CORPORATION, DEALER SELLING AGREEMENT, CHEVROLET MOTOR DIVISION §§ 21(2)-(3) (1962).

[478] CHRYSLER CORPORATION, DIRECT DEALER AGREEMENT, DODGE DIVISION § 21(c) (1964); FORD MOTOR COMPANY, FORD SALES AGREEMENT, FORD DIVISION § 21(b)(ii) (1962).

[479] AMERICAN MOTORS, DEALER FRANCHISE PROVISIONS, AUTOMOTIVE DIVISION § 28(a)(3) (1962).

[480] GENERAL MOTORS CORPORATION, DEALER SELLING AGREEMENT, CHEVROLET MOTOR DIVISION § 21(3) (1962).

[481] CHRYSLER CORPORATION, DIRECT DEALER AGREEMENT, DODGE DIVISION § 21(b) (1964); FORD MOTOR COMPANY, FORD SALES AGREEMENT, FORD DIVISION § 21(b)(i) (1962); GENERAL MOTORS CORPORATION, DEALER SELLING AGREEMENT, CHEVROLET MOTOR DIVISION § 21(2) (1962).

[482] AMERICAN MOTORS, DEALER FRANCHISE PROVISIONS, AUTOMOTIVE DIVISION § 28(a)(2) (1962).

All will repurchase signs of a type they recommend.[483] All will buy special tools designed for servicing their cars if the tools were of a recommended type and purchased within three years of the termination.[484] All offer help in disposing of the dealer's premises if he is not going to continue in the new or used-car business.[485] Essentially, all offer to find a purchaser or sublessee or to lease the building themselves from the dealer for one year after termination.[486] This benefit is well-hedged with protections for the manufacturer—for example, the dealer may not refuse reasonable offers.[487]

The new franchises gave the dealers some more freedom to run their businesses independently, but they still are subject to many factory controls. The five-year term offered to many dealers ended the yearly hazing sessions where a dealer was worked over by a manufacturer's sales staff and induced to place heavy orders for cars and trucks, participate in contests, and order advertising material.[488] Dealers were given more power to pass their business on to a successor upon their retirement or death although the manufacturers still retain an important veto power.[489]

Possibly all of these benefits might have been given to the dealers had there been no state statutes, federal hearings, or the Good Faith Act. Yet undoubtedly the legal system speeded up the decision to make these concessions and prompted top management to pay attention to problems of dealer relations. The legal battles also had great influence on the form of the concessions.

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483 *Id.* § 28(a)(4); CHRYSLER CORPORATION, DIRECT DEALER AGREEMENT, DODGE DIVISION § 21(d) (1964); FORD MOTOR COMPANY, FORD SALES AGREEMENT, FORD DIVISION § 21(c) (1962); GENERAL MOTORS CORPORATION, DEALER SELLING AGREEMENT, CHEVROLET MOTOR DIVISION § 21(4) (1962).

484 AMERICAN MOTORS, DEALER FRANCHISE PROVISIONS, AUTOMOTIVE DIVISION § 28(a)(5) (1962); CHRYSLER CORPORATION, DIRECT DEALER AGREEMENT, DODGE DIVISION § 21(e) (1964); FORD MOTOR COMPANY, FORD SALES AGREEMENT, FORD DIVISION § 21(d) (1962); GENERAL MOTORS CORPORATION, DEALER SELLING AGREEMENT, CHEVROLET MOTOR DIVISION § 21(5) (1962).

485 AMERICAN MOTORS, DEALER FRANCHISE PROVISIONS, AUTOMOTIVE DIVISION § 30 (1962); CHRYSLER CORPORATION, DIRECT DEALER AGREEMENT, DODGE DIVISION § 23 (1964); FORD MOTOR COMPANY, FORD SALES AGREEMENT, FORD DIVISION § 22 (1962); GENERAL MOTORS CORPORATION, DEALER SELLING AGREEMENT, CHEVROLET MOTOR DIVISION § 22 (1962).

486 *Ibid.*

487 AMERICAN MOTORS, DEALER FRANCHISE PROVISIONS, AUTOMOTIVE DIVISION § 30(b) (1962); CHRYSLER CORPORATION, DIRECT DEALER AGREEMENT, DODGE DIVISION § 23(a) (1964); FORD MOTOR COMPANY, FORD SALES AGREEMENT, FORD DIVISION § 22(c) (1962); GENERAL MOTORS CORPORATION, DEALER SELLING AGREEMENT, CHEVROLET MOTOR DIVISION § 22(a) (1962).

488 See text accompanying note 50 *supra*.

489 AMERICAN MOTORS, DEALER FRANCHISE PROVISIONS, AUTOMOTIVE DIVISION § 27 (1962); CHRYSLER CORPORATION, DIRECT DEALER AGREEMENT, DODGE DIVISION §§ 24-25 (1964); FORD MOTOR COMPANY, FORD SALES AGREEMENT, FORD DIVISION § 20 (1962); GENERAL MOTORS CORPORATION, DEALER SELLING AGREEMENT, CHEVROLET MOTOR DIVISION § 20 (1962).

In the second part of this Article, I will first describe the fifth stage of change through the use of the legal system—the attempt to use the legal rights created in the third stage when one party asserts that there has not been compliance. Here I will look at the long parade of defeats for dealers who have attempted to use the federal Good Faith Act and the victories for dealers in the informal processes that have grown up around some of the state administrative-licensing statutes.

Then I will turn to the impact of the entire effort reported to this point. What real changes have been made, to what extent are the dealers satisfied and to what extent is there unrest? Next the costs of these gains to the dealers, the manufacturers, and the public will be looked at insofar as information is available. The functioning of the legal system will be appraised in terms of what was done by courts, legislatures, and administrators and why it was done. Finally, I will look at the process of removing a problem from the area of contract and note the extent to which contract policies remain attached to the problem like barnacles although legislative innovations have been attempted.

LAW AND SOCIETY

CHANGING A CONTINUING RELATIONSHIP BETWEEN A LARGE CORPORATION AND THOSE WHO DEAL WITH IT: AUTOMOBILE MANUFACTURERS, THEIR DEALERS, AND THE LEGAL SYSTEM—PART II†

STEWART MACAULAY

OUTLINE

† Part I of this Article, tracing dealer efforts to redress the balance of power, appeared at 1965 WIS. L. REV. 483. As in Part I, letters and interviews are cited simply as "Letter" and "Interview" to preserve the anonymity of the sources. See the title note to Part I.

E. *The Fifth Stage: Application of the Statutes Through Legal and Private Systems*

After the birth of a law some degree of voluntary compliance usually follows, but often one or more of the beneficiaries of the law will be dissatisfied with the nature of that compliance. Courts, administrative agencies, or both then enter the picture. Their presence may prompt compromise so that individuals are less unhappy, or these agencies may operate formally and issue orders, injunctions, or judgments. Of course, their formal operation usually gives content to the law or withdraws content from it.

Both the federal Good Faith Act and the various state statutes aimed at the manufacturer-dealer relationship have passed through this fifth stage. Some dealers have saved their franchises, obtained settlements, won judgments, and prompted factory officials to lose licenses. Other dealers have failed. These laws have been overturned, expanded, and defined in the process. To appraise the results of the operation of the legal system described to this point, it is necessary to consider as many of the consequences of litigation, administrative proceedings, and construction of the statutes as we can.

1. THE FEDERAL GOOD FAITH ACT

In the nine years since the Dealers Day in Court Act was passed, many dealers have sought to recover under the act, and manufacturers have tried both to defend against liability in the particular suits and to have the statute construed in ways favorable to them. First, we will look at the degree of success and failure of those dealers who have tried to use the act, and then we will attempt to explain what happened and point out likely consequences.

a. The over-all picture of success and failure: statistics

I have discovered 90 cases filed under the Good Faith Act as of September 1965. My sources are reporters, trade regulation services, and an industry paper, *Automotive News*. While undoubtedly there have been some other cases filed, I think that my total is reasonably accurate. Only one of the forty-nine representatives of dealers' trade associations contacted indicated that he knew of a case in his state that I had not found.[490]

In 57 of the 90 cases, I have some information about the results. That information is contained in Table 2.

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490 Interviews.

(Footnotes to Table 2)

491 B. A. Dario v. General Motors Corp. (D.R.I. March 14, 1961) in NADA Magazine, Nov. 1962, pp. 24, 68 (Buick dealer sued for wrongful termination of his franchise in 1958. Consent judgment for defendant).

492 Woodard v. General Motors Corp., 298 F.2d 121 (5th Cir.), *cert. denied*, 369 U.S. 887 (1962) (Chevrolet dealer moved dealership to different building without written consent and franchise was terminated for inadequate facilities. Summary judgment for General Motors affirmed); Johnson Chevrolet Co. v. General Motors Corp. (W.D.N.Y. June 14, 1962) in Automotive News, June 25, 1962, p. 57, col. 2 (dealership terminated. General Motors failed to find a buyer as dealer alleged had been agreed. Complaint dismissed after dealer's case presented to jury); Bergstrom v. General Motors Corp. (E.D. Mich. Sept. 22, 1961) in NADA Magazine, Nov. 1962, p. 67 (manager and investor in Pontiac dealership put out of business when General Motors, exercising its power as majority stockholder, closed dealership. Manager alleged he was promised another Pontiac dealership but did not get it. Summary judgment for General Motors affirmed); Harwood-Dewey Oldsmobile Co. v. General Motors Corp. (W.D. Mich. March 7, 1960) in NADA Magazine, Nov. 1962, p. 68 (dealership terminated. Case dismissed with prejudice).

493 White Rose Motors, Inc. v. General Motors Corp. (M.D. Pa. 1965) in Automotive News, Aug. 9, 1965, p. 8, col. 2 (Cadillac dealer sued General Motors to enjoin failure to renew franchise. Case pending); Colonial Capital Co. v. General Motors Corp. (D. Conn. 1960) in NADA Magazine, Nov. 1962, p. 68 (Cadillac dealer alleged conspiracy to drive him out of business by misallocation of cars in order to favor a competing Cadillac dealer who was the son of a top General Motors executive. Case withdrawn when plaintiff suffered heart attack and received medical advice that he had to terminate the action).

494 Roseville Rambler v. American Motors Sales Corp. (E.D. Mich.) in Automotive News, June 8, 1964, p. 6, cols. 1-2; *id.*, Sept. 7, 1964, p. 4, col. 5 (dealer alleged he was induced to open business in a location by American Motors, which then opened a company-owned dealership in competition with him. American Motors purchased dealership to settle); Carl Price v. American Motors Sales Corp. (N.D. Ala.) in Automotive News, March 13, 1961, p. 3, cols. 3-4 (Mercury dealer added the Rambler franchise; then Mercury produced the Comet, a competing compact car. American Motors would not allow dealer to sell both Comet and Rambler and cancelled franchise. Case settled for $3,000; Don Reeves Rambler v. American Motors Sales Corp. (W.D. Pa.) in Automotive News, Dec. 2, 1963, p. 2, cols. 1-2 (dealer in business only two months when franchise terminated.

TABLE 2. CASES UNDER THE GOOD FAITH ACT

Company	Cases settled	Cases kept from trier of fact	Cases where trier of fact found for manufacturer	Cases where trier of fact found for dealer and where result not set aside by judiciary	Cases where trier of fact found for dealer but where result set aside by judiciary	Cases where result unknown, case still pending, or result other than listed elsewhere in the table	Total cases discovered
General Motors	1 [491]	4 [492]	0	0	0	2 [493]	7
American Motors	3 [494]	5 [495]	1 [496]	0	1 [497]	6 [498]	16
Ford	1 [499]	4 [500]	2 [501]	0	3 [502]	7 [503]	17
Chrysler	3*[504]	4*[505]	3 [506]	0	0	9 [507]	18*
Subtotals for four major American manufacturers:	8	17	6	0	4	24	58*
Studebaker	0	0	0	0	1 [508]	3 [509]	4
Volkswagen	12 [510]	1 [511]	0	0	0	0	13
Renault	2 [512]	2 [513]	1 [514]	0	0	1 [515]	6
Willys (now Kaiser Jeep)	0	0	0	1 [516]	0	2 [517]	3
Other	2 [518]	1 [519]	0	0	0	3 [520]	6
Totals	24	21	7	1	5	33	90*

* One case was settled, pending appeal, after the manufacturer had won a directed verdict, and thus it is entered twice in the table (once as a settlement and once as a case kept from trier of fact); but it is not counted twice in the total of 90 cases.

Effective date: November 1, 1965

(Footnotes to Table 2 continued)

Alleged conspiracy with another Rambler dealer five miles away to end undue competition. Case settled after jury selected).

495 Augusta Rambler Sales, Inc. v. American Motors Sales Corp., 213 F. Supp. 889 (N.D. Ga. 1963) (dealer alleged unfair cancellation. American Motors cancelled for inadequate capitalization which led to poor sales. Summary judgment for American Motors); Diamond Motors v. American Motors Sales Corp. (E.D. Pa.) in Automotive News, Feb. 8, 1965, p. 2, col. 4 (dealership terminated for poor sales. Dealer alleged a promise that he was to have an exclusive franchise in Wilmington, Delaware, and breach caused poor sales. Directed verdict for American Motors); Novotny's, Inc. v. American Motors Sales Corp. (*NADA Magazine* lists this case in the Southern District of Ohio, while *Automotive News* reports it as a Los Angeles case. *Automotive News* is probably correct) in NADA Magazine, Nov. 1962, p. 68; Automotive News, March 13, 1961, p. 3, col. 3; *id.*, March 6, 1961, p. 62, col. 3 (dealer's franchise was not renewed. Directed verdict for American Motors in March 1961); Millville Motors, Inc. v. American Motors Sales Corp. (S.D. Ohio 1961) in NADA Magazine, Nov. 1962, p. 68 (dealer sued company for terminating his franchise when he refused to expand his facilities and move to another city. Case dismissed); Staten Island Motors, Inc. v. American Motors Sales Corp., 169 F. Supp. 378 (D.N.J. 1959) (dealer's franchise not renewed for failure to manage his business properly. Directed verdict for American Motors).

496 Pepper Motors, Inc. v. American Motors Sales Corp. (E.D.N.Y. 1961) in NADA Magazine, Nov. 1962, p. 68 (dealer sued for nonrenewal of his franchise, alleging an oral agreement to renew. Judgment for American Motors).

497 Garvin v. American Motors Sales Corp., 202 F. Supp. 667 (W.D. Pa. 1962), *rev'd*, 318 F.2d 518 (3d Cir. 1963) (dealer sued for nonrenewal of his franchise. American Motors' last renewal was conditioned on accurate business records being kept and the hiring of a full-time salesman. Jury verdict for $20,000 for dealer reversed on appeal as coercion not established).

498 Aubrey, Orval and Mac Rambler Sales, Inc. v. American Motors Sales Corp. (S.D. Tex.) in Automotive News, March 15, 1965, p. 55, col. 1 (American Motors attempted to cancel franchise as a result of a dispute over sales territory and the location of the dealership's sales headquarters. Temporary injunction granted against termination; dealership seeking permanent injunction); Regal Motors, Inc. v. American Motors Sales Corp. (N.D. Ohio) in Supplement, NADA Magazine, Nov. 1962 (unpublished mimeo. 1964) [hereinafter cited as NADA Supp.] (dealer sued for termination of franchise which he had held for twenty-eight years); Yonce Motors, Inc. v. American Motors Sales Corp. (D.S.C.) in Automotive News, July 6, 1964, p. 4, cols. 3-4 (dealer sued for wrongful termination. Franchise cancelled after dealer won a trip to Spain in a sales contest. American Motors asserts dealer failed to carry an adequate inventory. Case presently pending); Husak Bros. v. American Motors Sales Corp. (E.D. Mich.) in Automotive News, April 8, 1963, p. 4, col. 1; *id.*, June 8, 1964, p. 6, col. 2 (dealer sued for wrongful termination of franchise alleging that American Motors financed a rival dealer, failed twice to deliver new models until after the introduction period, and threatened to cancel the franchise unless slow-selling models were ordered); Ted Doba Auto Sales, Inc. v. American Motors, Inc. (N.D. Ind.) in NADA Magazine, Nov. 1962, p. 69 (dealer alleged unfair termination in a suit filed in 1959); Bergen Rambler, Inc. v. American Motors Sales Corp., 1962 Trade Cas. 76359 (D.N.J.) (dealer's franchise terminated. Alleged favoritism to other dealers. Reported case deals with dealer's interrogatories).

499 Bateman v. Ford Motor Co., 202 F. Supp. 595 (E.D. Pa.), *rev'd and remanded*, 302 F.2d 63 (3d Cir.); 204 F. Supp. (E.D. Pa.), *rev'd and remanded*, 310 F.2d 805 (3d Cir. 1962); 214 F. Supp. 222 (E.D. Pa. 1963) (dealer sued for injunction against termination. Circuit court decided injunction was an available remedy under the act, but the district court refused to issue a temporary one as this was not a "clear" case. The dealer alleged pressure to take unwanted cars and to sell out. A letter from one of the dealer's attorneys indicates that the case was settled).

(Footnotes to Table 2 continued)

500 Goss v. Ford Motor Co. (E.D. Ky. 1964) in Automotive News, June 22, 1964, p. 14, col. 5 (dealer sued for wrongful termination of franchise, alleging Ford set unreasonable quotas. Dealer failed to submit accurate reports. Directed verdict for Ford as no evidence of coercion presented); Loesch Motor Co. v. Ford Motor Co. (N.D. Ohio 1964) in Automotive News, July 20, 1964, p. 85, col. 1 (dealer sued for wrongful termination of franchise, alleging coercion to purchase too much inventory and to expand facilities. Suit dismissed as no issue between parties); Blenke Brothers Co. v. Ford Motor Co., 203 F. Supp. 670 (N.D. Ind. 1962); 217 F. Supp. 459 (N.D. Ind. 1963) in Automotive News, Aug. 19, 1963, p. 6, col. 5 (Mercury dealer's franchise terminated in 1958 for poor business practices, and he sued. Court held that the statute was constitutional and that failure to report complaint to Dealer Policy Board did not bar suit, despite franchise provision to this effect. Suit dismissed with prejudice and dealer had to pay costs); Leach v. Ford Motor Co., 189 F. Supp. 349 (N.D. Cal. 1960) (dealer sued for wrongful termination of franchise. Ford determined by a survey that its assigned sales quotas in dealer's neighborhood were reasonable and demanded certain procedures to increase sales, which the dealer refused to adopt. Motion to dismiss after plaintiff's case granted).

501 Walker v. Ford Motor Co., 241 F. Supp. 526 (E.D. Tenn. April 17, 1965) (dealer cancelled and proceeded under Tennessee administrative-licensing act and then sued under federal act. District court found (1) the statute of limitations had run since it had not been tolled by the state proceedings and (2) while Ford representatives set an unsound sales quota and insisted upon unrealistic business hours and the employment of unneeded salesmen and mechanics, "the 'advice' given the 'dealer' did not rise to the dignity of coercion"); Lavett Motors, Inc. v. Ford Motor Co. (D. Miss. 1962) in Automotive News, Nov. 4, 1963, p. 2, col. 1 (dealer sued for wrongful termination of franchise in 1959, and jury found for Ford).

502 Kotula v. Ford Motor Co., 338 F.2d 732 (8th Cir. 1964), *cert. denied*, 380 U.S. 979 (April 26, 1965) (dealer's franchise terminated. He sued, alleging reprisals because he refused to take a truck and had taken the matter to the head office of the company. Jury award of $12,500 for dealer, but trial court granted judgment n.o.v., affirmed on appeal); Milos v. Ford Motor Co., 206 F. Supp. 86 (W.D. Pa. 1962), *aff'd*, 317 F.2d 712 (3d Cir.), *cert. denied*, 375 U.S. 896 (1963) (dealer sued for wrongful termination of franchise, alleging Ford had set unreasonable sales quotas. Ford stressed dealer had promised to build better facilities within two years of receiving franchise and had failed to do so. Jury awarded dealer $95,000 but trial court granted judgment n.o.v., which was affirmed); Pierce Ford Sales, Inc. v. Ford Motor Co., 299 F.2d 425 (2d Cir.), *cert. denied*, 371 U.S. 829 (1962) (Ford refused to approve buyer of dealership if he paid the agreed price. Jury awarded dealer $23,850 but reversed on appeal).

503 Armstrong v. Ford Motor Co. (W.D. Pa.) in Automotive News, March 30, 1964, p. 4, col. 1 (dealer sued for coercion to take unwanted material); Reynolds Sales, Inc. v. Ford Motor Co. (N.D. Ohio) in NADA Supp. 6 (dealer sued in 1964 for wrongful termination of franchise, alleging he was given arbitrary and capricious sales quotas. Case presently pend-

(Footnotes to Table 2 continued)

ing); Kavanaugh v. Ford Motor Co. (N.D. Ill.) in NADA Supp. 5 (manager of factory-controlled dealership, who was forced out, sued in 1963); Hammond Ford, Inc. v. Ford Motor Co., 1962 Trade Cas. 76227 (S.D.N.Y.) (dealer sued for wrongful termination, alleging that he was forced to take unwanted cars and equipment and that Ford wanted him to use unethical sales tactics. Ford asserted dealer had inadequate facilities and made misrepresentations as to the ownership of the dealership. Ford counterclaimed for a conspiracy to create a Good Faith Act case. See Automotive News, July 31, 1961, p. 3, cols. 2-4 (case decided that Ford's release signed by dealer was not a bar to the suit. Presently the case is proceeding through pretrial, and there is pending a motion for summary judgment by Hammond. The motion concerns an alleged violation of the antitrust laws as a result of tie-in sales by Ford of radios with Ford automobiles); John P. Nielsen & Sons Co. v. Ford Motor Co. (D. Conn. 1962) in Automotive News, Oct. 15, 1962, p. 4, col. 3 (dealer sought injunction against termination of franchise which was denied. However, court refused to dismiss the case. The dealer, who had held a Ford franchise twenty-three years, asserted that Ford's sales quotas were unfair); Bill Cottrills, Inc. v. Ford Motor Co. (E.D. Mich.) in Automotive News, May 8, 1961, p. 4, col. 5 (dealer's franchise terminated after five years of operation. He alleged Ford's refusal to reimburse on warranty claims made his business unprofitable); Leslie & Sons, Inc. v. Ford Motor Co. (E.D. Mich.) in Automotive News, May 8, 1961, p. 4, col. 5 (dealer alleged he was forced out of business by Ford's failure to pay warranty claims).

504 Sam Goldfarb Plymouth, Inc. v. Chrysler Corp., 1962 Trade Cas. 76715 (E.D. Mich.) (dealer whose franchise was terminated sued, alleging Chrysler's dissatisfaction with his sales was based on his foreign car franchise and his leadership of a committee to fight competition by factory-owned and controlled dealerships. The case reports a denial of a temporary injunction against termination. A letter from the dealer's attorney reports the settlement); Jim Kelly, Inc. v. Chrysler Corp. (E.D. Mich. March 30, 1959) in NADA Magazine, Nov. 1962, p. 68 (dealership terminated and dealer sued, alleging competitors selling the same make were favored because of their association with the management of Chrysler. A motion to dismiss on ground Good Faith Act was unconstitutional was denied. The case was settled for $15,000); McLaren Motors, Inc. v. Chrysler Corp. (N.D. Cal. Dec. 1960) in NADA Magazine, Nov. 1962, p. 68 (dealership terminated and dealer sued, alleging Chrysler failed to fill orders, favored competitors, and forced unwanted cars. Directed verdict for Chrysler. Case settled for $8,000 pending appeal).

505 Abbott-Stansell Motors Co. v. Chrysler Motors Corp., 333 F.2d 322 (5th Cir. 1964) (directed verdict for Chrysler affirmed per curiam); Bob Hooper Motor Co. v. Chrysler Corp. (N.D. Tex. 1964) in Automotive News, June 15, 1964, p. 3, cols. 3-4 (dealer's suit dismissed when he failed to appear); Harvey Motors, Inc. v. Chrysler Corp. (N.D. Cal. 1958) in Automotive News, Oct. 16, 1961, p. 61, col. 3; *id.*, Feb. 13, 1961, p. 8, col. 2 (dealer's franchise terminated and he sued, alleging that he was forced to take slow-selling models to get best-selling ones and that competitors were favored in distribution. Directed verdict for Chrysler); McLaren Motors, Inc. v. Chrysler Corp., *supra* note 504.

506 Zarbock v. Chrysler Corp., TRADE REG. REP. (1965 Trade Cas.) ¶ 71361, at 80535 (D. Colo. 1964) (dealer who still has franchise sued for losses caused by Chrysler's poor distribution to dealers in smaller cities. Judgment for Chrysler); Blenke Bros. Motors, Inc. v. Chrysler Corp., 189 F. Supp. 420 (N.D. Ill. 1960) (dealer's franchise terminated and he sued. Case holds that coercion can be accomplished by indirect means and that interrogatories about dealers in surrounding area were proper. A jury found for Chrysler. See Automotive News, Dec. 10, 1962, p. 2, col. 5); Pinney & Topliff v. Chrysler Corp., 176 F. Supp. 801 (S.D. Cal. 1959) (court held that dealer had resigned his franchise voluntarily and that Chrysler had not promised to find a buyer. The court decided there was no coercion and gave judgment for Chrysler).

(Footnotes to Table 2 continued)

507 Mt. Lebanon Motors, Inc. v. Chrysler Corp. (W.D. Pa.) in Automotive News, Feb. 15, 1965, p. 6, col. 4 (a dealer led a protest against factory-controlled dealerships competing with established dealers, and alleged his quota was doubled in response. Suit filed in December 1964); Barton Motor Co. v. Chrysler Corp. (W.D. Pa.) in Automotive News, Feb. 15, 1965, p. 6, col. 4 (dealer's franchise terminated January 17, 1964, because he could not compete with factory-controlled dealership); Dewald v. Chrysler Corp. in Motor News Analysis 2-3 (Dec. 1964) (factory promised help in selling out but put in a competing dealership selling same make); H. D. Maggio, Inc. v. Chrysler Corp. (N.D. Ill.) in Automotive News, Sept. 21, 1964, p. 101, col. 4 (dealer's franchise terminated and he sued. He alleged Chrysler insisted he give up Plymouth in 1959 in order to handle the Dodge Dart. When he refused, Chrysler set up three Plymouth outlets in 1961 within a one and one-half mile radius of his dealership. The Dodge franchise was terminated in 1961, and he was replaced by a factory-controlled dealership); Gib Bergstrom, Inc. v. Chrysler Corp. (E.D. Mich.) in Automotive News, June 22, 1964, p. 4, col. 2 (dealer's franchise terminated and he sued, alleging he was given only six months to prove himself and that no cars were delivered in the first two months); Victory Motors, Inc. v. Chrysler Motors Corp. (S.D. Ga.) in NADA Supp. 5 (dealer's Chrysler-Imperial franchise terminated and he sued, alleging an agreement that he would not be required to meet sales quotas until his business was built up); America Dodge, Inc. v. Chrysler Corp. (D. Conn. 1963) in Automotive News, Jan. 20, 1964, p. 6, col. 4 (dealer's franchise terminated in 1962. Case involved a motion for more specific statement of claims); Dayton & Edwards, Inc. v. Chrysler Corp. (D. Conn.) in Automotive News, Jan. 20, 1964, p. 6, col. 4 (dealer's franchise terminated November 1, 1960, and he sued); Mead v. Chrysler Corp. (D. Ore.) in Automotive News, Oct. 5, 1959, p. 3, col. 1 (dealer brought suit for an injunction under the Good Faith Act).

508 Globe Motors, Inc. v. Studebaker-Packard Corp., 328 F.2d 645 (3d Cir. 1964) (dealer sued, alleging he was forced to go out of business because Studebaker would not supply Mercedes-Benz automobiles as it had orally agreed. The jury awarded the dealer $35,000 but the case was reversed by the circuit court, which applied the parol evidence rule to limit the dealer to the written franchise).

509 Bisceglia Motors Sales, Inc. v. Studebaker-Packard Corp. (E.D. Mich.) in Automotive News, Sept. 24, 1962, p. 3, col. 3 (dealer's franchise terminated and he sued, alleging misrepresentations that the franchise would be renewed. See also 367 Mich. 472, 116 N.W.2d 884 (1962)); Arlington v. Studebaker-Packard Corp. (S.D. Tex.) in Automotive News, May 22, 1961, p. 6, col. 3 (dealer held Lark franchise for four months in 1960. He asserted he was promised he would remain the exclusive Lark dealer in a three-county area, but other dealerships were created); Erny & J. & B. Motors v. Studebaker-Packard Corp. in Automotive News, Jan. 18, 1960, p. 50, col. 3 (dealer alleged that manufacturer made unreasonable demands, gave unfair quotas, and arbitrarily terminated franchise).

510 Automotive News, April 20, 1964, p. 2, col. 5, p. 8, col. 5, reports that nine Volkswagen dealers in New Jersey, Illinois, and Iowa settled their Good Faith Act suits for $9,000 each. The report adds that there were also settlements in the following cases: R. J. Schnabel v. Volkswagen America, Inc., 185 F. Supp. 122 (N.D. Iowa 1960) (case involved service of process. There was a $9,000 settlement); Reliable Volkswagen Sales &