



**Before The  
State Of Wisconsin  
DIVISION OF HEARINGS AND APPEALS**

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Jim Carter Ford, d/b/a Kocourek Ford, complainant

Case No.: TR-02-0015

v.

Ford Motor Company, respondent

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FINAL DECISION

The principal shareholder of Jim Carter Ford, d/b/a Kocourek Ford, James Carter entered into a Corporate Stock Purchase Agreement with Keith Kocourek under which it was agreed that Mr. Kocourek would acquire 90% of the stock of Jim Carter Ford, d/b/a Kocourek Ford, from Mr. Carter and become the sole individual having managerial authority for operating management of Jim Carter Ford, d/b/a Kocourek Ford, under paragraph F(ii) of the Ford Sales and Service Agreement. This proposal is the “proposed action.”

On or about February 22, 2002, Jim Carter Ford, d/b/a Kocourek Ford, served Ford Motor Company and the Wisconsin Department of Transportation with a Notice of Proposed Action pursuant to Wis. Stat. § 218.0134(2)(a). On or about March 22, 2002, Ford Motor Company served the Wisconsin Department of Transportation and Jim Carter Ford, d/b/a Kocourek Ford, with a written statement pursuant to Wis. Stat. § 218.0134(2)(b), of its reasons for disapproving the proposed action.

On April 16, 2002, Jim Carter Ford, d/b/a Kocourek Ford, filed a complaint pursuant to Wis. Stat. § 218.0134(2)(c) with the Division of Hearings and Appeals. At the same time the complainant filed a request for mediation pursuant to Wis. Stat. § 218.0136. On May 20, 2002, the Division of Hearings and Appeals issued an Order Suspending Proceedings in this matter. By letter dated June 4, 2002, the parties advised the Administrative Law Judge that a mediation meeting has occurred and was not successful. On June 12, 2002 an Order Lifting Suspension of Proceedings was issued.

Pursuant to due notice, the Division of Hearings and Appeals held a hearing on October 22, 23, and 24, 2002, in Madison, Wisconsin. Mark J. Kaiser, Administrative Law Judge (ALJ), presided. The parties filed post-hearing briefs. The complainant filed its initial brief on December 2, 2002; the respondent filed its response brief on December 23, 2002; and, the complainant filed its reply brief on January 7, 2003.

In accordance with Wis. Stat. §§ 227.47 and 227.53(1)(c), the PARTIES to this proceeding are certified as follows:

Jim Carter Ford, Inc., d/b/a Kocourek Ford, complainant, by

Attorney Paul R. Norman  
Boardman Law Firm  
P. O. Box 927  
Madison, WI 53701-0927

Ford Motor Company, respondent, by

Attorney Neil L. Johnson and Attorney Robert B. Rogers  
Berkowitz, Feldmiller, Stanton, Brandt, Williams & Shaw, LLP  
Two Emanuel Cleaver II Blvd., Suite 500  
Kansas City, MO 64112

The ALJ issued a proposed decision on February 17, 2003. The complainant filed comments requesting amendment of three statements in the “Discussion” section of the decision but generally supporting the adoption of the Proposed Decision. The respondent filed comments objecting to the Proposed Decision. The first proposed amendment requested by the complainant relates to a statement on page fourteen of the Proposed Decision that “regional average is a reasonable standard to evaluate the [complainant’s] sales performance.” The complainant argues that this statement should be modified to require Ford to give consideration to local market conditions, such as a substantially higher ratio of competing brand franchises in a local market compared to the average market in the region.

Specifically, the complainant proposes that the following sentence be added to the decision; “However, in evaluating the comparison of the Dealership’s sales performance with [the regional average], Ford must give consideration to any local market conditions that might affect the Dealership’s sales performance differently from the sales performance of the average Ford dealer in the Twin Cities Region.” As discussed in the Proposed Decision, although the Twin Cities region contains more rural dealers than urban dealers, it also includes Ford dealers in the Twin Cities, a metropolitan area. Using the average in the region is reasonable and there is no reason to require Ford to consider additional local factors.

The complainant’s second proposed modification is to a statement on page seventeen of the Proposed Decision related to the assignment of the 54703 zip code. The Proposed Decision contains the statement that “If one dealer has to be assigned responsibility for the 54703 zip code, it is not unreasonable for Ford to assign it to the [complainant].” The complainant argues that assignment of the 54703 zip code to it is contrary to Ford’s practice for assigning responsibility for zip codes. As discussed further below, reviewing Ford’s assignment of zip codes to dealers is beyond the scope of this hearing. The assignment of an Area of Sales Responsibility to the complainant is discussed in the Proposed Decision solely for the purpose of evaluating the complainant’s sales performance. Nothing in this decision should be construed as a finding that Ford’s assignment of the entire 54703 zip code to the complainant is unreasonable.

The complainant's third proposed modification is a request to delete a statement in footnote four of the "Discussion" section. The ALJ stated that "[p]resumably, Ford, like most motor vehicle manufacturers, allocates product among its dealers based in part on the sales potential of the dealer's assigned territory." The complainant argues that the record contains no evidence to support this statement. The statement is unnecessary for the analysis and the footnote is deleted from the Final Decision.

The respondent's first objection to the Proposed Decision is to the use of sales effectiveness rather than retail registration effectiveness as the standard for evaluating Kocourek's sales performance. The respondent argues that the ALJ erred in referring to sales effectiveness and retail registration effectiveness as "alternative measures" and alleges that they should be considered "companion measures." This distinction has no apparent significance. The Proposed Decision describes these two measures. Each provides useful information for evaluating the performance of dealers; however, for reasons set forth in the Proposed Decision, sales effectiveness is the more reasonable standard to use to evaluate the complainant's sales performance in this case.

As further support for this objection, the respondent cites provisions of the Ford Sales and Service Agreement that require the Dealer to promote vigorously and aggressively the sale of cars and trucks to customers within the Dealers Locality and obtain a reasonable share thereof. The respondent does not indicate what it considers to be a reasonable share. The respondent recognizes that dealers sell to customers outside of their assigned territory and other dealers sell into a dealer's assigned territory. Retail registration effectiveness is a useful measure of a brand's image in a dealer's assigned territory as the brand image is promoted by the local dealer. However, to deny a dealer applicant a franchise because of a retail registration effectiveness less than the region average when the dealer is selling the number of vehicles expected is unreasonable.

The respondent's second objection is that the Proposed Decision splits the 54703 zip code between two dealers contrary to Ford's policies and practice. The Proposed Decision does not require the splitting of the 54703 zip code for any purpose other than evaluating the sales performance of the complainant pursuant to Kocourek's dealership application. As discussed above, the complaint argued that the 54703 zip code should be assigned to the Chippewa Falls Ford dealer because the centroid of the zip code is closer to that dealership. The proposed Decision finds that the respondent's assignment of responsibility for the 54703 zip code to the complainant was reasonable. However, as discussed in the Proposed Decision, the two dealers essentially share the zip code. The fairest assignment of responsibility for the 54703 zip code for the limited purpose of evaluating Kocourek's sales performance is to split the zip code. This does not require anything more sophisticated than dividing the numbers for the zip code in half and attributing half to each dealer. This is not a requirement that Ford split for responsibility for the 54703 zip code for any other purpose. Finding of Fact 25 has been amended to make this point explicit.

The respondent also argues that "the Proposed Decision ignores the fact that Mr. Kocourek's management has not increased total sales at the Ford dealership compared to the last

year the dealership was managed by James Carter. This statement is not completely accurate. In 1999, the last year under Carter's management, the dealership sold 580 new Ford cars and trucks. Final sales totals for 2002 are not in the record; however, by June of 2002, Kocourek had sold 300 vehicles. This extrapolates to projected annual sales of 600 vehicles. More importantly, simply looking at annual sales is misleading because Ford's market share in the Twin Cities region declined from 1999 (10.5% for cars and 29.3% for trucks (compl. exh. 35)) to 2002 (8.7% for cars and 24.9% for trucks) and the number of new cars and trucks sold in the Eau Claire area declined from 2000 to 2002.<sup>1</sup>

The complainant's sales increased during a time period when Ford's market penetration, as measured by the Twin Cities region average, and the number of industry sales in the complainant's PMA both declined. In this context, the complainant's sales performance is even more impressive. There is no guarantee that the complainant's sales effectiveness will continue to improve; however, from 2000 until June of 2002 the complainant's sales effectiveness did show steady improvement.

The respondent also argues that the Proposed Decision ignores Kocourek's sales performance at his Chevrolet dealership in Wausau and the fact that Kocourek admitted trying to "spike" his sales numbers in order to obtain Ford's approval of his dealer application. With respect to the sales performance of Kocourek's Chevrolet dealership, Kocourek's Chevrolet numbers are less relevant than his Ford numbers in the Eau Claire area. However, with respect to Kocourek's Chevrolet dealership, the bottom line is that General Motors considers Kocourek a satisfactory dealer. With respect to Kocourek's efforts to "spike" his sales numbers, Kocourek freely admitted to addressing the areas that Ford considered deficient. The Proposed Decision also does not address Kocourek's complaint that he had to compete directly with a manufacturer owned dealership in Chippewa Falls. Ford denied Kocourek's application because of deficient capacity; Kocourek did what he needed to do to address this deficiency.

Finally, the respondent objects to the finding in the Proposed Decision that Ford's disapproval of the proposed action will have a substantial adverse impact on James Carter's return on his investment in the dealership. Mr. Carter has found two willing buyers of his Ford dealership who were both willing to purchase the dealership in a manner that had tax advantages to him. Ford has rejected both of these dealer applicants. Undoubtedly, other dealer applicant's could be found to purchase complainant's dealership. Whether any of them would purchase the dealership on as favorable of terms as Kocourek has agreed to is speculative. As discussed in the Proposed Decision, Mr. Carter's preference to sell the dealership to Kocourek extends beyond financial considerations. Ford's refusal to approve a qualified prospective buyer of Carter's dealership does constitute an adverse impact in this case.

In summary, the legislative intent of the Wisconsin Automobile Dealership Law "is to furnish the dealer with some protection against unfair treatment by the manufacturer." *Forest*

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<sup>1</sup> Using the figures from the "properly" drawn PMA for the complainant, the total number of new cars and trucks sold in the Eau Claire area was 3353 in 2000; 3200 in 2001; and 1520 in the first half of 2002. The fact that industry sales declined in the Eau Claire area does not change if one uses Ford's PMA. The comparable numbers using Ford's PMA, as set forth in Finding of Fact 20, are 4277 cars and trucks sold in 2000; 4067 in 2001; and, 1921 in the first half of 2002.

*Home Dodge, Inc. v. Karns*, 29 Wis. 2d 78, at 85, 138 N.W.2d 214 (1965). Specifically, the purpose of Wis. Stat. § 218.0134 is to establish a procedure for reviewing the disapproval by a manufacturer of a “proposed action” by a dealer. As discussed in the Proposed Decision, Ford has an interest in appointing dealers that it considers qualified; however, the complainant also has an interest in selling his interest in the dealership under terms that he considers favorable and to an individual that he believes will treat the employees of the dealership fairly. The complainant has satisfied his burden to show good cause to undertake the “proposed action.” Except for the amendments described above, the Propose Decision is adopted as the Final Decision in this matter.

The issues to be decided are:

1. Whether good cause pursuant to the factors set forth at Wis. Stat. § 218.0134(3)(a) exists for permitting the proposed action to be undertaken.
2. Whether the sales performance standard upon which Ford Motor Company has relied in disapproving the proposed action are unfair, unreasonable and inequitable and/or are being applied by Ford Motor Company in an unfair, unreasonable and inequitable manner in violation of Wis. Stat. § 218.0124.

The burden of proof for both issues is on the complainant, Jim Carter Ford, Inc., d/b/a/ Kocourek Ford.

#### Relevant Statutes

Wis. Stat. § 218.0134 provides:

**(1)** In this section, "affected grantor" means a manufacturer on direct dealerships, a distributor on indirect dealerships or an importer on direct dealerships that has entered into an agreement with a motor vehicle dealer and that is directly affected by an action proposed to be undertaken by the dealer under this section.

**(2) (a)** If a motor vehicle dealer's agreement with an affected grantor requires the grantor's prior approval of an action proposed to be undertaken by the dealer under this section, a dealer may not voluntarily change its ownership or executive management, transfer its dealership assets to another person, add another franchise at the same location as its existing franchise or relocate a franchise without giving prior written notice of the proposed action to the affected grantor and to the department of transportation. Within 20 days after receiving the notice, the affected grantor may serve the dealer with a written list of the information not already known or in the possession of the grantor that is reasonably necessary in order for the grantor to determine whether the proposed action should be approved. The grantor shall, in good faith, confirm in writing to

the dealer the date on which it has received from the dealer or from other sources all the information specified on the list.

(b) An affected grantor who does not approve of the proposed action shall, within 30 days after receiving the dealer's written notice of the proposed action or within 30 days after receiving all the information specified in a written list served on the dealer under par. (a), whichever is later, file with the department of transportation and serve upon the dealer a written statement of the reasons for its disapproval. The publication of the reasons given for the disapproval or any explanation of those reasons by the manufacturer, distributor or importer shall not subject the manufacturer, distributor or importer to any civil liability unless the reasons given or explanations made are malicious and published with the sole intent to cause harm to the dealer or a transferee of the dealer. Failure to file and serve a statement within the applicable period shall, notwithstanding the terms of any agreement, constitute approval of the proposed action by the grantor. If an affected grantor files a written statement within the applicable period, the dealer may not voluntarily undertake the proposed action unless it receives an order permitting it to do so from the division of hearings and appeals under sub. (3) (b).

(c) A dealer who is served with a written statement by an affected grantor under par. (b) may file with the department of transportation and the division of hearings and appeals and serve upon the affected grantor a complaint for the determination of whether there is good cause for permitting the proposed action to be undertaken. The division of hearings and appeals shall promptly schedule a hearing and decide the matter. The proposed action may not be undertaken pending the determination of the matter.

**(3) (a)** In determining if there is good cause for permitting a proposed action to be undertaken, the division of hearings and appeals may consider any relevant factor including:

1. The reasons for the proposed action.
2. The affected grantor's reasons for not approving the proposed action.
3. The degree to which the inability to undertake the proposed action will have a substantial and adverse effect upon the motor vehicle dealer's investment or return on investment.
4. Whether the proposed action is in the public interest.
5. The degree to which the proposed action will interfere with the orderly and profitable distribution of products by the affected grantor.
6. The impact of the proposed action on other motor vehicle dealers.
7. Whether the dealer and affected grantor have previously agreed upon a specific action that is inconsistent with the proposed action and, if so, whether there has been a change in circumstances sufficient to justify the proposed action.

(b) The decision of the division of hearings and appeals shall be in writing and shall contain findings of fact and a determination of whether there is good cause for permitting the proposed action to be undertaken. The decision shall include an order that the dealer be allowed or is not allowed to undertake the proposed action, as the case may be. The order may require fulfillment of appropriate conditions before and after the proposed action is undertaken.

Wis. Stat. § 218.0124 provides:

Any performance standard or program for measuring dealership performance that may have a material effect on a dealer, and the application of any such standard or program by a manufacturer, importer or distributor, shall be fair, reasonable and equitable. Upon the request of any dealer, a manufacturer, importer or distributor shall disclose in writing to the dealer a description of how a performance standard or program is designed and all relevant information used in the application of the performance standard or program to that dealer.

### Findings of Fact

The Administrator finds:

1. Jim Carter Ford, Inc., d/b/a Kocourek Ford (Kocourek Ford or the Dealership) is a licensed motor vehicle dealer doing business at 2909 Lorch Avenue (near the intersection of Interstate Highway 95 and State Highway 93) in Eau Claire, Wisconsin. Kocourek Ford is a franchised dealer of Ford automobiles and trucks.

2. Ford Motor Company (Ford) is the manufacturer of Ford automobiles and trucks. Ford holds a manufacturer's license issued by the Wisconsin Department of Transportation. Eau Claire, Wisconsin is located in Ford's Twin Cities region. Ford's Twin Cities region consists of the entire states of Minnesota and North Dakota, most of South Dakota, the northern tier of Iowa and the western third of Wisconsin.

3. James Carter (Carter) is the president and principal shareholder of the Dealership. In 1980, James Carter, along with his father, formed Jim Carter Ford, Inc. Jim Carter Ford, Inc. purchased the dealership assets of an existing Ford dealership in Eau Claire. Jim Carter, Inc. entered into a Ford Sales and Service Agreement (SSA) with Ford on February 14, 1980. (compl. exh. 5)<sup>2</sup>

4. The SSA acknowledged Carter as the holder of 51% of the ownership interest in the dealership and as an individual "hav[ing] full managerial authority for the operating management" of the dealership. The SSA also required Carter to give notice to Ford of any proposed change in the ownership or managerial authority specified in the SSA. Ford agreed to "not unreasonably withhold its consent to any such [proposed] change." (compl. exh. 5)

5. Carter subsequently acquired various other motor vehicle franchises. These franchises included Mitsubishi, Volkswagen and Audi dealerships in Eau Claire, a Honda dealership and a GM dealership in Chippewa Falls, and a Chevrolet dealership in Wausau. Carter also owned three used vehicle dealerships.

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<sup>2</sup> In the record, exhibits were marked as either complainant's (compl.) or Ford's. This designation will be continued throughout this decision.

6. By 1985 Carter had become the sole shareholder in Jim Carter Ford, Inc. (compl. exh. 7) In 1987, Donald McMenamain (McMenamin), the Dealership's general manager, was added to paragraph F(ii) of the SSA as an individual with "full managerial authority" for the operations of the Dealership. (compl. exh. 8) At some point, Carter began to lose interest in the automotive sales business. In November 1991, Carter entered into a long-term buy-sell agreement with McMenamain under which McMenamain would acquire ownership of the Dealership. By letter dated May 22, 1992, Carter informed Ford of the buy-sell agreement. (compl. exh. 9) Carter estimated the buy-out of the Dealership by McMenamain would take between twelve and fifteen years.

7. Ford did approve McMenamain as a minority owner of the Dealership stock. However, Ford never approved the proposed change of ownership the Dealership. In 1999, Carter negotiated a buy-out of McMenamain's interest in the Dealership and began searching for other prospective buyers for the Dealership. Carter had previously sold his Honda dealership in Chippewa Falls and his Chevrolet dealership in Wausau.

8. Carter sold his Chevrolet dealership in Wausau to Kevin Kocourek (Kocourek), the general manager of the dealership. General Motors had approved Kocourek as 100% owner of the dealership. Carter began discussing the sale of his Eau Claire Ford dealership to Kocourek with him.

9. By January 2000, Carter and Kocourek had entered into an oral agreement under which Kocourek would acquire all of the ownership interest of the Dealership. On February 1, 2000, Kocourek submitted a "Prospective Dealer Application" to Ford. (compl. exh. 29) On April 26, 2000, Carter and Kocourek entered into a "Stock Redemption Agreement" under which Kocourek would acquire all the shares of Jim Carter Ford, Inc. (compl. exh. 33) The "Stock Redemption Agreement" was conditioned on Ford's approval of the proposed change in ownership. A copy of the "Stock Redemption Agreement" was received by Ford in its Twin Cities region office on September 5, 2000. Prior to receipt of the "Stock Redemption Agreement," Ford had approved Kocourek's acquisition of 20% of the stock in Jim Carter Ford, Inc. Ford had also approved Kocourek being listed as the general manager and having managerial authority for the Dealership. (compl. exh. 32)

10. By letter dated October 27, 2000, Tom Spencer (Spencer), Ford's Twin Cities Region, Regional Sales Manager, advised Carter and Kocourek that "[I]n light of the fact that the Stock Purchase Agreement does not meet [Ford's] capitalization guidelines, we are unable to support Mr. Kocourek as the replacement dealer in Eau Claire, Wisconsin." (compl. exh. 37)

11. In response to Ford's concerns, Carter and Kocourek amended the buy-sell agreement. The amended buy-sell agreement was sent to Ford on December 21, 2000. In the cover letter accompanying the buy-sell agreement, Kocourek requested Ford approve the proposed change of ownership and executive management of Jim Carter Ford, Inc. as a "proposed action" pursuant to Wis. Stat. § 218.0134. (compl. exh. 38)

12. By letter dated January 18, 2001, Ford responded to Kocourek's December 21, 2000 letter. Ford's response was to request the following information from Carter and Kocourek.

- CSI data for Mr. Kocourek's Chevrolet dealership for the last three years (2000, 1999, 1998). This data needs to be full year and has to compare the dealership to local and national CSI performance.
- Retail penetration data for Mr. Kocourek's Chevrolet dealership for the last three years (2000, 1999, 1998). This data also needs to be full year and has to compare the dealership to local and national retail penetration performance.
- Year-end financial statements for the Chevrolet dealership for 2000, 1999 and 1998.
- Personal financial statements for Mr. Kocourek for the last two years.
- Mr. Kocourek's detailed operating plan for the Ford dealership. The plan needs to address all facets of the dealership and should include sections addressing customer satisfaction and e-commerce.
- Aged parts inventory analysis for all Ford parts currently in inventory.

(compl. exh. 40)

13. Kocourek responded to Ford's request on March 22, 2001. (compl. exh. 42) In his response Kocourek also repeated his statement that the request for approval of the proposed change in ownership interest and executive management of Jim Carter Ford, Inc., was a "proposed action" pursuant to Wis. Stat. § 218.0134.

14. By letter dated April 4, 2001, Spencer, on behalf of Ford, disapproved the proposed action. The stated reason for the disapproval was because:

The market share performance of Kocourek Chevrolet is below state average and since Keith Kocourek took over the day-to-day operations at Jim Carter Ford as General Manager, market share and customer satisfaction performance as measured by customer viewpoint scores have declined. The proposed Stock Purchase Agreement would also further reduce the actual working capital which is presently below our required working capital guidelines.

(compl. exh. 43)

15. Both before and after he sent the April 4<sup>th</sup> letter, Spencer told Carter and Kocourek that Ford would be willing to reconsider its position on the ownership change in a few months, if the Dealership showed progress under Kocourek's management. (Kocourek testimony; compl. exhs. 43 and 44) Because the Dealership's sales and CSI performance were showing improvement in early 2001, Carter and Kocourek decided to wait a few months and then resubmit a request for Ford's approval. (Carter testimony; Kocourek testimony) In the meantime, by letter dated August 14, 2001, Kocourek requested Ford's approval to change the d/b/a name of the Dealership from Jim Carter Ford to Kocourek Ford. (compl. exh. 51) By

letter dated September 12, 2001, Spencer recommended approval of the name change. (compl. exh. 54) Ford subsequently approved the name change.

16. Ford assigns each of its dealers an area of sales and service responsibility. In the SSA the area of sales and service responsibility is referred to as the "Dealer's Locality." A dealer's Dealer Locality is also referred to as its Primary Market Area (PMA). For single point dealers, Ford designates respective dealers' PMAs on the basis of zip codes. Ford generally assigns zip codes to dealerships on the basis of proximity. Since 1982, the Dealership's PMA has consisted of the following zip codes:

54701 Eau Claire  
54702 Eau Claire  
54703 Eau Claire  
54720 Altoona  
54722 Augusta  
54741 Fairchild  
54742 Fall Creek  
54743 Gilmanton  
54755 Mondovi  
54764 Rock Falls

17. With respect to sales performance, the SSA provides:

*RESPONSIBILITIES WITH RESPECT TO VEHICLES*

**2. (a) Sales.** The Dealer shall promote vigorously and aggressively the sale at retail (and, if the Dealer elects, the leasing and rental) of CARS and TRUCKS to private and fleet customers within the DEALER'S LOCALITY, and shall develop energetically and satisfactorily the potentials for such sales and obtain a reasonable share thereof; but the Dealer shall not be limited to the DEALER'S LOCALITY in making sales. To this end, the Dealer shall develop, maintain and direct a trained, quality vehicle sales organization and shall conduct throughout each model year aggressive advertising and sales promotion activities, making use to the greatest feasible extent of the Company's advertising and sales promotion programs relating to VEHICLES.

The Dealer's performance of his sales responsibility for CARS shall be measured by such reasonable criteria as the Company may develop from time to time, including:

- (1) Dealer's sales of CARS to private and fleet users located in the DEALER'S LOCALITY as a percentage of:
  - (i) all private and all fleet registrations of CARS in the DEALER'S LOCALITY,
  - (ii) all private and all fleet registrations of COMPETITIVE CARS in the DEALER'S LOCALITY,
  - (iii) all private and all fleet registrations of INDUSTRY CARS in the DEALER'S LOCALITY, and



The Dealer's performance of his sales responsibility for TRUCKS shall be Determined in the same manner as for CARS.

The Company will provide to the Dealer an evaluation of his performance under this subparagraph (2)(a) from time to time as initiated by the Company, or not more than once a month upon the written request of the Dealer.

(compl. exh. 102, pages 3-4).

18. The automotive industry commonly uses two alternative methods for evaluating the sales performance of dealers. The PMA of the dealer is critical for using either alternative. One alternative is referred to as "retail registration effectiveness" (RRE). RRE compares how a particular brand, *e.g.* Ford, is doing in a specific area compared to another area. In the instant case Ford compared the market share for Ford vehicles in the Dealership's PMA with Ford's market share in the Twin Cities region. Using RRE a dealer gets credit for each Ford registered in its PMA regardless of whether the dealer assigned that PMA sold the vehicle.

The alternative method of evaluating sales performance is referred to as "sales effectiveness." To calculate a dealer's sales effectiveness one multiplies the number of industry registrations in the dealer's PMA by a comparison market share for a particular brand, *e.g.* Ford's Twin Cities region market share, to determine an expected sales number for a dealer. The dealer's actual sales, regardless of whether vehicles are registered within the dealer's PMA, is then compared to the expected sales number. Both RRE and sales effectiveness are expressed as percentages.

19. The Dealership's total Ford vehicle sales were 449 in 2000 and 529 in 2001. (compl. exhs. 92 and 93) The latest sales figures in the record are for June 2002 YTD (year to date). The Dealership's sales for June 2002 YTD were 300 vehicles. The Dealership's sales within its assigned PMA were 232 in 2000; 234 in 2001; and 135 in June 2002 YTD. (Ford exh. 48, dep. page 12) Total Ford registrations in the Dealership's assigned PMA were 697 (147 cars and 550 trucks) in 2000; 683 (141 cars and 542 trucks) in 2001; and 294 (69 cars and 335 trucks) in June 2002 YTD. (Ford exh. 49, rebut pages 14, 15, and 16)

20. Ford's Twin Cities region market shares, segmented by cars and trucks for the years 2000, 2001, and June 2002 YTD along with the expected sales for the Dealership's PMA and its RRE are as follows:<sup>3</sup>

**In 2000, Fords market share in the Twin Cities region was 10.5% for cars and 29.7% for trucks**

Industry registrations in Kocourek Ford's assigned PMA

<u>Cars</u>	<u>Trucks</u>
1986	2291

<sup>3</sup> The figures used in these tables are taken from Ford's exhibit 48, pages 12, 14A, 15A, 36A, 37A, and 38.

Expected Ford registrations using region average

<u>Cars</u>	<u>Trucks</u>
209	680

Actual Ford registrations in Kocourek Ford's PMA

<u>Cars</u>	<u>Trucks</u>
147	550

Kocourek Ford's RRE

<u>Cars</u>	<u>Trucks</u>
70.3%	80.9%

Kocourek Ford's total sales

<u>Cars</u>	<u>Trucks</u>
115	334

Kocourek Ford's sales effectiveness

<u>Cars</u>	<u>Trucks</u>
55%	49%

**In 2001, Fords market share in the Twin Cities region was 10.3% for cars and 28.5% for trucks**

Industry registrations in Kocourek Ford's assigned PMA

<u>Cars</u>	<u>Trucks</u>
1871	2196

Expected Ford registrations using region average

<u>Cars</u>	<u>Trucks</u>
193	626

Actual Ford registrations in Kocourek Ford's PMA

<u>Cars</u>	<u>Trucks</u>
141	542

Kocourek Ford's RRE

<u>Cars</u>	<u>Trucks</u>
73.1%	86.6%

Kocourek Ford's total sales

<u>Cars</u>	<u>Trucks</u>
144	385

Kocourek Ford's sales effectiveness

<u>Cars</u>	<u>Trucks</u>
74.6%	61.5%

**In June 2002 YTD, Fords market share in the Twin Cities region was 8.7% for cars and 24.9% for trucks**

Industry registrations in Kocourek Ford's assigned PMA

<u>Cars</u>	<u>Trucks</u>
828	1093

Expected Ford registrations using region average

<u>Cars</u>	<u>Trucks</u>	<u>Total</u>
72	272	344

Actual Ford registrations in Kocourek Ford's PMA

<u>Cars</u>	<u>Trucks</u>
69	225

Kocourek Ford's RRE

<u>Cars</u>	<u>Trucks</u>
95.8%	82.7%

Kocourek Ford's total sales

<u>Cars &amp; Trucks</u>
300

Kocourek Ford's sales effectiveness

<u>Cars &amp; Trucks</u>
87.2%

Ford's expert segmented the market taking local preferences into account before calculating the Dealership's RRE for these time periods. Under this analysis the Dealership's RREs are higher than those shown above; however, for the time period from January 2000 until

June 2002 the Dealership never achieved an RRE greater than 100% for any segment. (Ford's exh. 48)

21. In his letter recommending approval of the name for the Dealership from Jim Carter Ford to Kocourek Ford, Spencer acknowledged that the reputation of Jim Carter Ford was poor with respect to customer satisfaction in the Eau Claire area and a change to Kocourek Ford would result in a "more positive association with [Ford] products." (compl. exh. 54) In a separate letter, Mark Lowery, the market representation manager for Ford's Twin Cities region, acknowledged that the Dealership "has been improving" since Kocourek's involvement. (compl. exh. 55) During 2001, the Dealership's customer satisfaction performance, as measured by the Dealership's CSI scores, had improved from below the group average<sup>4</sup> in all but one category to at or above group average in nearly all categories. (compare customer satisfaction scores in compl. exh. 35 with those on compl. exh. 88)

22. In preparation for renewing the request for approval of the proposed change of ownership and executive management of Jim Carter Ford, Inc., the Dealership obtained from Ford the zip codes assigned to it as its PMA. (compl. exh. 62) After plotting the zip codes on a map, the Dealership concluded that several zip codes in its assigned PMA were actually closer to competing Ford dealerships than to Kocourek Ford. The Dealership then retained an expert to review Ford's sales performance standards and analyze how they were applied to Kocourek Ford. The expert, Professor John P. Matthews, prepared a report. In his report, Professor Matthews concluded that if Kocourek Ford's sales performance was evaluated using what he considered a properly defined PMA, Kocourek Ford's sales effectiveness for 2001 was above 100%. (compl. exh. 68)

23. A copy of Professor Matthew's report was submitted to Ford on February 22, 2002, along with a letter from Kocourek Ford's attorney. In the letter Kocourek Ford renewed its request for approval of the "proposed action." The letter provided:

The proposed action is the transfer of 70% of the Dealer's stock from James C. Carter to Keith A. Kocourek pursuant to the Corporate Stock Purchase Agreement, dated December 21, 2000, which has been previously provided to Ford, and the designation of Keith A. Kocourek as the sole individual having managerial authority for the operating management of Dealer in paragraph F(ii) of the Ford Sales and Service Agreement between Ford and Dealer.

(compl. exh. 68)

24. In evaluating potential dealer candidates, Ford considers what it refers to as the four "Cs." The four "Cs" are:

Customer Satisfaction: Demonstrated customer satisfaction commitment and acceptable performance based on available measurement criteria and other "customer care" factors.

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<sup>4</sup> For customer satisfaction purposes, Ford puts dealers into groups of dealers of similar sizes.

Capacity: Proven track record of satisfactory sales and market share performance and successful dealership operation.

Character: Good standing in the community with a sound personal and financial reputation.

Capital: Adequate cash, capital structure, and wholesale credit lines sufficient to meet established requirements.

In a letter dated March 22, 2002, Tom Spencer, on behalf of Ford, again disapproved the proposed action.

In the March 22, 2002, letter, Spencer stated that Kocourek has made progress with respect to Customer Satisfaction and Capital. However, Ford's "major concern continues to relate to Capacity." (compl. exh. 77) Spencer's letter further states that using either the PMA assigned to Kocourek Ford by Ford or the revised PMA defined by Matthews, Ford's market penetration in Kocourek Ford's PMA was less than the regional average. For this reason, Ford disapproved the proposed action.

25. As discussed below, when the Dealership's PMA is modified by deleting two zip codes that are not reasonably assigned to the Dealership and a third zip code, the 54703 zip code, is split between the Dealership and the Chippewa Falls Ford dealership, the Dealership sales effectiveness exceeds 100% as of June 2002 YTD. These modifications are made for purposes of evaluating the Dealership's sales performance only and should not be construed as a requirement that Ford alter the Dealership's Dealer's Locality for any other purpose.

26. For reasons set forth below, sales effectiveness is a more fair and equitable method of evaluating dealer's sales performance than RRE. Accordingly, Ford's disapproval of the proposed action based on its stated reasons of unsatisfactory sales performance is unreasonable. Good cause exists for permitting the proposed action.

## DISCUSSION

James Carter has been attempting to sell his Ford dealership in Eau Claire since 1995. To realize the maximum return on his investment in the Ford franchise, he prefers to do this by selling his stock in Jim Carter Ford, Inc. No one disputes Carter's right to sell the dealership under the terms most favorable to himself. Carter has identified two prospective buyers who were willing to purchase the stock of Jim Carter Ford. The first was Don McMenamin.

After several unsuccessful years of seeking Ford's approval of a sale of the franchise to McMenamin, Carter abandoned this plan and repurchased the stock McMenamin had acquired. Carter then began to negotiate with another prospective purchaser, Kevin Kocourek. Kocourek is also willing to purchase the stock of Jim Carter Ford, Inc. The Dealership requested approval of Kocourek acquiring the ownership and being named executive manager of Jim Carter Ford, Inc. several times. Ford disapproved the request. The reasons for disapproval changed over time

as Kocourek was able, as general manager of the Dealership, to address some of Ford's concerns.

The most recent request for approval was made in a letter dated February 22, 2002 and described the proposed action as "the transfer of 70% of the Dealer's stock from James C. Carter to Keith A. Kocourek pursuant to the Corporate Stock Purchase Agreement, dated December 21, 2000, which has been previously provided to Ford, and the designation of Keith A. Kocourek as the sole individual having managerial authority for the operating management of Dealer in paragraph F(ii) of the Ford Sales and Service Agreement between Ford and Dealer." Ford again disapproved the proposed action; however, Ford only stated one reason for its disapproval. The reason for disapproval is that Kocourek Ford has failed to achieve a market share for Ford in its PMA at least as high as the regional average for Ford.

As stated above, Carter is entitled to realize a reasonable return on his investment in his Ford franchise. For tax purposes, Carter prefers to sell the stock in Jim Carter Ford, Inc., not just the dealership assets. Carter also has a goal of selling the Dealership to someone who will treat the employees of the Dealership fairly. Selling the dealership to Kocourek satisfies both these conditions. On the other hand, Ford also has a legitimate interest in appointing strong dealers who will represent it well. For this reason Ford, like all manufacturers, reserves the right to approve new dealer candidates. In order to ensure that Ford and other manufacturers exercise their right of approval reasonably, the Wisconsin legislature enacted Wis. Stat. § 218.0134.

The issue in this matter is whether good cause exists for permitting the proposed action. Specifically, whether as alleged by Ford, the Dealership has failed to demonstrate a "proven track record of satisfactory sales and market share performance." Before one can address this issue one must determine the proper sales performance standard and the proper PMA for the Dealership. In order to establish a sales performance standard, one must first determine what standard should be used to compare the Dealership's performance. Ford has decided the Twin Cities regional average is the proper standard. Secondly, one must decide the proper method to measure the Dealership's sales performance. Ford has decided that RRE is the proper method.

#### Regional Average

The Dealership is located in Ford's Twin Cities Region. The Dealership argues that it is unfair to compare its sales performance to the Twin Cities regional average because the region includes more rural than urban dealers. Rural dealers face less competition from foreign models and enjoy more loyalty to domestic nameplates. The Dealership contends its sales performance should instead be compared to the average of Wisconsin Ford dealers.

Ford contends that it organizes its regions, in part, along media outlets. Therefore, by using regional averages a dealer's sales performance is compared to the performance of other dealers whose customers are receiving the same advertising messages. Additionally, incentive programs are done on a regional basis. Therefore, dealers are also compared to others with the same sales promotions. Ford presented statistics to show that the profile of the average Twin City Ford dealer is not substantially different than the Dealership. Ford's use of the regional average is a reasonable standard to evaluate the Dealership's sales performance.

### Retail Registration Effectiveness

Ford evaluates its dealer sales performance by the market penetration of Ford automobiles and trucks in the respective dealer's PMA. This standard is termed retail registration effectiveness. Ford's contention is that dealers are responsible for representing Ford in an assigned territory. Ford looks at how well its products are selling in that territory to evaluate the dealer's sales performance. Ford gives a dealer credit for Ford retail registrations in the dealer's assigned territory, regardless of which Ford dealer sold a particular vehicle. Ford's rationale for using RRE to evaluate its dealers sales performance is that, in part, the reputation of the Ford brand in a particular market is based on the public's opinion of the local Ford dealer. Therefore, comparing Ford's market share in a particular market is a reasonable method to evaluate the sales performance of the Ford dealer in that market. Ford also contends that a Ford vehicle sold in another dealer's PMA would likely have been sold by another Ford dealer; therefore, a dealer does not deserve credit, as an effective seller, for a sale outside of its PMA.

An alternative method to evaluate sales performance is by calculating sales effectiveness. Sales effectiveness is calculated by multiplying the total number of new vehicle registrations in a dealer's PMA by the manufacture's market penetration in a chosen area (e.g. region average, national average, or state average) to determine a dealer's expected sales. The dealer's actual sales (regardless of where the vehicle is registered) are compared to its expected sales. Expected sales are calculated as if all a dealer's sales were to residents of the dealer's PMA, but actual sales are counted regardless of where the vehicle is registered.

Ford's use of retail registration effectiveness has a certain logical appeal in that it attempts to measure how well a dealer is representing the Ford brand. However, in reality, a dealer has little control over who buys vehicles from it. If a dealer is selling the number of vehicles it is expected and upon which its product allocation is based, it is unreasonable for Ford to conclude that the dealer has failed to achieve an acceptable sales performance. In the instant case, by June 2002 YTD, the Dealership was selling the number of vehicles it would be expected to sell based on a properly assigned PMA. If all the surrounding Ford dealers had also been doing so, the Dealership's RRE would have been at or near 100%. The Dealership should not be penalized for the failure of some nearby Ford dealers to achieve their respective expected sales levels.

### Proper PMA

For single point dealers, Ford uses zip codes to define a dealer's PMA. With respect to the Dealership's PMA, prior to February 2000, the zip codes assigned to the Dealership as its PMA were:

54701 Eau Claire  
54702 Eau Claire  
54703 Eau Claire  
54720 Altoona  
54722 Augusta

54741 Fairchild  
54742 Fall Creek  
54743 Gilmanton  
54755 Mondavi  
54764 Rock Falls

Ford initially assigns responsibility for zip codes for single point dealers by calculating the distance between the centroid of the zip code and the nearby dealers. Zip codes are assigned to the dealer located the shortest distance from the centroid. After the initial assignment some modifications may be made based on local factors. In his report Professor Matthews produced maps which showed that zip code 54722 (Augusta) and 54741 (Fairchild) were significantly closer to the Osseo Ford dealer's location than to Kocourek Ford's location. The centroid of a third zip code, the 57703 zip code, is slightly closer to the new location of the Chippewa Falls dealership.

A dealer's PMA is used to calculate such things as the dealer's product allocation and sales potential. Although a dealer's PMA is important in its day-to-day operation of its business, it is especially critical when Ford is evaluating a dealer for purposes such as approving a transfer of ownership. In the instant case Ford had not revised the Dealership's PMA since 1982, despite the relocation of two nearby Ford dealerships, the Osseo Ford dealer (in November 2001) and the Chippewa Falls dealer (in 1998).

After reviewing Professor Matthew's report, Ford did its own analysis of the Dealership's PMA. Based on its analysis, Ford agreed that two zip codes, the 54722 and 54741 zip codes, were improperly assigned to the Dealership. Ford also concluded that the centroid for zip code 54738 (Eleva) is now closer to the Dealership since the relocation of the Osseo Ford dealer. Finally, Ford concluded that the 54703 zip code was properly assigned to the Dealership despite the fact that the centroid of the zip code is approximately 1.1 miles closer to the new location of the Chippewa Falls dealer than it is to the Dealership. Ford based this conclusion on the fact that the Dealership sold a plurality of the Ford vehicles registered in this zip code during 2000, 2001 and June YTD 2202.

Although the Dealership has sold a plurality of the Fords registered in the 54703 zip code, one can hardly say that the Dealership has demonstrated market dominance in this zip code. In 2000, the Dealership sold 91 out of 272 (33.4%) Ford vehicles registered in the 54703 zip code. In 2001, the Dealership sold 72 out of 251 (28.5%) of the Ford vehicles registered in the 54703 zip code. As of June 2002 YTD, the Dealership had sold 45 of 105 (42.9%) of the Ford vehicles registered in the 54703 zip code. In 2001, the Dealership sold less than a third of the Fords registered in the 54703 zip code. Based on the statistics prepared by Ford's expert, Ford dealers other than the three located closest to the 54703 zip code sold more of the Fords registered in that zip code than did any of the three nearby Ford dealers (Kocourek Ford, the Chippewa Falls dealer, and the Osseo dealer). The three closest dealers sold 72, 33, and 64 Ford vehicles registered in the 54703 zip code respectively. Other Ford dealers sold 82 (251 Ford vehicles sold less 169 sold by the three closest dealers) (Ford exh. 48, dep. page 12).

It is understood that Ford designates PMAs for single point dealers by assigning zip codes. If one dealer has to be assigned responsibility for the 54703 zip code, it is not unreasonable for Ford to assign it to the Dealership. However, as admitted by Ford's witnesses, in reality the Chippewa Falls Ford dealership and Kocourek Ford share responsibility for the 54703 zip code. It is, therefore, unreasonable to evaluate Kocourek Ford's sales performance as if it were solely responsible for the 54703 zip code. It is more reasonable to split the zip code between the two dealerships for purposes of evaluating Kocourek Ford's sales performance. The tables prepared by Ford's expert to calculate the expected sales for Kocourek Ford based on a PMA consisting of zip codes 54743, 54745, 54764, 54720, 54701, 54702, ½ of 54703, and 54742 for the years 2000, 2001, and June 2002 YTD are adjusted as follows:<sup>5</sup>

**DEC 2000 YTD**  
ZIP CODES PROPERLY ASSIGNED TO KOCOUREK FORD

	INDUSTRY REGISTRATIONS			FORD REGISTRATIONS		
	CARS	TRUCKS	TOTAL	CARS	TRUCKS	TOTAL
54743	0	1	1	0	0	0
54755	104	162	266	10	53	63
54764	0	1	1	0	0	0
54720	147	171	318	7	35	42
54701	863	912	1775	54	173	227
54702	6	30	36	2	8	10
½ of 54703	361	388.5	749.5	28	108	136
54742	83	123	206	9	26	35
	1564	1788.5	3352.5	110	403	513

Using the properly assigned PMA, the Dealership's expected sales for 2000 are 164 cars (1564 times 10.5%) and 531 trucks (1788.5 times 29.7%). The Dealership's RRE is 67% for cars and 75.9% for trucks. The Dealership's sales effectiveness for cars and trucks combined is 64.6% (449 actual sales divided by 646 expected sales).

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<sup>5</sup> The reassignment of the 54738 zip code is only appropriate after the relocation of the Chippewa Falls Ford dealer (November 2001). Insufficient data is available to recalculate the 2002 sales statistics with the 54738 zip code assigned to the Dealership. However, the sales numbers in the 54738 zip code are small and do not significantly effect the sales performance evaluations.

**DEC 2001YTD**  
ZIP CODES PROPERLY ASSIGNED TO KOCOUREK FORD

ZIP CODES	INDUSTRY REGISTRATIONS			FORD REGISTRATIONS		
	CARS	TRUCKS	TOTAL	CARS	TRUCKS	TOTAL
54743	1	0	1	0	0	0
54755	95	163	258	9	45	54
54764	0	0	0	0	0	0
54720	137	157	294	18	38	56
54701	806	880	1686	46	194	240
54702	8	19	27	2	3	5
½ of 54703	343	394	737	23.5	102	125.5
54742	85	112	197	12	30	42
	1475	1725	3200	105.5	412	531.5

For 2001, the Dealership's expected sales are 152 cars (1475 times 10.3%) and 492 trucks (1725 times 28.5%). The Dealership's RRE is 69.4% for cars and 82.1% for trucks. The Dealership's sales effectiveness for cars and trucks combined is 82.1% (529 actual sales divided by 644 expected sales).

**JUNE 2002 CYTD**  
ZIP CODES PROPERLY ASSIGNED TO KOCOUREK FORD

ZIP CODES	INDUSTRY REGISTRATIONS			FORD REGISTRATIONS		
	CARS	TRUCKS	TOTAL	CARS	TRUCKS	TOTAL
54743	2	0	2	0	0	0
54755	43	97	140	2	26	28
54764	0	1	1	0	0	0
54720	59	73	132	3	13	16
54701	376	438	814	31	83	114
54702	5	14	19	0	2	2
½ of 54703	150.5	193.5	344	14	38.5	52.5
54742	18	49	67	1	12	13
	653.5	865.5	1519	51	174.5	225.5

For June 2002 YTD, the Dealership's expected sales are 57 cars (654 times 8.7%) and 216 trucks (865.5 times 24.9%). The Dealership's RRE is 69.4% for cars and 82.1% for trucks. The Dealership's sales effectiveness for cars and trucks combined is 109.9% (300 actual sales divided by 273 expected sales). The Dealership's sales effectiveness has shown steady improvement

during the period that Kocourek has been general manager. As of June 2002 YTD, the dealership's sales effectiveness has surpassed the region average using a properly assigned PMA.

### Good Cause Factors

Seven factors are listed at Wis. Stat. § 218.0134(3)(a) that may be considered in determining whether good cause exists to permit the proposed action. The seven factors are:

1. The reasons for the proposed action.
2. The affected grantor's reasons for not approving the proposed action.
3. The degree to which the inability to undertake the proposed action will have a substantial and adverse effect upon the motor vehicle dealer's investment or return on investment.
4. Whether the proposed action is in the public interest.
5. The degree to which the proposed action will interfere with the orderly and profitable distribution of products by the affected grantor.
6. The impact of the proposed action on other motor vehicle dealers.
7. Whether the dealer and affected grantor have previously agreed upon a specific action that is inconsistent with the proposed action and, if so, whether there has been a change in circumstances sufficient to justify the proposed action.

With respect to the first factor, the reason for the proposed action is Carter's desire to get out of the automotive sales business. No relevant evidence related to factors four, six, or seven was presented at the hearing. The remaining three factors relate to the impact not being able to undertake the proposed action will have on the motor vehicle dealer's investment or return on investment versus the impact the proposed action will have on the manufacturer. These factors have been addressed above, but will be discussed briefly in the context of the statutory factors.

The third factor is "[t]he degree to which the inability to undertake the proposed action will have a substantial and adverse effect upon the motor vehicle dealer's investment or return on investment." Carter's goal is to obtain a reasonable return on his investment in the Dealership. He believes that he can do this by selling the stock in Jim Carter Ford, Inc., and not just the Dealership's assets. Ford's witnesses testified that they could locate other potential dealer candidates interested in purchasing the Dealership. However, it is speculative whether the candidates located by Ford would purchase the dealership on as favorable terms as offered by Kocourek. Carter also stated that he wanted to sell the Dealership to some one who would treat the employees fairly. Kocourek, the current general manager, also satisfies this condition.

Based on the evidence in the record, the inability of Carter to transfer ownership of the Dealership to Kocourek will have a substantial adverse impact on the return Carter realizes from the sale of the Dealership.

The second factor is “[t]he affected grantor's reasons for not approving the proposed action” and the fifth factor is “[t]he degree to which the proposed action will interfere with the orderly and profitable distribution of products by the affected grantor.” Ford’s reason for disapproving the proposed action is that Kocourek has not demonstrated an adequate sales performance. Ford’s concern is that Kocourek will continue to fail to achieve an RRE equal to the Twin Cities region average. Such a failure will obviously adversely impact Ford’s profits. As stated above, Ford is judging the Dealership using an unreasonable standard, RRE as opposed to sales effectiveness, and using an outdated PMA for the Dealership. Using a properly assigned PMA for the Dealership and using a standard of sales effectiveness, rather than RRE, the Dealership has demonstrated adequate sales performance compared to the average of the Twin Cities region. Good cause exists for permitting the proposed action.

#### Conclusions of Law

The Administrator concludes:

1. The use by the Ford Motor Company of retail registration effectiveness as a sales performance standard for the purpose of evaluating the sales performance of Jim Carter Ford, Inc., d/b/a/ Kocourek, during the time that Keith A. Kocourek was the General Manager of Jim Carter Ford, Inc., d/b/a/ Kocourek, and for the purpose of determining whether Keith A. Kocourek was qualified to purchase and operate the Dealership constitutes the application of an unfair, unreasonable, and inequitable performance standard in violation of Wis. Stat. § 218.0124.
2. The request made by Jim Carter Ford, Inc., d/b/a/ Kocourek Ford, for permission from Ford Motor Company to transfer 70% of the stock of Jim Carter Ford, Inc., from James C. Carter to Keith A. Kocourek, pursuant to the Corporate Stock Purchase Agreement, dated December 21, 2000, and to designate Keith Kocourek as the sole individual having managerial authority for the operating management of the Dealership in paragraph F(ii) of the Ford Sales and Service Agreement between Ford and Dealer constitutes a “proposed action” pursuant to Wis. Stat. § 218.0134(2)(a).
3. For the reasons set forth above and considering the factors listed at Wis. Stat. § 218.0134(3)(a), good cause does exist to permit the proposed action.
4. Pursuant to Wis. Stat. §§ 218.0134(3)(b) and 227.43(1)(bg), the Division of Hearings and Appeals has the authority to issue the following order.

Order

The Administrator orders:

Good cause exists for Jim Carter Ford, Inc., d/b/a/ Kocourek Ford, to undertake the proposed action as described above and it is hereby ORDERED that Jim Carter Ford, Inc., d/b/a/ Kocourek Ford, be allowed to undertake the proposed action.

Dated at Madison, Wisconsin on May 1, 2003.

STATE OF WISCONSIN  
DIVISION OF HEARINGS AND APPEALS  
5005 University Avenue, Suite 201  
Madison, Wisconsin 53705  
Telephone: (608) 266-7709  
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By: \_\_\_\_\_  
David H. Schwarz  
Administrator

### NOTICE

Set out below is a list of alternative methods available to persons who may wish to obtain review of the attached decision of the Division. This notice is provided to insure compliance with Wis. Stat. § 227.48 and sets out the rights of any party to this proceeding to petition for rehearing and administrative or judicial review of an adverse decision.

1. Any person aggrieved by the attached order may within twenty (20) days after service of such order or decision file with the Division of Hearings and Appeals a written petition for rehearing pursuant to Wis. Stat. § 227.49. Rehearing may only be granted for those reasons set out in sec. 227.49(3), Stats. A petition under this section is not a prerequisite for judicial review under Wis. Stat. §§ 227.52 and 227.53.

2. Any person aggrieved by the attached decision which adversely affects the substantial interests of such person by action or inaction, affirmative or negative in form is entitled to judicial review by filing a petition therefore in accordance with the provisions of Wis. Stat. §§ 227.52 and 227.53. Said petition must be filed within thirty (30) days after service of the agency decision sought to be reviewed. If a rehearing is requested as noted in paragraph (1) above, any party seeking judicial review shall serve and file a petition for review within thirty (30) days after service of the order disposing of the rehearing application or within thirty (30) days after final disposition by operation of law. Any petition for judicial review shall name the Division of Hearings and Appeals as the respondent. Persons desiring to file for judicial review are advised to closely examine all provisions of Wis. Stat. §§ 227.52 and 227.53 to insure strict compliance with all its requirements.