

NEW MOTOR VEHICLE BOARD
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STATE OF CALIFORNIA

NEW MOTOR VEHICLE BOARD

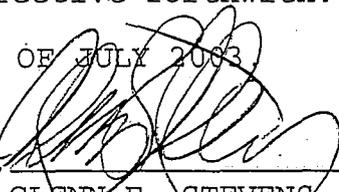
In the Matter of the Petition of)
)
UNIVERSITY FORD, dba BOB) Petition No. P-450-02
BAKER FORD,)
)
Petitioner,)
)
v.)
)
FORD MOTOR COMPANY,)
)
Respondent.)
_____)

DECISION

At its regularly scheduled meeting of July 21, 2003, the Public members of the Board met and considered the administrative record and Proposed Decision After Remand in the above-entitled matter. After such consideration, the Board adopted the Proposed Decision After Remand as its final Decision in this matter.

This Decision shall become effective forthwith.

IT IS SO ORDERED THIS 21st DAY OF JULY 2003.



GLENN E. STEVENS
President
New Motor Vehicle Board

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11 In the Matter of the Petition of)
12 UNIVERSITY FORD, dba BOB BAKER) **Petition No. P-450-02**
FORD,)
13)
Petitioner,) **PROPOSED DECISION AFTER REMAND**
14)
v.)
15)
FORD MOTOR COMPANY,)
16)
Respondent.)
17 _____)

18
19 **PROCEDURAL BACKGROUND**

20 1. On June 17, 2003, the Public members of the New Motor Vehicle
21 Board ("Board") met and considered the attached Proposed Decision dated
22 June 9, 2003.

23 2. The Board ordered that Petitioner and Respondent file and
24 serve simultaneous briefs addressing the proper standard of
25 administrative judicial review under Vehicle Code¹ section
26 11713.3(d)(3), and the applicability of the holdings in the Federal

27 _____
28 ¹ All statutory references are to the California Vehicle Code
unless noted otherwise.

1 cases of, *In re Van Ness Auto Plaza, Inc.*, 120 B.R. 545 (Bankr N.D. Cal.
2 1990), and *In re Claremont Acquisition Corporation, Inc.*, 186 B.R. 977
3 (Bankr. C.D. Cal. 1995).

4 3. By order dated June 18, 2003, the matter was remanded to the
5 Administrative Law Judge for reconsideration of the proper standard of
6 review in light of the parties' briefs.

7 4. After reviewing the briefs and applicable law, this Proposed
8 Decision After Remand is being submitted for consideration by the Public
9 members of the Board. The Proposed Decision dated June 9, 2003, is
10 incorporated herein except for paragraph 70.

11 **ISSUE**

12 5. The Order of Remand instructed the Administrative Law Judge to
13 determine the proper standard to be applied under Section 11713.3(d)(3)
14 and the applicability of the holdings in the cases of *In re Van Ness*
15 *Auto Plaza, Inc.*, 120 B.R. 545 (Bankr N.D. Cal. 1990), and *In re*
16 *Claremont Acquisition Corporation, Inc.*, 186 B.R. 977 (Bankr. C.D. Cal.
17 1995).

18 **ANALYSIS**

19 6. Both of the Bankruptcy cases cited above were decided prior to
20 the 1999 amendment to the Vehicle Code which resulted in the current
21 version of Section 11713.3(d)(3).

22 7. The former version of Section 11713.3 provided, in pertinent
23 part, as follows:

24 It is unlawful and a violation of this code for any
25 manufacturer, manufacturer branch, distributor, or distributor
branch licensed under this code to do any of the following:

26 ...
27 (d) To prevent or require, or attempt to prevent or require,
28 by contract or otherwise, any dealer, or any officer, partner,
or stockholder of any dealership, the sale or transfer of any
part of the interest of any of them to any other person or

1 persons. No dealer, officer, partner, or stockholder shall,
2 however, have the right to sell, transfer, or assign the
3 franchise, or any right thereunder, without the consent of the
4 manufacturer or distributor except that the consent shall not
5 be unreasonably withheld.

6 (e) To prevent, or attempt to prevent, a dealer from
7 receiving fair and reasonable compensation for the value of
8 the franchised business. There shall be no transfer or
9 assignment of the dealer's franchise without the consent of
10 the manufacturer or distributor, which consent shall not be
11 unreasonably withheld.

12 8. The pre-1999 version of Section 11713.3 made it unlawful for a
13 manufacturer or distributor to unreasonably withhold consent to a
14 proposed sale, transfer or assignment of the franchise. However, the
15 section did not directly address the standard which should apply to the
16 evidence in these cases in determining whether the franchisor's consent
17 was unreasonably withheld.

18 9. In 1990, the U. S. Bankruptcy Court for the Northern District
19 of California decided the *Van Ness* case. The court in *Van Ness* found no
20 published decisions interpreting Section 11713.3(e).

21 10. In adopting the substantial evidence standard of review, the
22 *Van Ness* court looked to the law governing the assignment of leases and
23 found:

24 Although the standards set forth in the authorities quoted
25 above differ from one another to some extent, they are alike
26 in that they focus not on whether the lessor's decision to
27 withhold consent is correct, but on whether there is a
28 substantial basis for the lessor's decision under relevant
criteria. None of the authorities suggest that a court is to
review the lessor's refusal to consent *de novo* and find that
decision unreasonable because the court would have decided
differently. (*In re Van Ness Auto Plaza, Inc., supra*, 120
B.R. 545, 548.)

11. In 1995, the U.S. District Court for the Central District of
California decided the *Claremont Acquisition* case, which was an appeal
from an order of the U.S. Bankruptcy Court for the Central District of
California.

1 12. The Claremont Acquisition court, reaffirming the substantial
2 evidence test set forth in *Van Ness*, stated:

3 The bankruptcy court did not limit itself to the question of
4 whether the CSI evidence presented by GM was "substantial,"
5 but went on to determine that a recent upward trend in
6 customer satisfaction under the new PDS system and the hiring
7 of Caren Myers "rebutted and overcame" GM's evidence. This
8 was an improper application of the legal standard discussed in
9 *Van Ness*. The bankruptcy court required more than
10 "substantial evidence" and, in effect, placed upon the
11 manufacturer the burden of proving that Worthington was
12 deficient as a proposed assignee, an approach rejected by the
13 *Van Ness* court.

14 ...
15 Reasonable minds might differ as to whether GM should have
16 withheld consent, but the decision was based on substantial
17 evidence and the court should not substitute its judgment for
18 that of the manufacturer.

19 13. In 1999, Section 11713.3(d) was amended, in pertinent part, as
20 follows:

21 (d)(1) Except as provided in subdivision (t) to prevent or
22 require, or attempt to prevent or require, by contract or
23 otherwise, any dealer, or any officer, partner, or stockholder
24 of any dealership, the sale or transfer of any part of the
25 interest of any of them to any other person or persons. No
26 dealer, officer, partner, or stockholder shall, however, have
27 the right to sell, transfer, or assign the franchise, or any
28 right thereunder, without the consent of the manufacturer or
distributor except that the consent shall not be unreasonably
withheld.

29 ...
30 (3) In any action in which the manufacturer's or distributor's
31 withholding of consent under this subdivision or subdivision
32 (e) is an issue, whether the withholding of consent was
33 unreasonable is a question of fact requiring consideration of
34 all the existing circumstances.
35 (Emphasis added).

36 14. Interpretation of a statute must be initially determined from
37 the language of the statute. See *Marina Green Homeowners Association v.*
38 *State Farm Fire and Casualty Company* (1994) 25 Cal.App.4th 200, 204.
39 However, when there are ambiguities in the statutory language, the
40 legislative history must be considered to determine the legislature's

1 4. Specifying that whether a car maker's refusal was
2 "unreasonable" is a question of fact requiring
3 consideration of all the existing circumstances; author's
4 amendments will eliminate potential ambiguity

5 Existing law places upon the car dealer the burden to
6 show that a manufacturer's withholding of consent was
7 unreasonable. Prior to the July 14th amendments, this
8 bill had also proposed to shift that burden of proof to
9 the manufacturer to show that its action was "not
10 unreasonable." That proposal was heavily opposed, as it
11 would have shifted, perhaps unconstitutionally, the
12 burden of proof in a criminal matter to a car
13 manufacturer to show that its conduct was not
14 unreasonable.

15 This bill, as amended, would now provide that whether a
16 manufacturer's refusal was unreasonable is a question of
17 fact requiring consideration of all the existing
18 circumstances in any action in which the manufacturer's
19 withholding of consent is an issue. Implicitly, the
20 burden of proof would remain with the dealer, which is
21 existing law . . .

22 . . . The sponsors assert that it is necessary to modify
23 the holding of a federal bankruptcy case, *In re Van Ness*
24 *Auto Plaza, Inc.* (citations omitted). In that case, the
25 court ruled that a manufacturer was reasonable in
26 withholding consent to a dealer transfer if its decision
27 is supported by substantial evidence of the proposed
28 buyer's deficiency in one or more performance-related
29 criteria, and that a court reviewing the manufacturer's
30 decision may not substitute its judgment for that of the
31 manufacturer.

32 The California Motor Car Dealers Association contends: 1)
33 that *Van Ness* was poorly decided; 2) that the
34 "substantial evidence" standard gives improper deference
35 to the manufacturer's decision and is contrary to general
36 California law with regard to consent clauses in
37 assignments; and 3) that the proper standard is to allow
38 the reviewing court or the trier of fact to exercise its
39 independent judgment on the evidence and to determine the
40 issue of reasonableness based on consideration of all the
41 circumstances and all the competing evidence.

42 This bill would overturn the "substantial evidence"
43 standard of *Van Ness* and would instead provide that in
44 any action in which the manufacturer's withholding of
45 consent is an issue, whether a manufacturer's refusal was
46 unreasonable is a question of fact requiring
47 consideration of all the existing circumstances. This
48 standard would allow the reviewing court or trier of fact
49 to independently weigh the evidence, rather than being
50 required to give substantial deference to the decision of

1 the manufacturer.
2 (Senate Judiciary Committee, Analysis, Assem. Bill No.
3 2707 (1997-98 Reg. Sess.) as amended July 14, 1998, pp.
4 5-6.)

5 18. In view of the comments cited above, it was the author's
6 intent to overturn the *Van Ness* and *Claremont Acquisition* substantial
7 evidence standard of review requiring the trier of fact to give
8 deference to the manufacturer. The amendment thus requires the trier of
9 fact to independently weigh the evidence presented by both parties.

10 19. It is clear from the Senate Judiciary Committee Comments that
11 the intention of the addition of Vehicle Code Section 11713.3(d)(3) was
12 to create the independent judgment test as the standard of review for
13 cases involving the manufacturer's withholding of consent.

14 20. In an Assembly Floor Analysis entitled "Concurrence in Senate
15 Amendments," the "Comments" section, in pertinent part, provides as
16 follows:

17 Under current law, a dealer must obtain the consent of a
18 manufacturer before he or she can enact the sale or transfer
19 of a dealer's franchise. However, current law requires that
20 the consent shall not be unreasonably withheld by the
21 manufacturer. Case law enumerates several factors which a
22 manufacturer may consider in determining whether to grant or
23 withhold consent. The Senate amendments to this measure
24 specify that a determination of unreasonableness is a question
25 of fact requiring consideration of all the existing
26 circumstances on a case-by-case basis.

27 (Assembly Floor, Concurrence in Senate Amendments, Assem. Bill
28 No. 2707 (1997-98 Reg. Sess.) as amended July 27, 1998, pp. 3-
4.)

29 21. The comments above are also an indication of the legislature's
30 intent to change the substantial evidence test of *Van Ness* and
31 *Claremont*.

32 22. Even Respondent Ford Motor Company ("Ford") acknowledges that
33 there is a distinction between the prior standard of review under *Van*
34 *Ness* and *Claremont Acquisition* and the 1999 amendment when it states:

1 The operative distinction between the two is that under the
2 former rule, the trier of fact, in formulating whether the
3 decision to withhold consent was reasonable, arguably was not
4 permitted to consider (or weigh) evidence proffered by a
5 dealer where a manufacturer had established substantial
6 evidence (i.e., that the proposed assignee was materially
7 deficient with respect to one or more performance related
8 criteria) supporting its basis for refusal. Under the "new"
9 standard, in formulating its decision as to whether the
10 transferee is materially deficient, the trier of fact may
11 consider (or weigh evidence) to determine whether the dealer
12 can satisfy its burden of proof of establishing that a
13 manufacturer acted unreasonably even when the manufacturer has
14 established plausible reasons for refusing consent. For
15 example, the trier of fact may consider whether the reasons
16 for a manufacturer's decision although appearing to be
17 plausible, were in fact a pretext (Footnotes omitted). (See
18 Ford's Brief Re: Proper Standard of Review in Light of Vehicle
19 Code Section 11713.3(d)(3) and Applicable Cases at pp. 7-8)

20 23. Under the independent judgment test the standard of review
21 allows an independent person to weigh the evidence and make their own
22 determination of whether the refusal was unreasonable. The trier of
23 fact should balance the interests of the manufacturer and dealer, take
24 evidence from both sides, and weigh the evidence to determine the
25 reasonableness of the refusal to consent.

26 24. With respect to the pending matter, the issue is whether upon
27 application of the independent judgment standard the findings of fact
28 would support the Proposed Decision.²

29 25. Although the independent judgment test was not articulated in
30 the Proposed Decision, it did determine that Section 11713.3(d)(3) was
31 an issue presented at the hearing. (See Issues Presented, Page 3,
32 Paragraph 9 of Proposed Decision).

33 26. In considering the evidence presented by Petitioner, including
34 its allegations and claims, the Proposed Decision includes the

35 ² It should be noted that although Petitioner and Respondent
36 vigorously argued both *Van Ness* and *Claremont Acquisition* cases in their
37 post-hearing briefs, neither party raised the issue of the 1999
38 amendment to Section 11713.3(d)(3).

1 following:

- 2 (1) The alleged disparate treatment by Ford of proposed buyer
3 Asbury Automotive Group Inc., ("Asbury") as compared with
4 other proposed buyers. (Paragraph 41, footnote 3 and Paragraph
5 44, footnote 5 of Proposed Decision).
- 6 (2) The proposed buyer Asbury's improved 2002 performance.
7 (Paragraph 61 of the Proposed Decision).
- 8 (3) Consideration of evidence presented by the proposed buyer
9 Asbury of its own calculations related to its performance.
10 (Paragraph 62 of Proposed Decision).
- 11 (4) Petitioner's allegations that Ford adopted policies which were
12 arbitrary or discriminatory toward public companies.
13 (Paragraphs 29-33 and 63 of Proposed Decision).
- 14 (5) Petitioner's allegations that Ford failed to adhere to its own
15 procedures when evaluating the proposed buyer Asbury.
16 (Paragraphs 38 and 39 of Proposed Decision).
- 17 (6) Petitioner's contention that little would change with the
18 Asbury purchase since the management for Bob Baker Ford would
19 remain the same. (Paragraphs 23 and 65 of Proposed Decision).

20 27. Under the panoply of "all existing circumstances" other facts
21 considered were: the potential financial impact upon the seller Bob
22 Baker Ford (Paragraphs 19, 20 and 42 of Proposed Decision); the fact
23 that Ford had given Asbury notice that it would not consider further
24 Asbury acquisitions until Asbury's performance had improved; and the
25 fact that the notice to Asbury occurred before Asbury's public
26 disclosure of its intention to purchase Bob Baker Ford. (Paragraphs 35
27 and 36 of Proposed Decision).

28 28. Ford's defense was also considered. Had Ford only relied on

1 sales performance at regional average and customer satisfaction at group
2 average in its decision, then perhaps a case for "unreasonable
3 withholding of consent" might have been made under the *Claremont*
4 *Acquisition* case. However, Ford's defense included the following
5 additional facts related to its decision to withhold consent:

- 6 (1) All Asbury-Ford stores, except one, declined in market share
7 after Asbury acquired them. (Paragraphs 51 and 52 of Proposed
8 Decision).
- 9 (2) All Asbury-Ford stores, except one, in actual retail sales of
10 cars and trucks, were significantly less than region and the
11 nation. (Paragraphs 57 and 58 of Proposed Decision).
- 12 (3) If Asbury-Ford stores performed at the same levels as before
13 their acquisition Ford would not have lost 5,218 sales.
14 (Paragraph 59 of Proposed Decision).
- 15 (4) Although Asbury's performance improved in 2002, it was
16 insufficient to significantly reverse the cumulative sales
17 decline by Asbury. (Paragraphs 60 and 61 of Proposed
18 Decision).
- 19 (5) In addition to the Asbury-Ford stores, Asbury-Lincoln-Mercury
20 stores also performed poorly. (Paragraph 56 of Proposed
21 Decision).

22 29. In conclusion, all existing circumstances were considered in
23 the Proposed Decision.

24 DETERMINATION OF ISSUES

25 30. As articulated in paragraph 23 *supra*, the standard of
26 administrative judicial review under Section 11713.3(d)(3) is the
27 independent judgment test.

28 ///

1 REVISED DETERMINATION OF ISSUES IN PROPOSED DECISION

2 31. Paragraph 70 of the Proposed Decision is modified to read as
3 follows:

4 Based on all of the existing circumstances, Ford's withholding
5 of consent to the Asbury-Baker buy-sell transaction was not
6 unreasonable.

6 PROPOSED DECISION AFTER REMAND

7 Based on the evidence contained in the Findings of Fact of the
8 Proposed Decision under the independent judgment standard of review
9 established by Section 11713.3(d)(3), Petitioner has failed to establish
10 its burden of proving that the withholding of consent by Respondent Ford
11 was unreasonable. The Petition is overruled.

12
13
14
15 I hereby submit the foregoing which
16 constitutes my Proposed Decision After
17 Remand in the above-entitled matter, as a
18 result of a hearing before me on the above
19 dates and recommend the adoption of this
20 Proposed Decision After Remand as the
21 decision of the New Motor Vehicle Board.

19 Dated: July 2, 2003

20
21 By *Marilyn Wong*
22 MERILYN WONG
23 Administrative Law Judge

24
25 Attachment

26
27 Steven Gourley, Director, DMV
28 Terri Thurlow, Chief,
 Licensing Branch, DMV

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11 In the Matter of the Petition of)
UNIVERSITY FORD, dba BOB BAKER) **Petition No. P-450-02..**
12 FORD,)
13 Petitioner,) **PROPOSED DECISION**
14 v.)
15 FORD MOTOR COMPANY,)
16 Respondent.)
17

18 PROCEDURAL BACKGROUND

19 1. By a letter dated October 25, 2002, Respondent Ford Motor
20 Company ("Ford") denied the request of Petitioner University Ford, Inc.
21 dba Bob Baker Ford ("Bob Baker Ford" or "University Ford") to have
22 Asbury Automotive Group Inc., ("Asbury") approved as the replacement
23 dealer for Bob Baker Ford.

24 2. On December 4, 2002, Petitioner filed its petition before the
25 New Motor Vehicle Board ("Board") under California Vehicle Code¹ section
26 3050(c) asserting violations of section 11713.3(d)(1) and (d)(3)

27 _____
28 ¹ All statutory references are to the California Vehicle Code
unless noted otherwise.

1
2 (d) (1) Except as provided in subdivision (t) to prevent or
3 require, or attempt to prevent or require, by contract or
4 otherwise, any dealer, or any officer, partner, or stockholder
5 of any dealership, the sale or transfer of any part of the
6 interest of any of them to any other person or persons. No
7 dealer, officer, partner, or stockholder shall, however, have
8 the right to sell, transfer, or assign the franchise, or any
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(3) In any action in which the manufacturer's or distributor's withholding of consent under this subdivision or subdivision (e) is an issue, whether the withholding of consent was unreasonable is a question of fact requiring consideration of all the existing circumstances.

(e) To prevent, or attempt to prevent, a dealer from receiving fair and reasonable compensation for the value of the franchised business. There shall be no transfer or assignment of the dealer's franchise without the consent of the manufacturer or distributor, which consent shall not be unreasonably withheld or conditioned upon the release, assignment, novation, waiver, estoppel, or modification of any claim or defense by the dealer.

10. The sole issue presented before this Board is whether Ford's withholding of consent to the Asbury-Baker buy-sell transaction was unreasonable.

FINDINGS OF FACT: INTRODUCTION

11. In 2002, Bob Baker negotiated a buy-sell agreement with Asbury to sell its ten franchises and six dealerships, including Petitioner, Bob Baker Ford. Petitioner sought Ford's approval of the buy-sell.

12. However, Ford declined to approve Asbury as the purchaser of Bob Baker Ford. By way of a letter dated October 25, 2002, to Bob Baker, Ford states, in part:

As discussed, Ford Motor Company's primary goal is to become the recognized leader in the automotive industry. Our commitment to sales, market share, and customer satisfaction extends beyond just our products and encompasses the vehicle buying process as well as the overall dealer operation. In

1 this regard, we have established uniform and consistent
2 criteria to evaluate potential dealer candidates. The four
3 criteria are as follows:

4 Capacity - Proven track record of satisfactory sales and
5 market share performance and successful dealership operation.

6 Customer Satisfaction - Demonstrated customer satisfaction
7 commitment and acceptable performance based on available
8 measurement criteria and other "customer care" factors.

9 Character - Good standing in the community with a sound
10 personal and financial reputation.

11 Capital - Adequate cash, capital structure, and wholesale
12 credit lines sufficient to meet established guide levels.

13 In consideration of these criteria, the California Region and
14 Ford Division management have concluded that the Asbury
15 Automotive Group does not currently satisfy our qualification
16 requirements of Capacity and Customer Satisfaction. These
17 deficiencies were reviewed with the management of Asbury
18 Automotive Group on October 18, 2002, and relate directly to
19 their unacceptable performance at existing Ford Division
20 dealerships they own and operate.

21 Therefore, we are unable to accept Asbury Automotive Group as
22 the replacement dealer for Bob Baker Ford and will not approve
23 them as our dealer in San Diego.

24 **FINDINGS OF FACT RELATING TO SELLER**

25 13. Robert Baker ("Bob Baker") is the Chief Executive Officer and
26 major stockholder of Bob Baker Enterprises, Inc., which owns ten
27 franchises within six dealership locations in San Diego County.

28 14. Bob Baker Enterprises holds the following franchises: Ford
located in central San Diego; Toyota located in Lemon Grove; Chevrolet
and Lexus located in El Cajon; and Chrysler, Volkswagen, Jeep, Subaru,
and Mitsubishi dealerships located in Carlsbad.

15. Bob Baker Enterprises, with 850 employees, is the management
company for the six dealership corporations which are: University Ford,
Inc., Bob Baker Imports, Inc., All American Chevrolet, Inc., El Cajon
Luxury Cars, Inc., Bob Baker Volkswagen, and Bob Baker Automotive, dba
Bob Baker Jeep, Subaru and Mitsubishi.

1 16. Bob Baker's dealerships have been recognized for their
2 outstanding performance through numerous awards. The Ford dealership is
3 Blue Oval certified and has won both the President's Award and the Top
4 100 award. The Chrysler and Jeep dealerships are Five Star certified.
5 The Lexus dealership has won the President's and Governor's Awards.
6 Both the Ford and Toyota dealerships are two of the largest in the
7 country.

8 17. Bob Baker became a Ford dealer in 1979. Michael Baker, who is
9 Bob Baker's son, has been the General Manager of University Ford for the
10 past ten years, and has been the Vice President of Operations of Bob
11 Baker Enterprises for the past 12 years.

12 18. Chris Baker, another son, operates the Jeep, Subaru, and
13 Mitsubishi dealerships. Mr. Baker and his sons have been involved in
14 the retail automotive business for most of their lives.

15 19. Bob Baker Ford is located on five acres of property owned by
16 Miller-Bond in the Mission Valley area of San Diego. The property is
17 subject to a site-control agreement between Ford and the owners.

18 20. Ford assigned its right to purchase the property to Bob Baker
19 which has resulted in his ability to acquire the property for \$4.7
20 million. Mr. Baker plans to construct a new Ford facility on the
21 property, which together with the land will cost around \$12 million.
22 The property will continue to be subject to a 50-year site-control
23 agreement with Ford.

24 **FINDINGS OF FACT RELATING TO BUYER**

25 21. Asbury was founded in 1995 and became a publicly held company
26 in March 2002. Asbury owns more than 90 dealerships representing over
27 130 franchises and is the fourth largest publicly owned automotive
28 retailer in the United States. Asbury characterizes itself as an

1 automotive consolidator.

2 22. Asbury's business model involves the "platform" acquisition of
3 groups of high-volume, multiple-franchise dealerships or mega-dealers
4 within a specific area or regional market. Asbury would like to
5 establish a presence in the California market with the purchase of the
6 Bob Baker dealerships.

7 23. Asbury's business model promotes the decentralization of
8 platform operations, preferring to have the businesses operated by the
9 local management team. The newly acquired platform dealership retains
10 the original dealer name and the existing local management. If the
11 Asbury-Baker transaction is approved, Bob Baker, Michael Baker and key
12 management with Bob Baker Enterprises will execute employment contracts
13 with Asbury, and they will continue to operate the dealerships.

14 24. The platform administrator, usually the former CEO of the
15 dealership, is responsible for increasing revenues and business growth
16 through tuck-in acquisitions. A tuck-in occurs after the initial
17 platform acquisition whereby other dealerships are purchased and tucked
18 into the existing platform resulting in increased growth and increased
19 revenues. If the Asbury-Baker transaction is allowed to proceed, Bob
20 Baker plans to increase his current revenues of \$500 million to \$1
21 billion annually by using the tuck-in process of acquiring additional
22 dealerships.

23 25. The success of the platform model relies on expanding the
24 initial business to enable the platform administrator, at a local level,
25 to negotiate better prices for goods and services based on volume.

26 26. On a national level, because of Asbury's size, it is able to
27 negotiate favorable prices on products and technology. By way of an
28 example, if a financial institution were to provide financing to Asbury

1 customers whereby Asbury receives \$50 per transaction, this would result
2 in substantial revenues based on an annual sales volume of 160,000
3 vehicles. In the same manner, Asbury is better able to negotiate
4 favorable rates or discounts for its customers based on its size.

5 27. The operational goals of the platform are to attract and
6 retain high-quality management, to meet the manufacturer's or
7 distributor's objectives, and to be profitable. Although Asbury
8 strongly encourages the entrepreneurial spirit of the platform
9 administrator, he or she must ultimately report to the management of
10 Asbury.

11 28. Since its inception Asbury's business model has allowed Asbury
12 to experience tremendous growth. From 1998 to 2002, Asbury grew from
13 \$1 billion in revenues to \$4.5 billion.

14 **FINDINGS OF FACT RELATING TO FORD AND ASBURY**

15 29. Public companies, including Asbury, have purchased some of the
16 largest dealership groups throughout the country. In the case of Ford,
17 public companies only own around 100 dealerships representing less than
18 4% of its 3,900 dealer body nationwide. However, because the 100
19 dealerships produce large sales volume, public companies represent 8% of
20 Ford's retail sales volume.

21 30. Ford has designated William Glick, the Dealer Franchising
22 Manager of Ford Division, as its liaison person with public companies.
23 Ford conducts periodic operational reviews and evaluation meetings with
24 the management of public companies. In addition to Mr. Glick, usually
25 present at these meetings are the General Sales Manager of Ford
26 Division, Tom Gorman, and the Market Representation Manager, Don
27 Huffman.

28 31. All public companies which hold Ford franchises are required

1 to execute an agreement entitled "Supplemental Terms and Conditions"
2 (referred to as "Supplemental Agreement"). Among other things, the
3 Supplemental Agreement sets forth performance standards which the public
4 company is required to meet. The failure to meet these standards gives
5 Ford the right to prohibit the public company from acquiring any
6 additional dealerships until the standards have been met. It also
7 insures that poor performing companies do not control Ford's dealer
8 network.

9 32. The Supplemental Agreement between Ford and Asbury was
10 originally executed in September 1998 when Asbury was a privately
11 capitalized company. After Asbury became a public company, it ratified
12 the Supplemental Agreement in August 2002.

13 33. The criteria for evaluation agreed to by Asbury in the
14 Supplemental Agreement require each dealership to consistently meet or
15 exceed Ford's regional average retail car and truck market share, and
16 meet or exceed customer satisfaction at group average.²

17 **FACTS RELATING TO THE ASBURY-BAKER BUY-SELL TRANSACTION**

18 34. Bob Baker entered into a stock sale and purchase agreement of
19 his six dealership corporations and Bob Baker Enterprises with Asbury in
20 2002. Under the terms of the agreement, the dealerships and Bob Baker
21 Enterprises would be sold to Asbury for an estimated \$88 million
22 including cash and stock in Asbury. Because the Supplemental Agreement
23 between Ford and Asbury is confidential, its terms were not disclosed to
24 Mr. Baker during his negotiations with Asbury.

25 35. Based on Asbury's history of poor performance, Mr. Gorman
26 advised Asbury in the summer of 2002, that most likely Ford would not

27
28 ² The merits or enforceability of the Supplemental Agreement is not an issue because Asbury is not a party to this action.

1 approve any further acquisitions of Ford dealerships by Asbury.

2 36. Four weeks before the public disclosure of the Asbury-Baker
3 transaction, Ford management, including Messrs. Glick, Huffman and
4 Gorman met with Asbury and again discussed Asbury's poor performance.
5 Once again Ford reiterated that it had no interest in Asbury increasing
6 its portfolio of Ford dealerships. Asbury acknowledged that it was told
7 that Ford was not "predisposed" to approving any further Asbury
8 acquisitions.

9 37. Ford, Toyota and Lexus have not approved the Asbury-Baker
10 transaction. The other seven manufacturers have approved the
11 transaction. Ford and Toyota are the most valuable franchises of the
12 Baker group of dealerships. Although Mr. Baker stated that he is
13 optimistic about obtaining approval from Toyota; as of the hearing
14 Toyota had not given approval for the transfer.

15 38. In a routine buy-sell transaction, the selling dealer usually
16 approaches the franchisor's regional manager with the proposed
17 agreement. The regional manager will then forward his or her
18 recommendation, in favor of or in opposition to the transfer, along with
19 the transaction documents to Ford's Market Representation Department.
20 Before rendering a decision, the Market Representation Department would
21 evaluate both the capabilities and the business plans of the proposed
22 dealer.

23 39. The Asbury-Baker transaction did not follow the typical
24 approval process. Ford was initially informed of the Asbury-Baker
25 transaction through Asbury's announcement on the Internet. Asbury then
26 directly contacted Tom Gorman to initiate the approval process for the
27 transfer. The typical process was not followed because Ford's Regional
28 Manager had no experience with the proposed candidate, Asbury. It is

1 usually the job of the regional manager to initially assess the
2 suitability of the candidate based on his or her experience with that
3 dealer. In this case the regional manager, although concurring with
4 Ford's decision, did not actually participate in the decision making
5 process. Although the Asbury-Baker transaction did not follow the
6 typical course of obtaining buy-sell approval, by-passing the regional
7 manager and having the decision made at Ford's national headquarters is
8 not unusual.

9 40. Mr. Baker has taken the position that all of his dealerships
10 and franchises must be included in the Asbury transaction. He has been
11 unwilling to consummate the transaction on any other grounds, and he is
12 unwilling to carve-out his Ford dealership from the transaction.

13 41. Asbury has offered to close all of the other buy-sell
14 agreements for which it has approval, but Mr. Baker has refused to
15 carve-out Ford or Toyota from the transaction. Ford also offered to Mr.
16 Baker the possibility of other buyers for the Ford dealership or in the
17 alternative, leaving the Ford dealership out of the Asbury transaction
18 altogether.³

19 42. Mr. Baker testified that should Ford's disapproval be upheld,
20 Asbury would still be willing to consummate the transaction without the
21 Ford dealership. Mr. Baker also admitted that he might not suffer any
22 economic loss if the Ford dealership was sold as a stand-alone facility,
23 outside of the Asbury transaction.

24
25 ³ One of the five dealers discussed by Ford owns two dealerships,
26 one of which performs well and the other which performs poorly because
27 of physical limitations of its location. Petitioner has offered this as
28 evidence of Ford's inconsistent application of its evaluation criteria;
however, Ford's analysis of the suitability of this dealer and its
circumstances is not inconsistent with Ford's decision to withhold
consent from the Asbury-Baker transaction.

1 FACTS RELATING TO FORD'S EVALUATION AND ASBURY'S PERFORMANCE

2 43. Ford uses the Four "C's" when evaluating a dealer candidate.
3 The Four "C's" stand for capacity, capital, character, and customer
4 satisfaction. The Four "C's" have been used by Ford for at least 15
5 years, and are used to evaluate both public and privately capitalized
6 companies to determine the proposed candidate's ability to successfully
7 operate a dealership and thereby successfully represent Ford.

8 44. In its disapproval letter, Ford cites both capacity and
9 customer satisfaction as its reasons for denying approval of the
10 Asbury-Baker buy-sell transaction.⁴ In fact, five of seven Asbury-owned
11 Ford dealerships were profitable in 2001, and had considerably higher
12 profits and return on investment than the regional average.

13 45. Capacity examines the sales performance and market share
14 performance of the proposed dealer-candidate; it also examines trends,
15 which in this case, includes Asbury's declining sales performance.

16 46. Ford evaluates the sales performance of all of its dealers
17 based on retail market share for car and truck, separately, as compared
18 with regional average, and customer satisfaction compared to a group.
19 Group is defined as dealers of the same or similar size. This
20 performance-based criteria has been used by Ford for over 27 years.

21 47. The evaluation criteria or benchmarks are applied to all Ford
22 dealers and are the same benchmarks set forth in the Supplemental
23 Agreement.⁵ (See Supra at paragraph 33).

24 48. Achieving retail market share at regional average in car and
25

26 ⁴ Ford conceded that in the case of Asbury, neither its
financial strength nor its character was an issue.

27 ⁵ Petitioner contends that Sonic Automotive's acquisition of
28 Capitol Ford, was evaluated differently than Asbury. Sonic is a public
company. Petitioner's contention is not supported by the evidence.

1 truck sales is considered average performance and is the minimum
 2 performance level expected of a dealer. Performance which is below
 3 regional average is considered unsatisfactory and can be the basis for
 4 denying a dealer additional dealerships.

5 49. Asbury owns the following Ford dealerships in Ford's
 6 designated regions: Crown Ford - Atlanta Region; North Point Ford -
 7 Memphis Region; Gray-Daniels Ford - Memphis Region; McLarty Ford -
 8 Southwest Region; Deland Ford - Orlando Region; Damerow Beaverton Ford -
 9 Northwest Region; and Dee Thomason Ford - Northwest Region.

10 50. According to the Ford Division Operational Review dated
 11 August 8, 2002, the following represents an historical view of Asbury's
 12 performance.

13 Asbury Market Share
 14 Retail Car - Dealer % of Region

15 Dealer Acquisition Date	1997	1998	1999	2000	2001	May 2002
16 Crown Point Ford 4/00	80.3%	101.0%	252.8%	175.2%	128.7%*	127.5%
17 North Point Ford 2/99	81.8%	90.1%	117.7%	126.4%*	97.7%	86.4%
18 Gray-Daniels Ford 7/01	96.6%	91.4%	132.7%	172.7%	146.9%	145.7%*
19 McLarty Ford 2/99	109.1%	103.7%	103.0%	95.3%*	94.4%	88.3%
20 Deland Ford** 6/00	108.3%	89.2%	124.1%	152.3%	150.8%*	161.8%
21 Damerow Beaverton 3/99	87.9%	101.1%	91.2%	80.7%*	71.7%	81.3%
22 Dee Thomason Ford 12/98	172%	164.8%	142.1%*	124.8%	96.0%	106.3%

22 * indicates first full year of Asbury ownership.

23 ** Deland, a single point dealer, has a high number of pump-ins⁶
 24 included in its percentage and would not have achieved regional
 average except for the pump-in sales.

25 ///

26 ///

27 _____
 28 ⁶ Pump-ins are registrations attributable to other dealers.

Asbury Market Share
Retail Truck - Dealer % of Region

Dealer Acquisition Date	1997	1998	1999	2000	2001	May 2002
Crown Point Ford 4/00	88.6%	100.0%	126.1%	117.6%	97.0%*	120.1%
North Point Ford 2/99	96.9%	84.7%	107.5%	91.4%*	75.0%	69.9%
Gray-Daniels Ford 7/01	105.8%	111.9%	204.1%	196.1%	174.9%	159.4%*
McLarty Ford 2/99	99.6%	103.1%	82.4%	76.8%*	75.9%	75.4%
Deland Ford** 6/00	101.0%	94.8%	96.8%	104.2%	103.0%*	109.7%
Damerow Beaverton 3/99	139.9%	123.2%	107.8%	104.0%*	94.7%	107.9%
Dee Thomason Ford 12/98	115.7%	123.6%	135.5%*	132.4%	132.5%	151.9%

* indicates first full year of Asbury ownership.

** Deland, a single point dealer, has a high number of pump-ins included in its percentage and would not have achieved regional average except for the pump-in sales.

51. At the end of 2001, four out of the seven Asbury owned Ford stores were below regional average, in market share of car sales. By May 2002, Asbury had slightly improved so that four out of its seven Ford stores met regional average. However, all of the Asbury-owned stores showed a decline in percentage of market share of car sales after being acquired by Asbury, with the exception of North Point Ford.

52. At the end of 2001, four out of the seven Asbury-owned Ford stores were below regional average in market share of truck sales. By May 2002, Asbury's performance improved with only two of the seven failing to meet regional average with a notation that Deland Ford would not have achieved regional average, except for the fact that there were a significant number of pump-in registrations in its region. Despite meeting regional average, five out of the seven Ford dealerships showed a decline in percentage of market share of truck sales after Asbury acquired them.

1 53. Customer satisfaction is measured by Ford through Voice of the
2 Customer ("VOC"). With customer satisfaction, dealers are measured
3 against a group which consists of similarly sized dealers. The
4 following shows the VOC scores of the Asbury-owned Ford dealerships for
5 12 months (July 2001, through June 2002).

Dealership	Dealer VOC	Group VOC
Crown Point Ford	74	67
North Point Ford	60	65
Gray-Daniels Ford*	66	65
McLarty Ford	72	71
Deland Ford	66	70
Damerow Beaverton	45	59
Dee Thomason Ford	57	59

* Acquired July 2001.

14 54. Of the seven Asbury-owned Ford dealerships, three are above
15 group average and four are below group average in customer satisfaction.

16 55. According to the Ford Division Operational Review dated
17 August 8, 2002, only three out of the seven Asbury-owned dealerships
18 achieved all three of the performance benchmarks of being at or above
19 regional average market share in car and truck sales and at or above
20 group average in customer satisfaction. Of the dealerships failing to
21 meet the benchmarks, two did not achieve any of the benchmarks and one
22 achieved two out of three. (See attached Exhibit A - Asbury Automotive
23 Performance Summary).

24 56. When the same analysis was performed upon the five Asbury-
25 owned Lincoln-Mercury stores, as of November 2002, none of the five
26 dealerships achieved all three of the performance benchmarks.

27 57. In addition to the benchmarks of dealer performance as a
28 percent of regional average, Ford in its Operational Review compared

1 actual retail car and truck sales by dealership for the years 2000 and
 2 2001.

3 Dealership	4 Dealer Car	5 Region Car	6 Dealer Truck	7 Region Truck	8 Dealer Combined Car/Truck	9 Region Combined Car/Truck
10 Crown Point Ford	-44.2%	-13.9%	-29.8%	-4.4%	-35.3%	-6.7%
11 North Point Ford	-35.4%	-17.1%	-29.4%	-1.3%	-30.9%	-4.9%
12 Gray-Daniels Ford	-22.3%	-17.1%	-1.1%	-1.3%	+5.0%	-4.9%
13 McLarty Ford	-16.7%	-10.7%	-7.8%	1.5%	-9.9%	-0.3%
14 Deland Ford	6.3%	-14.9%	27.7%	-0.8%	20.9%	-4.6%
15 Damerow Beaverton	-30.3%	-19.3%	-26.6%	-12.1%	-27.5%	-13.9%
16 Dee Thomason Ford	-39.5%	-19.3%	-19.4%	-12.1%	-24.3%	-13.9%

17 (See Attached Exhibit B - Asbury Retail Sales).

18 58. By any measure of comparison, car or truck against region,
 19 combined car and truck against combined region or combined car and truck
 20 against nation which was at -3.2%, actual retail sales by Asbury-owned
 21 stores, with one exception, were lower than region and nation and in
 22 most cases considerably lower.

23 59. From 1999 to October 2002, Ford has calculated that Asbury has
 24 lost 5,218 vehicle sales. The analysis merely compares the sales of the
 25 dealership before and after Asbury's purchase. Had Asbury performed at
 26 exactly the same level before it purchased the dealerships, Ford would
 27 have sold 5,218 more vehicles.

28 60. Another operational review dated October 18, 2002, a document
 entitled Asbury Automotive Performance Recap 1/1/00-9/30/02, shows the
 effective sales decline of Asbury-owned Ford stores from 1999 through

1 September 2002, as follows:

2 Retail Sales Combined Car and Truck

3

Date	Asbury	Nation	Difference Between Asbury and Nation
4 Sept. 2002 YTD*	0.2%	-4.7%	-4.5%
5 2001 CY**	-21.4%	-3.2%	-18.2%
6 2000 CY**	-14.1%	-0.9%	-13.2%
7 Effective sales decline 1999 through Sept 2002			
	-32%	-9%	-23%

8 * Year to Date

9 ** Calendar Year

10 61. Although Asbury has shown an improvement in its 2002
11 performance, it is not sufficient to make up for the cumulative decline
12 in sales over the past three years of negative 32.0%.

13 Facts Relating to Ford's Decision to Withhold Consent

14 62. Ford's decision to withhold consent to the Asbury-Baker
15 transaction involved the analysis of Asbury's performance over time. It
16 should be noted that Asbury's Senior Vice President, Bob Frank, disputes
17 Ford's analysis of Asbury's performance and considers Ford's analysis
18 "flawed." However, the evidence presented by Asbury was insufficient to
19 refute or contradict the evidence presented by Ford with respect to
20 Asbury's poor performance.

21 63. Before 1998, Ford had virtually no experience with automotive
22 consolidators or public companies. In 1998, with the advent of large
23 automotive consolidators, Ford allowed the acquisition of dealerships by
24 the consolidators. In 1998, while Asbury was still a privately
25 capitalized company, it bought Courtesy Auto Group in Florida which
26 included Courtesy Lincoln-Mercury and Thomason Auto Group in Oregon

1 which included Dee Thomason Ford.⁷

2 64. From the end of 1998 through the middle of 2001, Asbury had
3 acquired all of its current Ford dealerships. During this period of
4 time, Asbury had yet to establish a track record. However, by 2002, when
5 Asbury sought to buy Bob Baker's Ford dealership, Asbury had established
6 a three and one-half year performance record, albeit a poor one.

7 65. Ford found, with few exceptions, each time Asbury purchased a
8 Ford store, the sales performance and customer satisfaction of that
9 store would decline. This was the case, irrespective of whether or not
10 the original CEO remained in charge of the dealership. In fact, all but
11 two of the original CEOs remained involved with the businesses, and the
12 stores' performance still experienced declining sales and customer
13 satisfaction.⁸

14 66. Through its operational reviews, Ford analyzed data to
15 conclude that Asbury should not be approved as the replacement dealer
16 for Bob Baker Ford. In summary, based on the operational review data
17 Ford found:

18 (a) By the end of 2001, four of seven Asbury-owned dealerships
19 failed to achieve market share at regional average in car and
20 truck sales.

21 (b) All of the Asbury Ford dealerships, except North Point in car
22 and Dee Thomason in truck, showed declining market share after

23
24 ⁷ Asbury began acquiring dealerships in 1997 with the purchase of
Nalley Auto Group in Atlanta and Plaza Auto Group in St. Louis.

25 ⁸ Ford did not find that the retention of key management after the
26 sale was relevant to their decision to withhold or grant consent.
27 Ford's reasoning with respect to this issue relates to Ford's primary
28 concern in the permanency of the dealer appointment and not the
operational specifics of a dealership. In Ford's experience with
Asbury-owned Ford stores, performance declined even though the original
management stayed on to run the business.

1 being acquired by Asbury..

2 (c) Four of seven Asbury dealerships were below group in customer
3 satisfaction index.

4 (d) Three of seven of Asbury's Ford stores and none of Asbury's
5 Lincoln-Mercury stores achieved all three benchmarks.

6 (e) In actual retail sales, except for one store, the combined car
7 and truck sales were significantly less for Asbury-owned
8 stores as compared to region.

9 (f) In calculating sales, if the Asbury stores had performed at
10 the same levels as before their purchases, Ford would have
11 sold 5,218 more vehicles.

12 (g) The cumulative decline in sales from 1999 through September
13 2002, for Asbury was -32.0% as compared with decline of Ford
14 sales in the nation of -9.0%.

15 67. In summary, it was Asbury's poor performance history over
16 three and one-half years as indicated by the above-listed factors that
17 led Ford to withhold its consent.

18 ANALYSIS OF APPLICABLE CASE LAW

19 68. There are two cases which are applicable to the present case,
20 *In re Van Ness Auto Plaza, Inc.*, 120 B.R. 545 (Bankr N.D. Cal. 1990)
21 and *In re Claremont Acquisition Corporation, Inc.*, 186 B.R. 977 (Bankr.
22 C.D. Cal. 1995). In the *Claremont* case which relies on the *Van Ness*
23 case, the Court states:

24 B. Standard for "Reasonable" Refusal to Consent Under Cal.
25 Veh. Code § 11713.3(e)

26 There are no published decisions by a California state court
27 interpreting Cal. Veh. Code § 11713.3(e). The only published
28 opinion discussing the proper standard to apply under this
statute is *In re Van Ness Auto Plaza, Inc.*, 120 B.R. 545,
(Bankr. N. D. Cal. 1990). The court in that case looked to
the law governing assignment of leases for guidance in

1 selecting a standard of "reasonableness." The court reviewed
2 several standards which have been employed in defining
reasonableness in that context and concluded:

3 Although the standards set forth in the authorities
4 quoted above differ from one another to some extent, they
5 are alike in that they focus not on whether the lessor's
6 decision to withhold consent is correct, but on whether
7 there is a substantial basis for the lessor's decision
8 under relevant criteria. None of the authorities suggest
9 that a court is to review the lessor's refusal to consent
10 de novo and find that decision is unreasonable because
11 the court would have decided differently. The quotation
12 from the Grossman decision [359 S.W.2d 475 (Tex.Civ.App.
13 1962)] expressly states that withholding consent may be
14 reasonable even if the decision is wrong. The quotation
15 from the Thurman decision [345 S.W.2d 635, 639 (Ky.
16 1961)] states that withholding consent is reasonable if,
17 on the facts of the case, reasonable minds could differ
18 as to whether consent should be withheld.

19 120 Bankr. at 548. Because an automobile dealership involves
20 a closer relationship between the parties than the typical
21 lease, and because it is more difficult to determine whether a
22 proposed franchisee is capable of performing the duties of an
23 automobile dealer, the court concluded that a manufacturer's
24 refusal to consent to assignment of its automobile franchise
25 should be afforded even greater deference than is commonly
26 granted lessors in deciding to withhold consent. Id.

27 The court described the standard of reasonableness that it was
28 adopting as follows:

I conclude that withholding of consent to an assignment
of an automobile franchise is reasonable under California
Vehicle Code section 11713.3(e) if it is supported by
substantial evidence showing that the proposed assignee
is materially deficient with respect to one or more
appropriate, performance-related criteria. Fn7 This test
is more exacting than whether the manufacturer
subjectively made the decision in good faith after
considering appropriate criteria. It is an objective
test that requires the decision to be supported by
evidence. The test is less exacting than one which
requires that the manufacturer demonstrate by a
preponderance of evidence that the proposed assignee is
deficient. Although the initial burden of explaining the
basis for the decision is on the manufacturer, the
ultimate burden of persuasion is on the assigning dealer
to demonstrate that the manufacturer's refusal to consent
is unreasonable. Id. at 549.

Fn7. Relevant considerations include: (1) whether the
proposed dealer has adequate working capital; (2) the extent
of prior experience of the proposed dealer; (3) whether the

1 proposed dealer has been profitable in the past; (4) the
2 location of the proposed dealer; (5) the prior sales
3 performance of the proposed dealer; (6) the business acumen of
4 the proposed dealer; (7) the suitability of combining the
5 franchise in question with other franchises at the same
6 location; and (8) whether the proposed dealer provides the
7 manufacturer sufficient information regarding its
8 qualifications.

9 Van Ness, 120 B.R. at 547.

10 69. In *Van Ness* at page 549 the Court states:

11 Because the manufacturer may not act arbitrarily, and because
12 the manufacturer is in the possession of all information
13 regarding its reasons for refusing to consent to assignment,
14 the burden of presenting plausible reasons for the refusal to
15 consent must be on the manufacturer. The ultimate burden of
16 persuasion however, is on the dealer to establish that the
17 manufacturer's refusal to consent is unreasonable. Cf.
18 Restatement (Second) of Property § 15.2 comment g at 105
19 (1977) (leases); *Reuling v. Sergeant*, 93 Cal.App.2d, 241, 242,
20 208 P.2d 1046 (1949) (leases).

21 **DETERMINATION OF ISSUES**

22 70. Respondent has established by substantial evidence based on
23 relevant performance-based criteria that the proposed replacement dealer
24 candidate Asbury was materially deficient in sales performance and
25 customer satisfaction.

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Asbury Automotive Performance Summary

		Retail Sales July YTD 2002			Retail Market Share May YTD 2002			Customer Viewpoint 12 Month (July 2001 - June 2002)				Car Truck Share Share VOC			
		01	02	%CHG	Dealer	Region	% Req	Dealer	Group	Target	Met/Exc.	% Req	% Req	% Grp	# met
		Group													
CROWN FORD	Car	255	245	-3.9%	11.6	9.1	127.5%	-	-	-	-	-	-	-	-
	Truck	531	707	33.1%	29.3	24.4	120.1%	-	-	-	-	X	X	X	3
	Combined	786	952	21.1%	-	-	-	74	67	56	X				
NORTH POINT FORD	Car	225	223	-0.9%	7.0	8.1	86.4%	-	-	-	-	-	-	-	-
	Truck	805	857	6.5%	15.3	21.9	69.9%	-	-	-	-	-	-	-	0
	Combined	1,030	1,080	4.9%	-	-	-	60	65	57	X				
GRAY-DANIELS FORD	Car	251	232	-7.6%	11.8	8.1	145.7%	-	-	-	-	-	-	-	-
	Truck	1,464	1,472	0.5%	34.9	21.9	159.4%	-	-	-	-	X	X	X	3
	Combined	1,715	1,704	-0.6%	-	-	-	66	65	55	X				
MCLARTY FORD	Car	81	84	3.7%	9.1	10.3	88.3%	-	-	-	-	-	-	-	-
	Truck	345	403	16.8%	21.2	28.1	75.4%	-	-	-	-	-	-	-	0
	Combined	426	487	14.3%	-	-	-	66	70	64	X				
DELAND FORD	Car	117	129	10.3%	11.0	6.8	161.8%	-	-	-	-	-	-	-	-
	Truck	315	339	7.6%	24.9	22.7	109.7%	-	-	-	-	X	X	X	3
	Combined	432	468	8.3%	-	-	-	72	71	64	X				
BEAVERTON FORD	Car	343	258	-24.8%	6.5	8.0	81.3%	-	-	-	-	-	-	-	-
	Truck	1,132	906	-20.0%	23.3	21.6	107.9%	-	-	-	-	-	X	-	1
	Combined	1,475	1,164	-21.1%	-	-	-	45	59	49					
DEE THOMASON FORD	Car	325	314	-3.4%	8.5	8.0	106.3%	-	-	-	-	-	-	-	-
	Truck	1,345	1,405	4.5%	32.8	21.6	151.9%	-	-	-	-	X	X	-	2
	Combined	1,670	1,719	2.9%	-	-	-	57	59	47	X				
		Above Regional/Group Average													
		Below Regional/Group Average													

ASBURY RETAIL SALES

Dealership	2001 VS. 2000								
	CAR			TRUCK			COMBINED		
	00	01	%CHG	00	01	%CHG	00	01	%CHG
21225 CROWN FORD	908	507	-44.2%	1,479	1,038	-29.8%	2,387	1,545	-35.3%
23205 NORTH POINT FORD	632	408	-35.4%	1,894	1,337	-29.4%	2,526	1,745	-30.9%
23309 GRAY-DANIELS FORD (7/2001)	629	489	-22.3%	2,764	2,733	-1.1%	3,393	3,222	-5.0%
52327 MCLARTY FORD	209	174	-16.7%	688	634	-7.8%	897	808	-9.9%
24510 DELAND FORD	208	221	6.3%	451	576	27.7%	659	797	21.6%
74017 DAMEROW BEAVERTON FORD	875	610	-30.3%	2,605	1,913	-26.6%	3,480	2,523	-27.5%
74023 DEE THOMASON FORD	929	562	-39.5%	2,922	2,355	-19.4%	3,851	2,917	-24.3%
TOTAL	4,390	2,971	-32.3%	12,803	10,586	-17.3%	17,193	13,557	-21.1%
21 ATLANTA REGION	61,074	52,577	-13.9%	188,309	180,034	-4.4%	249,383	232,611	-6.7%
23 MEMPHIS REGION	28,148	23,340	-17.1%	95,109	93,913	-1.3%	123,257	117,253	-4.9%
24 ORLANDO REGION	44,949	38,261	-14.9%	124,149	123,103	-0.8%	169,098	161,364	-4.6%
52 SOUTHWEST REGION	66,898	59,726	-10.7%	263,493	267,557	1.5%	326,228	327,283	0.3%
74 NORTHWEST REGION	20,866	16,839	-19.3%	62,417	54,878	-12.1%	83,283	71,717	-13.9%
NATION	683,502	607,683	-11.1%	1,935,691	1,926,537	-0.5%	2,619,193	2,534,220	-3.2%

Combined Retail Sales performance above Region
 Combined Retail Sales performance below Region