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STATE OF CALIFORNIA  
NEW MOTOR VEHICLE BOARD

In the Matter of the Protest of )  
UNIVERSITY FORD CHRYSLER PLYMOUTH, ) Protest No. PR-448-83  
Protestant, )  
vs. )  
CHRYSLER CORPORATION, )  
Respondent. )

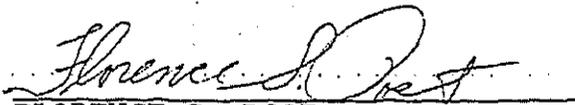
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DECISION

The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the New Motor Vehicle Board as its Decision in the above-entitled matter.

This Decision shall become effective forthwith.

IT IS SO ORDERED this 29th day of September, 1987.

  
FLORENCE S. POST  
President  
New Motor Vehicle Board

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UNIVERSITY CHRYSLER PLYMOUTH, INC.	)	
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Protestant,	)	Protest No. PR-448-83
	)	
vs.	)	<u>PROPOSED DECISION</u>
	)	<u>AFTER REMAND</u>
CHRYSLER CORPORATION,	)	
	)	
Respondent.	)	
	)	

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PROCEDURAL BACKGROUND

1. Respondent, Chrysler Corporation (Chrysler), gave notice by a letter dated May 18, 1983, pursuant to section 3060 of the Vehicle Code, of its intention to terminate the franchise of Protestant, University Chrysler Plymouth, Inc., which had been located at 1433 Camino Del Rio South, San Diego, California.

2. A protest was filed on behalf of University Chrysler Plymouth with the New Motor Vehicle Board (Board) on May 19, 1983.

3. A hearing was held on July 11, 12, 13, 14, 15, 20, 21,

22, 23, 25, 26 and 27, 1983, before Anthony M. Skrocki, Administrative Law Judge for the Board.

4. A proposed decision which sustained the protest on the condition that University Chrysler Plymouth relocate to a suitable facility within 2 years was submitted to the Board by the administrative law judge on October 6, 1983.

5. The Board adopted the proposed decision effective October 18, 1983.

6. On November 18, 1983, University Chrysler Plymouth filed a petition for writ of mandate with the Superior Court of the State of California, for the County of San Diego, requesting that the portion of the Board's decision which required the dealership to relocate in two years be vacated.

7. On November 30, 1983, Chrysler filed a petition for writ of administrative mandamus with the Superior Court of the State of California, for the County of San Diego, requesting that the Board's decision be vacated.

8. On February 1, 1984, the parties stipulated to have their respective petitions consolidated and heard at the same hearing before the Superior Court.

9. On February 17, 1984, the Honorable Judge Jack R. Levitt ruled that the statute in effect at the time of the Board's decision resulted in Chrysler being denied due process.

10. On March 1, 1984, Judge Levitt issued a peremptory writ of mandate which ordered the Board to vacate its decision.

11. On March 26, 1984, Judge Levitt issued a preliminary injunction restraining Chrysler from terminating University

Plymouth's franchise while the matter was pending.

12. On May 7, 1984, the Board filed an appeal with the California Court of Appeal, Fourth Appellate District. University Chrysler Plymouth filed an appeal on May 16, 1984.

13. On April 3, 1986, the Court of Appeal affirmed the Superior Court's ruling.

14. The Board's petition to the Court of Appeal for re-hearing was denied on April 24, 1986.

15. In May 1986, the Board and University Chrysler Plymouth filed petitions for hearing before the California Supreme Court. The petitions were denied on July 16, 1986.

16. On August 25, 1986, the Board pursuant to the peremptory writ of mandate issued by the Superior Court, vacated the prior decision of the Board dated October 18, 1983. The order vacating the decision stated in part, "The Board, unless instructed otherwise by the Superior Court, will remand the matter back to the Administrative Law Judge for further evidentiary determinations prior to any reconsideration of the matter."

17. On September 2, 1986, the Board remanded the protest proceedings to the administrative law judge for further hearing and evidentiary determinations with evidence to be taken limited to the sales performance of University Chrysler Plymouth from the date of the Board's prior decision of October 18, 1983 to the present. Notice was also given that a pre-hearing conference would be held on September 12, 1986.

18. On September 11, 1986, counsel for the parties

stipulated to continue the pre-hearing conference to September 17, 1986.

19. On September 19, 1986, the Board sent notice to the parties that the hearing before the administrative law judge would commence on October 13, 1986.

20. On September 25, 1986, Chrysler obtained an order from the Honorable Douglas R. Woodworth, Judge of the Superior Court, San Diego County, which temporarily stayed the hearing scheduled to commence before the administrative law judge on October 13, 1986.

21. By a minute order dated March 9, 1987, Judge Woodworth dissolved the temporary stay of September 25, 1986. No formal order was entered.

22. On March 23, 1987, the Board sent notice to the parties of a pre-hearing conference to be held on April 2, 1987. Pursuant to stipulation of counsel for the parties, the pre-hearing conference was continued to April 7, 1987.

23. The pre-hearing conference was held on April 7, 1987, at which time counsel for the parties stipulated to commence the hearing before the administrative law judge on June 30, 1987.

24. A hearing was held on June 30, 1987, before Anthony M. Skrocki, Administrative Law Judge for the Board.

25. Respondent was represented by Franklin H. Wilson of McCutchen, Black, Verleger and Shea. University Chrysler Plymouth was represented by Michael G. Coder of Coder and Tuel, and by Robert J. Fredrick of Murfey, Griggs and Fredrick.

PRIOR FINDINGS

26. Attached hereto is the Proposed Decision submitted on October 6, 1983.

27. Incorporated by reference and included as findings of fact herein are the facts as they were found to exist in the Proposed Decision of October 6, 1983, (specifically paragraphs 5 through 153).

FINDINGS OF FACT ON REMAND  
PERTAINING TO THE SALES PERFORMANCE OF  
UNIVERSITY CHRYSLER PLYMOUTH FROM  
OCTOBER 18, 1983 TO THE PRESENT

28. The Direct Dealer Agreement between Chrysler and University Chrysler Plymouth establishes their relationship, and specifically defines the responsibilities of each party.

29. The Direct Dealer Agreement states that the dealer's actual sales are compared to his Minimum Sales Responsibility (MSR) to determine "his sales performance".

30. The MSR as stated in the Direct Dealer Agreement is the number of new cars or trucks a dealer must sell to equal the product acceptance obtained in his zone. The "zone" referred to in the MSR definition refers to one of twenty-five zones that Chrysler has throughout the United States. University Chrysler Plymouth is in the Los Angeles zone, and its sales are measured against the product acceptance for its lines in that zone exclusively.

31. Product acceptance is measured in terms of market

penetration; that is, a car or truck line's percent of total new car or truck industry registrations. For example, if the total number of Chryslers registered in the Los Angeles zone during the calendar year is 5,000 and the total number of new cars registered in the Los Angeles zone during that same year is 100,000, the market penetration for Chrysler in the Los Angeles zone would be 5% (5,000 divided by 100,000 = .05).

32. The dealer's MSR is measured the same way as the market penetration except that the focus is on the dealer's particular sales locality rather than the entire zone. Once the market penetration for the particular line within the zone is calculated, then the total number of new cars (or trucks) registered within the dealer's specific sales locality is multiplied by the market penetration percentage. For example, using the market penetration figure of 5% for Chrysler within the zone, and assuming that the total number of cars registered within the dealer's sales locality is 10,000, then the dealer's MSR would be 500 units (10,000 x .05 = 500).

33. Each dealer's sales locality is identified in the Direct Dealer Agreement. The Sales Locality Description, which is part of the agreement, lists post office towns which make up the boundaries of a dealer's, or a group of dealer's, sales locality. University Chrysler Plymouth was assigned to the San Diego sales locality.

34. There are two adjacent sales localities to the north of the San Diego sales locality. The Carlsbad sales locality is northwest of the San Diego sales locality, while the

Escondido sales locality is due north.

35. Chrysler utilizes what it calls the Fair Share Development in large sales localities where there is more than one dealer selling the same line of cars or trucks so as to establish each dealer's share of the total sales responsibility. Individual dealer's "fair share" percentages are established by determining the relative importance of each dealer's local market.

36. When calculating the dealer's fair share, Chrysler has developed a standardized formula called the "5-4-1" method. The formula utilizes a combination of three measurable factors:

(1) Total industry registrations (exclusive of all fleet, lease, and dealer registrations) in each dealer's primary trading zone.

(2) The dealer's product line registrations (exclusive of all fleet, lease, and dealer registrations) in each dealer's primary trading zone.

(3) Each dealer's own private retail sales.

37. Each dealer's primary trading zone is usually established by a "time drive" survey of the multiple point market. In this survey, the time required to drive between each dealer point is measured in one or two minute intervals. Primary trading zones are defined at points approximately midway in time between dealer points, taking into consideration natural barriers such as rivers, lakes, as well as expressway systems, or other factors which influence the trading patterns within the market.

38. Once each dealer's primary trading zone is defined, its relative registration value is compared with the trading zones for all other like-line dealers in the market. The basic formula for establishing fair share assignments under the "5-4-1" method is as follows:

(1) Total private industry registrations in each dealer's trading zone as a percent of the industry registrations in the entire sales locality x 5.

(2) Private Chrysler/Plymouth registrations in each dealer's trading zone as a percent of those line registrations in the entire sales locality x 4.

(3) Each Chrysler/Plymouth dealer's private retail sales as a percent of all the like-line sales made by all other dealers in the sales locality x 1.

(4) The sum of 1, 2, and 3, is divided by 10.

39. The San Diego sales locality has been divided into four trading zones. The trading zone for University Chrysler Plymouth (Mission Valley trading zone) in the middle, McCune Chrysler Plymouth (National City trading zone) to the south, Best Chrysler Plymouth (El Cajon trading zone) to the east, and an open point (Kearny Mesa trading zone) to the north.

40. The MSR Fair Share Agreement which was executed January 1, 1985, between Chrysler and University Chrysler Plymouth assigned to the dealer 22.09% of the San Diego sales locality market.

41. The registration figures which Chrysler uses in its various formulae come from R.L. Polk and Company. Chrysler

obtains the dealer's information from a new vehicle delivery record (NDVR) card which is submitted to Chrysler when a vehicle is sold.

42. The percent of MSR attained by University Chrysler Plymouth during the relevant years is: (PLY=Plymouth; CHR=Chrysler; IMP=Imperial; PLYTR=Plymouth Truck)

	<u>MSR (Units)</u>	<u>TOTAL SALES (Units)</u>	<u>PLY</u>	<u>CHR</u>	<u>IMP</u>	<u>PLYTR</u>	<u>MSR ATTAINED</u>
1983	479	557	93.4	139.4	100.0	100.0	116.3
1984	692	887	134.6	126.4	DISCONTINUED in 1983		128.2
1985	819	1277	200.0	137.9	--	120.7	155.9
1986	805	1282	202.5	126.3	--	176.2	159.2

43. The Percent of MSR Attained for Best Chrysler Plymouth during the relevant years is:

	<u>MSR (Units)</u>	<u>TOTAL SALES (Units)</u>	<u>PLY</u>	<u>CHR</u>	<u>IMP</u>	<u>PLYTR</u>	<u>MSR ATTAINED</u>
1984	752	410	64.9	48.8	DISCONTINUED in 1983		54.5
1985	604	461	93.3	71.0	--	58.9	76.3
1986	791	609	87.4	66.9	--	90.0	76.9

44. Chrysler is not attempting to terminate Best Chrysler Plymouth.

45. Chrysler attempts to measure University Chrysler Plymouth's MSR against its alleged "sales opportunities". Since University Chrysler Plymouth, pursuant to Vehicle Code section 3062, has filed a protest against the establishment of a new

Chrysler dealership in the Kearny Mesa trading zone, Chrysler is attempting to hold University Chrysler Plymouth responsible for the Kearny Mesa MSR.

46. If University Chrysler Plymouth's fair share were to change, the District Manager for the Los Angeles zone would notify the dealership verbally and a contractual amendment would be executed. University Chrysler Plymouth has never received any notification of a change in its MSR, or a notification that it would be held responsible for the Kearny Mesa trading zone. University Chrysler Plymouth learned for the first time at the hearing that Chrysler intended to hold the dealership responsible for the Kearny Mesa trading zone.

47. For 1986, the Kearny Mesa fair share for the San Diego sales locality was 29.93% (1,090 units). If University Chrysler Plymouth were held responsible for the Kearny Mesa trading zone in addition to its assigned Mission Valley trading zone, its MSR would be 1,895 units instead of its present 805 units. Since University Chrysler Plymouth sold 1,282 units in 1986 there would be a deficit of 613 units and its MSR percent for 1986 would drop from 159.2% to 67.7%.

48. Chrysler has suppressed the assignment of the Kearny Mesa trading zone to University Chrysler Plymouth because it is Chrysler's intent to put a dealer in the Kearny Mesa trading zone. Presently, Chrysler does not hold University Chrysler Plymouth contractually responsible for the Kearny Mesa trading zone.

49. The Direct Dealer Agreement establishes both the trading

zone and the MSR for which University Chrysler Plymouth is responsible. University Chrysler Plymouth's sales performance is measured against the standards established by the agreement. In accordance with those standards, University Chrysler Plymouth's sales performance has been excellent.

50. In 1984, University Chrysler Plymouth was named by Chrysler as one of the Top 10 dealers in the Los Angeles zone.

51. University Chrysler Plymouth has been named as a member of Chrysler's Pacesetter Club in 1985 and 1986. The Pacesetter Club is an honor bestowed by Chrysler upon its dealers who have sold 1,200 or more Chryslers or Plymouths during the year.

52. In March, 1986 and February, 1987, Robert Baker, majority shareholder of University Chrysler Plymouth, received a letter from Mr. Martin R. Siegal, Los Angeles Zone Manager, thanking him for his "individual, outstanding performance ... in both sales and profits."

53. In February 1987, Mr. Baker received a letter from Mr. E. T. Pappart, Vice-President of Chrysler Corp., commending him for his "great sales performance."

54. In 1986, University Ford, with which University Chrysler Plymouth is dualled, achieved the distinction of being the number one volume Ford dealership in San Diego County. In that same year, University Ford won the Ford Dealer Distinguished Achievement Award. The award is Ford's highest honor and is given to those dealers whose performance in the areas of customer satisfaction, share of industry, and profit meet the highest standards of automotive retailing.

55. Robert Baker was selected by the judges at the University of Michigan, Graduate School of Business Administration, as one of the twenty 1987 Time Magazine Quality Dealer Award Finalists. Only 80 dealers nationwide were nominated for the award. Part of the criteria relating to the selection process is sales performance. Mr. Baker was selected to represent the Western Region of the United States.

DETERMINATION OF ISSUES

56. It is determined that Chrysler has failed to establish there is good cause to terminate the franchise of University Chrysler Plymouth, in that:

- (a) Chrysler did not establish that the amount of business transacted by University Chrysler Plymouth prior to the relocation in 1983 was inadequate as compared to the business available to University Chrysler Plymouth; [§3061(1)]
- (b) Chrysler did not establish that the amount of business transacted by University Chrysler Plymouth from 1983 to the present was inadequate as compared to the business available to University Chrysler Plymouth; [§3061(1)]
- (c) Chrysler did not establish that University Chrysler Plymouth does not have a material investment and Chrysler did not establish that University Chrysler Plymouth has not incurred substantial obligations in the performance of its part of the franchise; [§3061(2)]

- (d) Chrysler is estopped from asserting that the investment of University Chrysler Plymouth is not permanent; [§3061(3)]
- (e) Chrysler did not establish that it would be beneficial and not injurious to the public welfare for the business of University Chrysler Plymouth to be disrupted; [§3061(4)]
- (f) Chrysler did not establish that University Chrysler Plymouth does not have adequate motor vehicle sales and service facilities, equipment, vehicle parts, and qualified service personnel to provide reasonably for the needs of consumers for Chrysler vehicles, and Chrysler did not establish that University Chrysler Plymouth has not been rendering adequate services to the public; [§3061(5)]
- (g) Chrysler did not establish that University Chrysler Plymouth failed to fulfill warranty obligations of Chrysler; [§3061(6)]
- (h) Chrysler did not establish that the failure of University Chrysler Plymouth to comply with the terms of the franchise was so substantial as to warrant its termination [§3061(7)], in that:
- (i) Chrysler did not establish that the relocation of University Chrysler Plymouth without the approval of Chrysler is a sufficient reason to terminate the franchise under the circumstances of this case;

- (ii) Chrysler did not establish that the relocation of University Chrysler Plymouth to the University Ford site was unreasonable;
- (iii) Chrysler's refusal to grant permission for the relocation was primarily due to Chrysler's concern about University Chrysler Plymouth's ability to achieve sufficient sales when dualed with Ford. Chrysler's concern about University Chrysler Plymouth's sales as a result of being dualed with Ford have been proven unfounded. University Chrysler Plymouth's sales performance since its relocation in 1983 have been excellent by Chrysler's own standards.
- (iv) Chrysler's refusal to allow University Chrysler Plymouth to dual with University Ford is inconsistent with Chrysler's prior conduct, and under the circumstances is unreasonable.

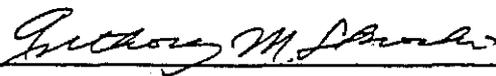
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The following proposed decision is respectfully submitted:

Chrysler has not established good cause to terminate the franchise of University Chrysler Plymouth. The protest is unconditionally sustained.

I hereby submit the foregoing which constitutes my proposed decision in the above-entitled matter, as a result of a hearing had before me on the above date and recommend its adoption as the decision of the New Motor Vehicle Board.

DATED: September 2, 1987

  
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ANTHONY M. SKROCKI  
Administrative Law Judge  
New Motor Vehicle Board

NEW MOTOR VEHICLE BOARD  
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In the Matter of the Protest of: )  
UNIVERSITY CHRYSLER PLYMOUTH, INC. )  
dba UNIVERSITY FORD CHRYSLER PLYMOUTH, )  
Protestant, ) Protest No. PR-448-83  
vs. ) PROPOSED DECISION  
CHRYSLER CORPORATION, )  
Respondent. )

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PROCEDURAL BACKGROUND

1. Respondent, Chrysler Corporation (Chrysler), gave notice by a letter dated May 18, 1983, pursuant to Section 3060 of the Vehicle Code,<sup>1/</sup> of its intention to terminate the franchise of Protestant, University Chrysler Plymouth, Inc., which had been located at 1433 Camino Del Rio South, San Diego, California.

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<sup>1/</sup> All references are to the California Vehicle Code unless otherwise indicated.

2. A protest was filed in behalf of University Chrysler Plymouth with the New Motor Vehicle Board on May 19, 1983.

3. A hearing was held on July 11, 12, 13, 14, 15, 20, 21, 22, 23, 25, 26 and 27, 1983, before Anthony M. Skrocki, Administrative Law Judge for the Board.

4. Respondent was represented by Franklin H. Wilson and Michael M. Johnson of McCutchen, Black, Verleger and Shea, and by William S. Hurst of Chrysler Corporation. University Chrysler Plymouth was represented by Michael G. Coder of Coder and Tuel, and by Robert J. Fredrick of Murfey, Hill, and DuVal.

FACTS LEADING UP TO THE NOTICE OF TERMINATION

5. Chrysler's notice of termination was issued because University Chrysler Plymouth relocated without the consent of Chrysler.

6. Chrysler refused to grant permission to relocate because the relocation was to the site of University Ford and resulted in a combined Ford-Chrysler Plymouth dealership known in the industry as a dual. The dealership is now doing business as University Ford-Chrysler Plymouth.

7. Chrysler has a corporate policy prohibiting dualing with major domestic competitors, or some imports, in a

metropolitan area. Chrysler also contends that the University Ford facility is not adequate for proper representation of Chrysler products.

8. Ownership of the stock of University Chrysler Plymouth is as follows:

Robert Baker	- 80%
William Carey	- 10%
Frank Brock	- 10%

9. Robert Baker owns 100% of the stock of University Ford, Inc..

10. University Chrysler Plymouth was located at 1433 Camino Del Rio South, San Diego.

11. University Ford is located at 730 Camino Del Rio North, San Diego.

12. The distance between the two sites is less than one-half mile and both sites are in the City of San Diego in an area known as Mission Valley.

13.. Prior to the representation by University Chrysler Plymouth, Chrysler was for many years represented by Martin

Carter Chrysler Plymouth, Inc., dba Martin Chrysler Plymouth, (Martin) at the former location of University Chrysler Plymouth.

14. The property upon which University Chrysler Plymouth was located was owned by Chrysler Realty Corporation until 1979. The property had been leased to Martin under a lease which was to expire on May 31, 1987.

15. In 1979 before Baker purchased Martin, and in the depths of Chrysler's financial problems, Chrysler Realty sold all of its dealership properties across the country (approximately 600) to ABKO Realty, Inc. (ABKO). In the sale agreement with ABKO, Chrysler did not provide for lease renewal options in favor of its dealers. Chrysler did, however, reserve an option in its own favor in respect to the University Chrysler Plymouth property. Chrysler subsequently released this option.

16. Baker began negotiating with Martin for the purchase of the stock of Martin in the fall of 1979 and assumed control on March 1, 1980.

17. Baker purchased Martin even though the future of Chrysler was uncertain. At the time of the purchase, Baker was told by Martin that the property was leased from Chrysler and that there were 7-1/2 years remaining on the lease.

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18. Until the conclusion of the Baker-Martin buy-sell, or just after, Baker believed Chrysler was the lessor of the property. As long as the property was owned by Chrysler Realty, a dealer in a leased facility felt reasonably certain Chrysler would perpetuate the landlord-tenant relationship to keep the dealership at that location, regardless of the termination date of the lease.

19. Baker would have purchased Martin regardless of who the lessor was because the rent was so advantageous.

20. When Baker learned that the property was owned by ABKO, he was not immediately concerned about the expiration date of the lease because he assumed that the land could either be purchased or the lease extended with the assistance of Chrysler.

21. Chrysler did in fact, on October 7, 1982, in a single transaction, re-purchase many of the properties sold to ABKO in 1979. However, Chrysler did not buy back any properties in California, Texas or Arizona, because they had increased substantially in value. Of the 120 Chrysler dealers, (Chrysler Plymouth - Dodge - Dodge Truck) in the Los Angeles zone,<sup>2/</sup> 30 dealers (25% of the zone total) are situated on properties

<sup>2/</sup> The Los Angeles zone includes southern California, Arizona and Hawaii.

which Chrysler chose not to re-purchase, and therefore, are still owned by ABKO. It is likely that these dealers will not be able to remain at their present locations when their leases expire.

22. Although Chrysler has contacted ABKO about the possibility of re-purchasing or extending the leases on these properties on a piecemeal basis, none of the remaining Los Angeles zone properties owned by ABKO after the 1982 Chrysler re-purchase have been re-acquired by Chrysler or had the lease terms extended. This is so despite the fact the first of the leases to expire does so in 1984. Chrysler has told its dealers to either purchase the property from ABKO or move to another location.

23. Chrysler did not communicate with its Los Angeles zone in regards to Chrysler's transactions with ABKO. The Chrysler Los Angeles zone personnel were not told until after the fact that certain properties were not being re-purchased by Chrysler. The Los Angeles zone personnel were not informed as to the reasons why the properties were not being re-purchased.

24. When the properties were sold to ABKO the California properties were re-assessed for tax purposes and the tax increases passed on to the dealers pursuant to the lease terms.

25. When ABKO re-sold the properties the properties were

re-assessed again for tax purposes and the increases again passed on to the dealers.

26. Baker became aware in late 1980 of the possibility that Chrysler did not intend to re-purchase the property from ABKO. Baker initiated contact with ABKO to explore the possibility of buying the property himself.

27. By the summer of 1982, the Chrysler dealers in ABKO-owned facilities were repeatedly expressing their concerns to Chrysler representatives about their facility leases.

28. The Los Angeles Zone Manager was receiving so many calls from so many dealers in regard to the ABKO-owned properties that it was uncertain as to when he first became aware of Baker's concerns.

29. Baker's concerns were continuously expressed to Chrysler personnel and the concern was referred to by Chrysler personnel as "the ABKO Realty problem". Baker's concerns and suggestions were reported by the Zone Dealer Placement Manager in a memo dated September 2, 1982, directed to the Los Angeles Zone Manager. The Zone Dealer Placement Manager suggested an early meeting between Baker and the Zone Manager. The memo was not seen by the Zone Manager and no meeting was held, despite the urgent tone of the memo.

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30. Under the terms of the first sale agreement (1979), between ABKO and Chrysler Realty, Chrysler retained an option to renew the lease on the University Chrysler Plymouth property if the property ceased to be used as a Chrysler Plymouth dealership by the existing tenant. Chrysler had the power to renew the lease for an additional 5-year period at a rent based upon the assumption that the highest and best use for the property was as an auto dealership.

31. Chrysler's option was to have expired on September 30, 1984. For reasons or consideration not disclosed during the hearing, Chrysler, in the summer or fall of 1982, surrendered its option. The effect of such surrender increased the value of both the freehold interest (ABKO) and the leasehold interest (University Chrysler Plymouth).

32. Chrysler's surrender of its option removed the uncertainty of the duration of occupancy of the property by a Chrysler dealer. Prior to the surrender of the option, a prospective buyer of the property from ABKO had to concern itself with the possibility that if University Chrysler Plymouth failed or moved, before September 30, 1984, Chrysler could exercise its option and extend the expiration of the lease from 1987 to 1992.

33. After the surrender of the option, a prospective buyer could be assured of possession no later than 1987. Possession

could be gained even earlier if the buyer could convince University Chrysler Plymouth to vacate the premises.

34. On December 9, 1982, ABKO granted an option to purchase the University Chrysler Plymouth property to American Real Estate Associates dba San Diego Diversified Properties (SDDP). SDDP planned to construct a major hotel on the site and desired it completed in time for the 1984 Olympics scheduled to be held in Los Angeles.

35. Until the fall of 1982, Baker felt no urgency to do anything because he hoped Chrysler would re-purchase the property or that something else could be worked out with ABKO in regard to purchasing the property or extending the lease. Baker did not believe a sale of the property by ABKO to a third party was probable because of the Chrysler option. Baker learned in September 1982, that Chrysler had surrendered its option to renew. He acquired this information from ABKO representatives and so informed the Zone Dealer Placement Manager. Once Chrysler surrendered its option, Baker realized his ability to remain on the property beyond 1987 was unlikely.

36. In late November 1982, Baker received the first offer from SDDP of \$400,000 to surrender the University Chrysler Plymouth lease. This offer was rejected.

37. On December 22, 1982, Baker received an offer of

\$750,000 from SDDP, but Baker did not believe that the SDDP would be able to raise that sum. As it became more likely that the \$750,000 would be tendered, Baker met with Los Angeles zone representatives on January 20, 1983.

38. On January 20, 1983, in a meeting with Baker and Los Angeles zone representatives, Baker informed the Los Angeles zone representatives that he had learned that ABKO had committed itself to the sale of the University Chrysler Plymouth site. There was therefore little chance of Baker or Chrysler ever acquiring ownership, or an extension of the lease, as Chrysler had represented it was attempting to do. The Los Angeles zone personnel had not been informed by Chrysler of ABKO's actions. The Zone Manager immediately called Chrysler's offices in Detroit to inquire if Baker's information was correct. He was informed that it was.

39. On February 1, 1983, Baker accepted \$25,000 for an option granting SDDP the right through February 15, 1983, to purchase the leasehold for \$750,000 cash.

40. The option was exercised by SDDP on February 8, 1983 and the \$750,000 paid by cashiers check. Under the terms of the agreement, University Chrysler Plymouth was required to vacate the premises no later than June 30, 1983. Baker eventually agreed to move no later than May 2, 1983 and received an additional \$25,000 (for a total of \$800,000) plus

reimbursement for pre-paid rent.

41. By letter dated February 16, 1983, the Los Angeles Zone Manager warned Baker that dualing Chrysler Plymouth and Ford would not be acceptable and would result in termination.

42. After an exchange of correspondence, a meeting was held on March 8, 1983, between Baker, other University Chrysler Plymouth representatives and Los Angeles zone personnel. A proposal for dualing was presented to Chrysler.

43. By a letter dated March 14, 1983, the Los Angeles Zone Manager informed Baker that the dualing proposal as submitted was not acceptable to him but that it was being forwarded to Chrysler's National Marketing Committee in Detroit for their consideration.

44. After an exchange of communications regarding alternative sites, (which Baker found unacceptable), Chrysler notified Baker by a mailgram dated April 11, 1983, that Chrysler had not yet approved the relocation and that a decision on Baker's proposal was forthcoming from Detroit.

45. After another exchange of communications, a meeting was held on April 17, 1982, at University Ford with Baker, Los Angeles zone representatives and John Naughton, Chrysler's Executive Vice President of Sales and Marketing. Naughton

informed Baker that he did not believe the Ford facility was adequate for representation of both Ford and Chrysler.

46. On April 18, 1983, University Chrysler Plymouth moved its service operations to University Ford.

47. On April 22, 1983, the Los Angeles Zone Manager forwarded a recommendation to Detroit that University Chrysler Plymouth be terminated.

48. On April 27, 1983, a Los Angeles zone representative prepared an analysis of the facilities at University Ford.

49. On May 2, 1983, University Chrysler Plymouth moved its sales operation to University Ford.

50. On May 18, 1983, the notice of termination was delivered to Baker. This was the first communication to Baker as to the decision by the Marketing Committee.

#### ISSUES PRESENTED

51. Vehicle Code Section 3066 imposes upon Chrysler the burden to establish that there is good cause to "terminate or refuse to continue a franchise." Vehicle Code Section 3061 requires:

In determining whether good cause has been established for . . . terminating, or refusing to continue a franchise, the board shall take into consideration the existing circumstances, including, but not limited to:

(1) Amount of business transacted by the franchisee, as compared to the business available to the franchisee.

(2) Investment necessarily made and obligations incurred by the franchisee to perform its part of the franchise.

(3) Permanency of the investment.

(4) Whether it is injurious or beneficial to the public welfare for the franchise to be modified or replaced or the business of the franchisee disrupted.

(5) Whether the franchisee has adequate motor vehicle sales and service facilities, equipment, vehicle parts, and qualified service personnel to reasonably provide for the needs of the consumers for the motor vehicles handled by the franchisee and has been and is rendering adequate services to the public.

(6) Whether the franchisee fails to fulfill the warranty obligations of the franchisor to be performed by the franchisee.

(7) Extent of franchisee's failure to comply with the terms of the franchise.

FACTS RELATING TO THE AMOUNT OF BUSINESS TRANSACTED  
BY UNIVERSITY CHRYSLER PLYMOUTH, AS COMPARED  
TO THE BUSINESS AVAILABLE TO IT [§3061(1)]

52. Planning potential is the number of cars and trucks Chrysler plans to build during a given year. Chrysler determines a national planning potential number and divides it among all the sales localities in the country, based on sales registrations of the local market as a percentage of the

national market. For example, the San Diego market is assigned a planning potential percentage as its share of the national objective. The San Diego planning potential is then further divided among the dealerships within the locality based upon registrations for their particular local market. Adding all the dealerships planning potential together would equal 100% of the planning potential assigned to San Diego.

53. The planning potential is used for many corporate purposes, including determining the size and requirements of a facility as well as a measure of the sales performance of a dealer.

54. For 1982, Chrysler assigned a planning potential of 488 units to University Chrysler Plymouth. During 1982, sales by University Chrysler Plymouth exceeded its assigned planning potential.

55. Chrysler also assigns each dealer a minimum sales responsibility. This is determined by historical measurement of sales which have already taken place. It is usually based upon the sales transactions of the preceding year.

56. The following indicates the sales performance of Martin Chrysler Plymouth and University Chrysler Plymouth as a percentage of minimum sales responsibility:

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<u>Year</u>	<u>Dealership</u>	<u>Actual Sales As A Percentage of MSR</u>
1979	Martin	80%
1980	Martin-University	106%
1981	University	122%
1982	University	194%
1983 thru June	University	183%

57. Chrysler also assigns its dealers monthly minimum sales objectives, (as compared to its minimum sales responsibility which is computed on an annual basis). University Chrysler Plymouth has exceeded its monthly minimum sales objectives during 1983.

58. Sales by University Chrysler Plymouth during the first 6 months of 1983 exceeded its sales during the first 6 months of 1982.

59. Chrysler considered University-Chrysler-Plymouth to be an "adequate dealer".

60. The sales performance by University Chrysler Plymouth was not a factor in Chrysler's decision to terminate.

61. Chrysler's experience with duals of Chrysler products with other major domestic makes is that the dual dealerships do not provide satisfactory sales performance. However, almost all of these duals are in other than major metropolitan areas.

In addition, only one is a Chrysler-Ford dealership with a Chrysler planning potential of over 300 units. This dealership's 1982 sales equalled 85.6% of its planning potential.

62. There are at least two exceptions to the rule that duals do not perform well and both are in a major metropolitan area. One is a Chrysler Plymouth-Buick dual in Boston and one is a Dodge-Ford dual in a suburb of Boston. Both are selling well and utilize separate showrooms. Both were appointed in the depths of Chrysler's depression when Chrysler was desperate for dealers. Despite the fact the dealers are performing satisfactorily, Chrysler would probably not appoint those dealers today.

FACTS RELATING TO THE INVESTMENT NECESSARILY MADE AND OBLIGATIONS INCURRED BY UNIVERSITY CHRYSLER PLYMOUTH TO PERFORM ITS PART OF THE FRANCHISE [§3061(2)]

63. University Chrysler Plymouth is a corporation, the shares of which are owned as follows:

Robert Baker	- 80%
William Carey	- 10%
Frank Brock	- 10%

64. University Chrysler Plymouth was located at 1433 Camino Del Rio South in San Diego.

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65. Until 1980, the franchisee was Martin-Carter, Inc. dba Martin Chrysler Plymouth. Baker began negotiating for the purchase of Martin in the fall of 1979 and consummated the purchase even though Chrysler was in a precarious financial condition at the time.

66. Baker took over Martin by a management agreement on March 1, 1980. Baker paid \$125,000 over the book price for the stock of Martin for a total of \$432,401 cash.

67. Baker also assumed and personally guaranteed the corporation's contingent liabilities including the outstanding warranty contracts.

68. Baker also undertook to pay Mr. Martin \$2,200 per month for 5-1/2 years. Baker is also required to provide medical coverage for Mr. Martin and his wife and provide them with two cars for the same time period.

69. The following represents the earnings of University Chrysler Plymouth for the years indicated:

<u>Year</u>	<u>Net Profit Before Taxes</u>
1981	\$ 85,582
1982	392,681
1983 thru April	175,319

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70. In 1982, Baker drew \$24,000 salary for the year and a \$10,000 bonus. No dividends were paid.

71. University Chrysler Plymouth received \$800,000 cash in connection with its sale of its leasehold.

72. Baker is willing to relocate University Chrysler Plymouth if a site is found which is suitable to Chrysler and economically feasible for operation of a dealership.

73. Baker is also willing to and has commenced modifying the facilities at University Ford to accommodate University Chrysler Plymouth on a temporary basis.

74. Approximately 80% of the fixed assets of University Chrysler Plymouth were transferred to the University Ford site. The other 20% of the assets were sold to the public.

FACTS RELATING TO PERMANENCY OF INVESTMENT OF  
UNIVERSITY CHRYSLER PLYMOUTH [§3061(3)]

75. Chrysler contends there is no permanency of investment because University Chrysler Plymouth abandoned its facilities. The facilities, however, were under a lease which was incapable of being renewed because Chrysler Realty, the previous owner, had sold the property to a third party in a mass sale of its properties in an attempt by Chrysler to survive. Had this not occurred there is little doubt that University Chrysler

Plymouth would be looking forward to a lease extension with Chrysler Realty or possibly the purchase of the property at terms conducive to operating an automobile dealership.

76. Chrysler effectively contributed to the inability of University Chrysler Plymouth to acquire any greater permanency than it had before the relocation. Chrysler is therefore estopped to assert lack of permanency of investment by University Chrysler Plymouth.

77. University Chrysler Plymouth, under Baker's control, has operated successfully and profitably as a Chrysler Plymouth dealership. Baker and University Chrysler Plymouth have earned a good reputation in the San Diego market.

FACTS RELATING TO WHETHER IT IS INJURIOUS OR BENEFICIAL  
TO THE PUBLIC WELFARE FOR THE BUSINESS OF  
UNIVERSITY CHRYSLER PLYMOUTH TO BE  
DISRUPTED [§3061(4)]

78. University Chrysler Plymouth is located in the Mission Valley area of the City of San Diego. Mission Valley is currently being developed according to a city development plan and land values have increased substantially.

79. The former University Chrysler Plymouth site is less than a half mile from the present location of University Chrysler Plymouth.

80. University Chrysler Plymouth is the only Chrysler Plymouth dealership in the City of San Diego. The following represents the locations, drive time and distances between the present University Chrysler Plymouth location and other Chrysler Plymouth dealers.

<u>University Chrysler Plymouth To:</u>	<u>Distance</u>	<u>Drive Time</u>
Best Chrysler Plymouth El Cajon	11.5 miles east	14 minutes
McCune Chrysler Plymouth National City	11 miles south	15 minutes
Bob Baker Chrysler Plymouth Volkswagen - Carlsbad	31.3 miles north	34 minutes

81. Baker has been in the automobile business since 1953. He has had much experience and has been very successful in the dealerships he has operated.

82. Chrysler recognizes the need to have representation in Mission Valley and plans on replacing University Chrysler Plymouth if termination occurs.

83. Chrysler has not actively engaged in any attempts to locate a replacement dealer or sites. Chrysler estimates that a replacement dealer could be appointed within 90 days after a suitable candidate is located. It could, however, take as long as 10 months to establish an operating dealership if the candidate were required to locate property and build a facility.

84. Chrysler has had several inquiries from persons interested in a Chrysler Plymouth franchise in Mission Valley.

85. Chrysler has done nothing to locate a candidate, or a site, pending the outcome of this protest.<sup>3/</sup> Chrysler believes it will not have difficulty in replacing University Chrysler Plymouth, despite the fact that the cost of land in Mission Valley is extremely high.

86. Based upon the evidence presented, the ability of Chrysler to establish a replacement dealership in Mission Valley is speculative as to the time that would be required to do so. It is also speculative as to whether the dealership, when established, would serve the public as well as University Chrysler Plymouth even though temporarily dualled at the University Ford location.

87. If termination occurs, Chrysler would "consider" allowing University Chrysler Plymouth to continue servicing Chrysler products until another Mission Valley dealer is established.

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<sup>3/</sup> At a pre-hearing conference Chrysler's attention was specifically directed to prior decisions of the board in which the board ordered a remand to determine the specific plans of the franchisors in regard to replacing a dealer. These were Polland - Ravenscroft Co. vs. Chevrolet Motor Division, PR-201-78 and Daly City Datsun, Inc. vs. Nissan Motor Corporation, PR-254-79.

88. There are six Chrysler (Chrysler Plymouth or Dodge) dealerships in the San Diego metropolitan area that are authorized to perform warranty work on Chrysler products. There was no showing that their personnel or facilities are sufficient to service the customers of University Chrysler Plymouth during the interval between termination of University Chrysler Plymouth and establishment of a replacement.

FACTS RELATING TO WHETHER UNIVERSITY CHRYSLER PLYMOUTH HAS  
ADEQUATE MOTOR VEHICLE SALES AND SERVICE FACILITIES,  
EQUIPMENT, VEHICLE PARTS AND QUALIFIED SERVICE  
PERSONNEL TO REASONABLY PROVIDE FOR THE  
NEEDS OF CONSUMERS OF CHRYSLER PLYMOUTH  
VEHICLES AND HAS BEEN AND IS RENDERING  
ADEQUATE SERVICES TO THE PUBLIC  
[§3061(5)]

89. University Chrysler Plymouth, at its former location, had adequate motor vehicle sales and service facilities, equipment, vehicle parts and qualified service personnel and had been rendering adequate services to the public. University Chrysler Plymouth has received the Five Star Quality Service Award each year since Baker acquired the franchise in 1979. It was one of five dealerships in California to receive the award in 1982.

90. The facilities and location of University Ford are excellent. Chrysler would not be attempting to terminate University Chrysler Plymouth if the facilities were to be used for only Chrysler products.

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91. Chrysler might have found the University Ford facilities adequate for both Ford and Chrysler if Baker provided a separate showroom, and brand and fascia identification. However, Chrysler would not have approved the dual because it would still be against Chrysler's policy of permitting duals with major domestic competitors in a metropolitan market.

92. Both Ford and Chrysler establish guides for the facilities required of their dealerships. Ford determines its guides based upon what it calls planning volume and Chrysler determines its guides based upon what it calls planning potential.

93. The following are the figures assigned by the franchisors to University Ford and University Chrysler Plymouth:

Ford Planning Volume	2300
Chrysler Planning Potential	<u>488</u>
Combined	2788

94. The following chart illustrates Chrysler's facilities requirements for a dealership with a planning potential of 3,000 new cars as compared with the actual availability at the University Ford-Chrysler Plymouth facility.

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SALES AND ADMINISTRATION

<u>Showroom Display Space</u>	<u>Required by Chrysler</u>	<u>Available at University Ford- Chrysler Plymouth</u>
Units	8	8
Square Feet	3,400	3,225
<u>Office</u>		
Square Feet	2,670	6,400
Total Square Feet	<u>6,070</u>	<u>9,625</u>

SERVICE DEPARTMENT

<u>Service Stalls</u>	<u>Required by Chrysler</u>	<u>Available at University Ford- Chrysler Plymouth</u>
Number of Stalls	75	93
Square Feet	35,625	34,500
<u>Parts</u>		
Square Feet	8,203	13,560
Total Square Feet	<u>43,828</u>	<u>48,060</u>
Total Inside Building Dimensions	<u>52,393</u>	<u>57,685</u>

LAND AREA

<u>New Car Storage</u>	<u>Required by Chrysler</u>	<u>Available at University Ford- Chrysler Plymouth</u>
Square Feet	112,500	133,100
<u>Used Car Display</u>		
Square Feet	70,700	46,200
<u>Customer/Employee Parking</u>		

Square Feet	78,750	78,800
Total Land Area <u>Square Feet</u>	261,950	258,100
Total Land & Building	314,343	315,785
Approximate Acres	7.22	7.23

95. The facilities available at the University Ford-Chrysler Plymouth site are substantially in compliance with Chrysler's facility requirements for a dealership with a planning potential of 3,000 new units. The combined University Ford and University Chrysler Plymouth planning potential and planning volume is only 2,788 new units.

96. University Ford sold 1,559 new units in 1982; University Chrysler Plymouth sold 496 new units in 1982, for a combined total of 2,055 new units. This is almost 1,000 units less than the 3,000 unit figure used for facility analysis purposes.

97. The following represents the number of sales by University Ford during its peak years and in 1982:

<u>Year</u>	<u>Number of New Units Sold</u>
1972	3,756
1973	3,332
1978	3,291
1982	1,559

98. University Ford experienced no difficulties in its operation when it sold in excess of 3,000 new units per year.

99. University Ford was established in 1947, at a site two miles from its present location. University Ford moved to its present site in 1967, and the facilities are the same now as they were during the years shown above.

100. The Ford planning volume for University Ford for 1979 was 2,900 vehicles but it was reduced when Ford established another dealership and divided the market.

FACTS RELATING TO WHETHER UNIVERSITY CHRYSLER PLYMOUTH  
HAS FAILED TO FULFILL THE WARRANTY OBLIGATIONS  
OF CHRYSLER TO BE PERFORMED BY UNIVERSITY  
CHRYSLER PLYMOUTH [§3061(6)]

101. Chrysler did not allege that University Chrysler Plymouth failed to perform warranty obligations and was satisfied that warranty obligations were being met by University Chrysler Plymouth.

FACTS RELATING TO WHETHER UNIVERSITY CHRYSLER PLYMOUTH  
FAILED TO COMPLY WITH THE TERMS OF THE FRANCHISE  
[§3061(7)]

102. University Chrysler Plymouth is operating as a franchisee under a Chrysler Direct Dealer Agreement and a

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Plymouth Direct Dealer Agreement.<sup>4/</sup> The Chrysler and  
Plymouth direct dealer agreements provide in part as follows:

Facilities and Capital - DIRECT DEALER agrees to  
maintain at DIRECT DEALER'S address as indicated in  
the opening paragraph of this agreement or at such  
other or additional

locations as CHRYSLER approves in writing, a place or  
places of business including salesroom, service, and  
parts and accessories facilities relatively  
equivalent to those maintained by DIRECT DEALER'S  
principal competitors and to operate such place of  
business in the manner and during the hours usual in  
the trade in DIRECT DEALER'S Sales Locality.

103. There is no prohibition against dualing in the direct  
dealer agreements. There are no requirements in the direct  
dealer agreements that a dealer obtain Chrysler's approval  
prior to dualing. Chrysler would have no right to object to  
dualing unless to do so caused the dealership to fall below  
Chrysler's facilities requirements.

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<sup>4/</sup> Chrysler uses four different types of agreements in  
connection with the marketing of its vehicles. These are:

- (1) Direct Dealer Agreement - The typical permanent  
franchise of a Chrysler, Plymouth, Dodge and/or Dodge  
truck dealer. It has no set termination date.

104. Chrysler would not have had a right under its direct dealer agreements to terminate if University Chrysler Plymouth had remained at its prior location and Baker had moved University Ford and dualled it with University Chrysler Plymouth.

105. Chrysler concedes that the University Ford facility is excellent. Chrysler also agrees that the facility is in an excellent location and provides ease of access, visibility, and convenience. Chrysler agrees there is need for representation in Mission Valley.

106. Dualing with Ford is not by itself a violation of the direct dealer agreements. The relocation would not be objected to by Chrysler if it did not result in dualing with Ford.

107. Ford Motor Company has not objected to the temporary addition of Chrysler Plymouth to the Ford facility.

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4/ (Cont'd.)

- (2) Term Sales Agreement - An agreement with a fixed expiration date. The agreement typically requires a dealer to meet certain conditions which if met will make the dealer eligible for a Direct Dealer Agreement. The conditions to be met usually pertain to such things as capital, facilities, or management.
- (3) Temporary Sales Agreement - An agreement used by Chrysler to authorize a dealer to sell Chrysler Plymouth and Dodge in a market where Chrysler eventually desires to have separate representation for Chrysler Plymouth and separate representation for Dodge. It is a temporary "dual" of Chrysler Plymouth with Dodge and has a fixed termination date.
- (4) Letter of Intent - This is an agreement to enter into one of the agreements described above. It commits Chrysler to appoint the designated individual as a dealer at some time in the future if certain conditions are met.

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FACTS PERTAINING TO WHETHER CHRYSLER'S REFUSAL TO  
ALLOW UNIVERSITY CHRYSLER PLYMOUTH TO DUAL WITH  
UNIVERSITY FORD IS REASONABLE

108. Chrysler contends that University Chrysler Plymouth was under no compulsion to move because it still had four years remaining on its lease.

109. University Chrysler Plymouth was one of 30 dealers in the Los Angeles zone situated on property sold by Chrysler Realty to ABKO and not subsequently re-purchased by Chrysler.

110. It became obvious to Baker that he must do something in regard to the property. Despite Chrysler's assurances that it was attempting to re-purchase the properties on a piecemeal basis, nothing was being done, even with respect to those properties the leases on which had little time remaining.

111. This was so even though the dealers repeatedly expressed their concerns to Chrysler representatives since the summer of 1982.

112. The Los Angeles zone representatives were not kept informed by Chrysler's Michigan offices of what was happening with respect to the ABKO-owned facilities.

113. Baker explored the possibility of purchasing the property from ABKO beginning in 1981. ABKO declined to consider a sale to Baker which would have included a trade of

property Baker owned in Indiana on which was situated a Chevrolet dealership formerly owned by Baker.

114. Baker consulted with the Bank of America in regard to the feasibility of purchasing the property from ABKO. The Bank of America, Vice President and Credit Administrator for Auto Dealers, advised Baker against buying the property at ABKO's price of \$3.5 million. The Bank of America representative felt the purchase price was too high for an auto dealership and the interest rates were too high to make the purchase feasible.

115. Baker could not obtain private capital to consummate the purchase.

116. Baker attempted to sell his Indiana property to raise the capital. In the spring of 1982 while discussing listing the property with Coldwell Banker, he found that ABKO had listed all of the Chrysler properties with Coldwell Banker. The market was depressed due to poor domestic sales and 20% interest rates.

117. Baker had no sense of urgency about moving or purchasing the property because he did not feel ABKO could find a buyer to pay ABKO's price so long as Chrysler retained its option to extend the lease. The option, if exercised, would prevent a buyer from either taking possession of the property or charging the true market value for rent until 1992.

118. It was not until September 1982, that Baker became concerned about the inability to perpetuate the existence of University Chrysler Plymouth at its original location. It was then Baker learned that Chrysler, for some unknown reason, had released its option and a sale by ABKO to a third party was imminent. Baker communicated his concerns to Chrysler but received no response. Baker also learned that the Los Angeles zone representatives were not aware Chrysler had released its option or that ABKO was in the process of selling the property.

119. Baker realized that a buyer willing to pay \$3.5 million for the property would like to realize the full potential of the property as quickly as possible. University Chrysler Plymouth's leasehold, having over 4 years to run at a very low rent, was adverse to the buyer's interest. Baker realized that the longer he stayed on the property the less the buyer would be willing to pay University Chrysler Plymouth to terminate the lease. Baker also realized that property in Mission Valley is extremely expensive and rising in price. By 1987, the leasehold would have no value and University Chrysler Plymouth would still be required to move.

120. Chrysler suggested as alternative locations the site of a former Dodge facility known as Padre Dodge located in San Diego, and the site of a former Volkswagen facility known as Factor Volkswagen in Lemon Grove.

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121. Baker declined to relocate to the Padre Dodge site, which is 3.4 miles east of University Chrysler Plymouth, because a Chevrolet dealer and a Dodge dealer had previously failed at that site. The facility had originally been a bottling plant and is located in an area that Baker considered to be declining and having a high crime rate with most businesses closing at 7:00 p.m. The site has 1 to 1-1/2 acres and is not located in Mission Valley.

122. The Factor Volkswagen site is located approximately 6.5 miles from University Chrysler Plymouth. Factor Volkswagen had closed due to bankruptcy. Baker declined to relocate to the Factor Volkswagen site because he considered the facilities too small, too close to a newly-appointed Chrysler Plymouth dealer in El Cajon, hard to find, and inconvenient to Mission Valley customers.

123. Baker requested permission to relocate north to the Kearny Mesa area but permission was denied. Chrysler had given notice to University Chrysler Plymouth and the Board on May 18, 1983, that Chrysler intended to establish an additional dealership in Kearny Mesa. Chrysler denied Baker permission to relocate to Kearny Mesa because it already has a candidate for Kearny Mesa and considers Kearny Mesa and Mission Valley separate points.

124. University Chrysler Plymouth's ability to relocate

south is limited by the fact that McCune Chrysler Plymouth is located in National City, approximately 11.5 miles away. Its ability to relocate to the east is limited by the existence of Best Chrysler Plymouth in El Cajon, approximately 11.5 miles away. Best was appointed by Chrysler in late 1982. University Chrysler Plymouth's ability to move north is limited by Chrysler's plans to fill the Kearny Mesa point approximately 3-1/2 miles away. The ability to relocate to the west is limited by the Pacific Ocean.

125. Baker advised Chrysler that he desired to relocate the University Chrysler Plymouth franchise to University Ford on a temporary basis. Baker requested he be given a term agreement.

126. On March 8, 1983, Baker presented to Chrysler his plans for relocating University Chrysler Plymouth to University Ford. The format of the proposal was substantially identical to that prepared with Chrysler's assistance when Chrysler granted Baker a franchise to dual Chrysler Plymouth into Baker's existing Volkswagen dealership in Carlsbad in March 1982. Despite the similarities of the format, Chrysler's Los Angeles zone representatives found the presentation and proposal to dual University Chrysler Plymouth and University Ford to be inadequate. Chrysler expected a more formal solicitation of permission because, in this instance, the request was to dual with Ford in a metropolitan market.

Although Chrysler expected more than was done in regard to the Carlsbad dual, Chrysler provided none of the assistance to University Chrysler Plymouth that Chrysler had provided to Bob Baker Volkswagen.

127. Although the Los Angeles zone forwarded Baker's written proposal to the Marketing Review Committee in Detroit, the written proposal was not seen or reviewed by the marketing committee.

128. The Marketing Review Committee meets 3 or 4 times per month and considers from 10 to 30 proposals of various types at each meeting. The committee met on March 21, 1983 to review Baker's request. It did not have a copy of Baker's written proposal and denied Baker's request solely because it did not want to allow dualing with a domestic competitor in a metropolitan market. Very little time was spent considering the request because duals with domestic competitors are "usually disapprove[d] . . . almost automatically".

129. The marketing committee had allowed such duals in the past and a few had proved to be successful. The approvals given were at a time when Chrysler was in financial difficulty and desperate for dealers. The marketing committee made no attempt to determine whether Baker was a better-than-average risk as a dual but merely decided to deny the request based upon corporate policy.

130. Although Baker had requested a term agreement, such a possibility was not considered by the marketing committee.

131. When the marketing committee does consider the merits of an application for a dual, the factors it considers are the facilities, management, and working capital of the applicant. No evidence was presented by Chrysler to indicate that either University Chrysler Plymouth's management<sup>5/</sup> or working capital were factors that adversely influenced Chrysler's decisions. (As to whether the proposed facilities are inadequate by Chrysler's standards, see paragraphs 94 & 95.)

132. The marketing committee has denied requests for duals even though the recommendation from the zone may have been for approval. The reverse has never happened.

134. During Naughton's inspection of the University Ford facility on April 1, 1983, Baker informed Naughton that he did not intend the dual to be permanent.

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<sup>5/</sup> In addition to performing well in regard to University Chrysler Plymouth, Baker's sales and service performances at University Ford have earned him several awards. Among them are Ford's Service Citation of Excellence, and the Los Angeles District Award. The Citation of Excellence is Ford's highest award for service. The District Award is in recognition of being among the 20 best selling dealers out of 100 within the district. Baker has won both these awards every year since he has been a Ford dealer in San Diego.

133. Although Baker reasonably expected to get some response from Chrysler, he was told only that the marketing committee was reviewing the proposal. (11-143; 12-28, 39; Exhibit Q; Exhibit P; 9-94, 110)

135. The first notice Baker had of the decision of the marketing committee was the notice of termination personally delivered on May 18, 1983 by the Los Angeles Zone Manager.

136. Chrysler's objections to dualing are based upon its concerns about the following:

- (1) Sales personnel are uncomfortable with the concept of duals;
- (2) There are too many models to permit the salespeople to become knowledgeable about the product;
- (3) It is difficult for the dealer principals and general managers to attend dealer meetings due to potential conflicts in dates;
- (4) It is difficult to comply with two different warranty policies and procedures;
- (5) It is necessary to have two sets of financial records;
- (6) Factory incentive programs may conflict or overlap; and
- (7) Consumer confusion.

137. Despite the above concerns, Chrysler, however, has no objection to dualing in other than metropolitan markets or

dualing even in metropolitan markets with other than a major domestic competitor. Chrysler also permits dualing with a major import competitor in a metropolitan area. Such duals are usually operating under term agreements.

138. Chrysler does not consider the imports to be directly competitive in that they do not compete across all Chrysler product lines as do the major domestic manufacturers. Chrysler and Ford together accounted for 15% of the total industry registrations for 1982 in the San Diego metropolitan area.

139. Out of 120 Chrysler Plymouth and/or Dodge dealerships in the Los Angeles zone, there are 15 authorized duals. These are:

- (1) Tempe, Arizona - Dodge Truck, Chrysler Plymouth-Ford\*
- (2) Pomona, California - Chrysler Plymouth and Volvo\*
- (3) Garden Grove, California - Chrysler Plymouth-AMC\*
- (4) Pasadena, California - Dodge-Nissan\*
- (5) Honolulu, Hawaii - Chrysler Plymouth-Nissan\*
- (6) Valencia, California - Chrysler Plymouth-Toyota\*
- (7) Buena Park, California - Chrysler Plymouth-Mazda\*
- (8) Cypress, California - Dodge-Volkswagen\*
- (9) Glendale, Arizona - Chrysler Plymouth-Mazda\*
- (10) Nogales, Arizona - Chrysler Plymouth-Dodge, Dodge Truck, Ford, Lincoln Mercury
- (11) Sierra Vista, Arizona - Chrysler Plymouth-Ford

- (12) Pasadena, California - Chrysler Plymouth-Ferrari\*
- (13) Indio, California - Chrysler Plymouth-Peugeot
- (14) Carlsbad, California - Chrysler Plymouth-Volkswagen\*  
(Baker)
- (15) Bakersfield, California - Chrysler Plymouth-Mazda

\* Indicates Metropolitan Areas

140. Chrysler's policy not to allow dualing with domestic competitors in metropolitan areas is allegedly based on its experience that such duals, as a group, do not provide satisfactory sales performance. Chrysler also believes that dualing results in a negative perception by the public that the dealership is not permanent.

141. Chrysler permits dualing in smaller markets because it is often the only practical way to get representation when the sales potential is too low to allow a dealer to buy land, and build buildings, and make a profit. Dual dealerships are an acceptable alternative where there is not sufficient market potential to support a single line operation.

142. The cost of acquiring the University Chrysler Plymouth site from ABKO would have been \$3.5 million. There would also be a significant increase in the property taxes as a result of the sale. The Chrysler planning potential of 488 for University Chrysler Plymouth is not sufficiently large to

support a facility which costs \$3.5 million to acquire.

143. When Baker informed Chrysler that he intended to relocate University Chrysler Plymouth to University Ford, Chrysler urged Baker to either:

- A. Delay the move and remain in the old location for an unspecified time to give Chrysler and Baker time to explore alternatives. Baker rejected this proposal because he believed Chrysler had no intention of assisting him in regard to the property itself, and the other assistance by Chrysler consisted of suggestions to move to less desirable locations; or
  
- B. Accept a letter of intent. This would require University Chrysler Plymouth to surrender its franchise and cease operation as a Chrysler Plymouth dealership. The letter of intent would then enable University Chrysler Plymouth to be reappointed in 6 months or a year if Baker were able to find a facility suitable to Chrysler and economically feasible for operation as a Chrysler Plymouth dealership. Baker rejected this proposal as unrealistic, detrimental to the approximately 50 employees of University Chrysler Plymouth who would be without work, and detrimental to customers who would be required to look outside of Mission Valley

for sales and service.

144. Chrysler also would have been willing to allow Baker to continue servicing Chrysler vehicles (but not allowing sales) during the period of the letter of intent. This was never communicated to Baker.

145. Baker requested a 2 or 3-year term agreement. Chrysler rejected the request. Chrysler would not offer a term agreement of any kind because its experience allegedly showed that dualing reduces sales performance. Chrysler, however, considered a voluntary cessation of business, and total loss of sales and customer service for possibly as long as a year, as a more attractive alternative than a speculative percentage decline in sales that might result from a temporary dual. Chrysler also apparently felt that there would be less confusion to the public and less loss of image from a total void of representation in Mission Valley than from a temporary relocation to an attractive, well-located facility of the same name under the same ownership.

146. Chrysler is sacrificing practicality to a principle which may no longer have justification. The principle is based upon a perception of Ford being Chrysler's major competitor in San Diego. It is also based on an assumption that merely being in a major metropolitan area will result in the sale of a sufficiently large number of vehicles to be able to afford the

luxury of a facility dedicated to one brand.

147. It is difficult to conclude that Ford is Chrysler's major competitor in southern California. It is also difficult to conclude that there will be a sufficient number of Chrysler products to generate enough income to absorb the cost of a \$3.5 million facility and leave any profit, let alone enough to represent a reasonable return on the investment. Despite Chrysler's miraculous and well-deserved recovery, the value of the land in Mission Valley is increasing appreciably faster than Chrysler's market penetration.

148. Chrysler's decision to sell its real estate holdings was undoubtedly caused by economic expediency and necessity. The effect of the sale may have been beneficial to Chrysler and its dealer body as a whole, but it was detrimental to certain individual members of its dealer body. Likewise, the sale of Baker's leasehold was caused by economic expediency and necessity partly caused by Chrysler's former economic distress. The effect of the sale of the leasehold was merely to accelerate what became the inevitable after Chrysler sold the property to ABKO.

149. Chrysler's refusal to allow University Chrysler Plymouth to dual with Ford was also based in part on Chrysler's contention that the University Ford facility is not conducive to meeting Chrysler's requirements for adequate signage, in

compliance with Chrysler's dealer identification program.

150. Participation in Chrysler's sign program is voluntary with the dealer.

151. At present Baker has installed temporary Chrysler Plymouth identification banners at the dealership, pending the outcome of this proceeding. To comply with Chrysler's desires will require changing of existing signs due to both zoning controls and the fact that Ford has control over the signs it owns.

152. Chrysler did not request that University Chrysler Plymouth submit a sign proposal.

153. Baker is willing to do whatever is necessary to comply with the requirements of Chrysler, Ford and the city in regards to signs at the dealership.

#### DETERMINATION OF ISSUES

154. It is determined that Chrysler has failed to establish there is good cause to terminate the franchise of University Chrysler Plymouth, in that:

- (a) Chrysler did not establish that the amount of business transacted by University Chrysler Plymouth

was inadequate as compared to the business available to University Chrysler Plymouth; [§3061(1)]

(b) Chrysler did not establish that University Chrysler Plymouth does not have a material investment and Chrysler did not establish that University Chrysler Plymouth has not incurred substantial obligations in the performance of its part of the franchise; [§3061(2)]

(c) Chrysler is estopped from asserting that the investment of University Chrysler Plymouth is not permanent; [§3061(3)]

(d) Chrysler did not establish that it would be beneficial and not injurious to the public welfare for the business of University Chrysler Plymouth to be disrupted; [§3061(4)]

(e) Chrysler did not establish that University Chrysler Plymouth does not have adequate motor vehicle sales and service facilities, equipment, vehicle parts, and qualified service personnel to provide reasonably for the needs of consumers for Chrysler vehicles, and Chrysler did not establish that University Chrysler Plymouth has not been rendering adequate services to the public; [§3061(5)]

(f) Chrysler did not establish that University Chrysler Plymouth failed to fulfill warranty obligations of Chrysler; [§3061(6)]

(g) Chrysler did not establish that the failure of University Chrysler Plymouth to comply with the terms of the franchise was so substantial as to warrant its termination [§3061(7)], in that:

(i) Chrysler did not establish that the relocation of University Chrysler Plymouth without the approval of Chrysler is a sufficient reason to terminate the franchise under the circumstances of this case;

(ii) Chrysler did not establish that the relocation of University Chrysler Plymouth to the University Ford site was unreasonable;

(iii) Chrysler's refusal to allow University Chrysler Plymouth to dual temporarily with University Ford is inconsistent with Chrysler's prior conduct, and under the circumstances is unreasonable.

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The following proposed decision is respectfully submitted:

Chrysler has not established good cause to terminate the franchise of University Chrysler Plymouth. The protest is sustained upon condition that:

- (1) University Chrysler Plymouth relocate to a suitable existing or new facility within 2 years of the date hereof; and
- (2) In the interim, University Chrysler Plymouth, in good faith, follows through with its plans to modify its present facility to accommodate Chrysler Plymouth products, including construction of separate showroom facilities, appropriate signage, and the appointment of a separate sales staff.

I hereby submit the foregoing ~~which~~ which constitutes my proposed ~~and~~ decision in the above-entitled ~~matter~~ matter, as a result of a hearing had before me on the above dates and recommend its adoption as the decision of the New Motor Vehicle Board.

DATED: October 6, 1983

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ANTHONY M. SKROCKI  
Administrative Law Judge  
New Motor Vehicle Board