



## One Minute Memo®

# Equipment Manufacturer, Seeking to Terminate a Dealer Under Wisconsin Fair Dealership Law, Denied Summary Judgment

The United States District Court for the Eastern District of Wisconsin recently refused to grant summary judgment to an equipment manufacturer, Kaeser Compressors Inc. ("Kaeser"), on its claim that the refusal of Compressor & Pump Repair Services ("CPR") to sign a new, uniform dealership agreement constituted "good cause" to terminate CPR under the Wisconsin Fair Dealership Law ("WFDL"). *Kaeser Compressors, Inc. v. Compressor & Pump Repair Services, Inc.*, Case No. 09-C-521 (E.D. Wis. Feb. 14, 2011). CPR held an exclusive right to sell Kaeser's products in Wisconsin and Minnesota. After 20 years of doing business, Kaeser evaluated CPR's performance and concluded that CPR was underperforming in those markets. At or around the same time, Kaeser proposed a new, uniform agreement to each of its thirty-five dealers throughout the country, including CPR. The new dealership agreement would allow Kaeser to appoint other dealers in CPR's territory or to compete with CPR itself. Kaeser's thirty-four other dealers signed the agreement as presented by Kaeser; CPR refused to do so. Kaeser sought a declaration from the Wisconsin court that this refusal constituted good cause for termination under the WFDL.

The WFDL greatly limits a manufacturer's ability to alter its relationship with its dealers. Under the WFDL, a manufacturer may terminate a dealership agreement only for good cause. Wis. Stat. § 135.03. As defined in the statute, good cause includes a dealer's failure to comply with "essential and reasonable requirements imposed" by the manufacturer as long as "similarly situated dealers" are treated in the same way. Wis. Stat. § 135.02 (4)(a). Kaeser argued that it was entitled to impose the agreement on CPR, as it was imposed on and agreed to by all of CPR's other dealers throughout the country.

In determining whether the change in CPR's territory in Wisconsin from exclusive to non-exclusive was commercially reasonable, the Court considered whether there was: (1) an objectively ascertainable need for change; (2) a proportionate response to that need; and (3) nondiscriminatory action.

The Court found that Kaeser clearly met the third factor -- nondiscriminatory action -- because the proposed new agreement was uniformly imposed on all of Kaeser's dealers, but held that uniformity alone was not enough. "Otherwise a manufacturer could impose draconian (but uniform) new terms on its dealers . . . and simply cite a generic need for uniformity to justify the changes." In finding an issue of fact necessitating a trial on the merits, the Court noted that Kaeser had not met its burden of "not only showing why and how the marked changes it proposed solve important economic problems it has, but also how the new contract is tailored to achieve those ends." As found by the Wisconsin Supreme Court in *Ziegler Co. v. Rexnord*, "the means used by a grantor may not be disproportionate to its economic problem." Because Kaeser had difficulty articulating

both an objective need for the proposed change and an explanation for how the change in CPR's agreement represents a proportional response to its economic concerns at the summary judgment stage, the Court ordered the parties to trial.

Although a single dealer agreement governed CPR's Wisconsin and Minnesota territories, the Court held that Kaeser was entitled to terminate CPR's Minnesota territory without running afoul of the WFDL. In doing so, the Court found that the WFDL does not apply to business relationships that take place outside of Wisconsin -- even if the Minnesota territory was covered under the same dealership agreement.

*To find out whether your business is affected by this recent interpretation of the Wisconsin Fair Dealership Law, please contact the Seyfarth attorney with whom you work or any Franchise and Dealer Disputes attorney on our [website](#).*

Note - The following are citations to cases mentioned above but without cites given:

*Morley-Murphy Co. v. Zenith Electronics Corp.*, 142 F.3d 373, 378 (7th Cir. 1998)

*Ziegler Co. v. Rexnord, Inc.*, 147 Wis. 2d 308, 433 N.W.2d 8 (1988).



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