



BY BRIAN E. BUTLER

# The Wisconsin Fair Dealership Law:

## A Personal Look Back Over 50 Years



## A creator of Wisconsin's 50-year-old fair dealership law shares a few memories regarding the law's origins.

If you're interested in a scholarly exegesis of the Wisconsin Fair Dealership Law (WFDL), Wis. Stat. chapter 135, that would be the other WFDL article in this issue, by Jeff Mandell and Isaac Brodkey. If you're interested in the mental meanderings of an octogenarian about his personal experience with the dealership law, read on. Don't worry, I'll make it short.

### How It Started

In 1972 or so, a client of what was then known as Stafford, Rosenbaum, Rieser & Hansen asked the firm to draft a statute to protect dealers against arbitrary termination. The client had experienced just such a termination and felt strongly that "there oughta be a law." William F. (Bill) Nelson, a partner at the firm, asked an associate, me, to take a first crack at it, which I did. The only resource I recall was a New Jersey statute that protected business-format franchisees (for example, McDonald's). In any event, Bill Nelson's and my draft was presented to state government leaders, who shelved it.

The draft would still be gathering dust but for the OPEC oil embargo of 1973. Domestic petroleum producers saw the crisis as an opportunity to terminate many independent gas station operators. These retailers demanded that the Wisconsin Legislature take action, and our draft was taken off the shelf and passed in 1974. Never mind that it was prospective, and thus of no help to the terminated gasoline retailers, nor that it was of much broader application than the retail gasoline business.

There was some opposition in the legislature, as I recall, notably from John C. Shabaz, then minority leader of the Senate. Some years later, before he ascended to the bench, John hired Bill Nelson and me as co-counsel to help him with a plaintiff's

dealership case. This was deeply gratifying.

Bill Nelson was heavily involved in the legislative fights over the original statute and then later over proposed amendments. His chief ally was Representative Tom Hauke. I was on the sidelines. My role was to prepare and present testimony from a client to a legislative committee, in support of some proposed amendments. The client had been a Case farm-implement dealer when Case merged with International Harvester. The merger occasioned the termination of about one-half of the Case dealers and about one-half of the International Harvester dealers in Wisconsin. The client told the committee that the WFDL was a good thing.

### Educating Lawyers About the New Law

Passage of the WFDL did not seem to affect the occurrence of dealership terminations, but it certainly increased litigation over them. This did not escape the attention of the State Bar of Wisconsin and the University of Wisconsin Law School, which decided that lawyers needed education on the fair dealership law.

In November 1979, the State Bar presented a continuing legal education program titled Magna Carta for Wisconsin Businesses – The Wisconsin Fair Dealership Act. The program materials included chapters on legislative history, the definition of "dealership," notice and opportunity to cure, good cause, injunctions, damages, defenses, advising the client at the initial interview, pleadings and papers, hiring experts, attorney fees, advising grantees on how to structure sales programs, and key judicial decisions. The half-dozen or so presenters were from various law firms around the state. We were a traveling show, with stops in Madison, Milwaukee, Eau Claire, and Green Bay. No Zoom.

In 1983, the UW Law School presented a CLE program called Wisconsin's Fair Dealership Law. I still have the written materials.

Ralph Cagle, who taught a practice course at the UW Law School, used a hypothetical WFDL case as a teaching tool.

Much of my practice over 40-plus years was dealership litigation. At first, I represented mostly dealers, later about half dealers and half grantors. It was great work. I loved it.

### Writing the Book

One day in 1985 or so, Michael Bowen (with Foley & Lardner; frequent opponent and good friend) and I were traveling in a rented car somewhere in Nebraska, headed for a deposition in a WFDL case. My client, an agricultural equipment dealer, had sued Mike's client, a manufacturer located in a small Nebraska town.

During the drive, Mike suggested that we coauthor a book about the law. At that time much of the WFDL case law was unpublished trial court decisions,

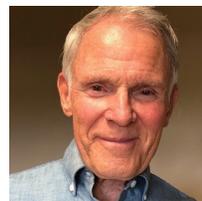
and they were all over the map. An orderly treatment would help the profession. He would write the book himself, he explained, but he thought it might be viewed as biased, because he represented mostly grantors. I would provide balance.

Our partnership began with agreement on an outline of the book and a division of labor. He preferred writing about good cause, which he thought was the most interesting aspect of the law. That was fine with me, because I thought the question of who gets statutory protection was more interesting. We would review and edit each other's chapters.

Mike finished his part of the manuscript first, and I dutifully read it. Of course, I was struck by his erudition and wit. And challenged! It would be an effort to adapt to his style. So it was, but it was fun. We had fun.

Mike was concerned about finding a publisher. Fortunately, I was married to one, Carolyn Lazar Butler, who ran the book publishing arm of the State Bar.

The WFDL is replete with ambiguities, and it raises significant public policy issues. Judicial interpretations and applications of the law are rife with conflict. I like to think that the book Mike Bowen and I wrote, aptly named *The Wisconsin Fair Dealership Law*, has helped lawyers and judges deal with the WFDL. **WL**



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