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**BLOGS**

State Franchise and Dealer Laws

## Wisconsin Appeals Court Rejects Seventh Circuit's Community of Interest Test

The Wisconsin Court of Appeals has rejected Seventh Circuit jurisprudence concerning the "community of interest" test as applied to the Wisconsin Fair Dealership Law (WFDL). In *The Water Quality Store v. Dynasts Spas, Inc.*, 2010 Wisc. App. Lexis 550 (Wisc. Ct. App. Jul. 15 2010), a Wisconsin retailer had been selling the defendant manufacturer's line of spa and spa equipment, on a nearly exclusive basis, for approximately seven years. The manufacturer terminated the relationship without good cause and without observing the notice and opportunity to cure requirements of the WFDL. On summary judgment, the manufacturer argued that the WFDL did not apply to the parties' relationship because the retailer could not establish that there was a "community of interest" between the parties, as required under the WFDL. Wisconsin Supreme Court cases interpreting the WFDL have set forth a multi-pronged test for the community of interest requirement, looking at ten different facets of the manufacturer's relationship with the dealer. For WFDL cases arising in federal court, the Seventh Circuit has articulated a slightly different test for community of interest, looking to whether the manufacturer has a bargaining power advantage so as to have the dealer "over a barrel" in the relationship. More recent Seventh Circuit cases have interpreted the "over a barrel" test such that if the dealer has been able to replace the manufacturer's line of products with a substitute brand, the manufacturer is deemed not to have the dealer "over a barrel," negating the existence of a community of interest and, as a result, application of the WFDL.

The Wisconsin Court of Appeals rejected the Seventh Circuit approach and reaffirmed the Wisconsin Supreme Court's ten-facet test. Evidence that the plaintiff had successfully mitigated its damages by replacing the manufacturer's line of spas with a competitor's products was deemed irrelevant. Denial of the defendant's summary judgment motion was therefore upheld. The decision underscores the significant differences in the way community of interest will be analyzed in Wisconsin state court versus in the federal court system. This provides manufacturers with greater incentive to secure federal court jurisdiction whenever possible in WFDL cases.