

## BLOGS

State Franchise and Dealer Laws

# Distributor Not Required to Repurchase Merchandise Under Statutory Buy-Back Provision

In *Miller Construction Equipment Sales, Inc. v. Clark Equipment Co.*, 2016 WL 2626803 (D. Alaska May 6, 2016), the federal court in Alaska found that a distributor did not have an obligation to repurchase several pieces of equipment in its former dealer's inventory under Alaska's distributorship statute. After the parties' distribution agreement ended, Miller demanded that Clark repurchase several pieces of heavy equipment (and associated attachments) under a statute which governs the disposition of a dealer's remaining merchandise upon the termination of a distributorship. In particular, the statute requires a distributor to repurchase only "unused" merchandise, or merchandise still in its original packaging or container. The heavy equipment at issue, however, was never in any packaging, and the Alaskan Supreme Court had not yet considered how the law applied in such a circumstance.

Miller filed suit and eventually moved for summary judgment, arguing that a prior contract between the parties and industry custom established that equipment used for less than 300 hours was "new" equipment and thus should be deemed "unused" under the Alaskan law. The court rejected that argument. Relying on the interpretation of similar distributorship statutes from other states, the court held that the term "unused," in situations where the merchandise was never in any packaging, meant merchandise that had not been "commercially used." It was undisputed that the three pieces of heavy equipment at issue were commercially used. Accordingly, the distributor had no obligation to repurchase them. The court further held, however, that the distributor did have an obligation under the same law to repurchase several attachments to the heavy equipment that were still in their original packaging.

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