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## BLOGS

### Terminations

# Notice of Termination Does Not Constitute Termination

In *Diesel Machinery, Inc. v. The Manitowoc Crane Group*, 2011 U.S. Dist. LEXIS 35370 (D. S.D. Mar. 31, 2011), a federal court in South Dakota granted partial summary judgment in favor of a manufacturer, finding that a notice of termination of a distributor agreement does not constitute a termination and that a notice of termination may be withdrawn prior to its effective date. In 2005, the defendant manufacturers of mobile hydraulic cranes entered into an agreement with Diesel Machinery, Inc. (DMI), a dealer/distributor in South Dakota, to grant DMI the right to sell and service certain mobile hydraulic crane products. In accordance with its rights under the agreement, the manufacturer later provided a notice of termination in 90 days. DMI filed suit alleging that the notice of termination violated the South Dakota Dealer Protection Act (SDDPA) and breached the agreement. Three months after issuing its notice, defendant Manitowoc sent a letter to DMI withdrawing the notice and saying it no longer intended to terminate.

In its motion for summary judgment, Manitowoc argued that it never cancelled the agreement and, therefore, it could not have violated the SDDPA. The court found that while no South Dakota court had considered the issue of whether a notice of termination constitutes a cancellation under the SDDPA, courts in other jurisdictions have held that a notice of termination does not constitute a termination of a franchise or distribution relationship. The court concluded that it was clear that Manitowoc was not causing an immediate termination and that nothing in the SDDPA prohibited a manufacturer from providing a 90-day notice of intent to terminate a dealership. The court also concluded that such a notice may be withdrawn prior to the effective date.