

## BLOGS

State Franchise and Dealer Laws

# Retroactive Application of Good Cause Termination Requirement Does Not Violate Texas Constitution

The Texas Supreme Court, answering a certified question from the Fifth Circuit Court of Appeals, held that the application of a state dealer law to an agreement entered into before the law's passage did not violate the Texas Constitution. *Fire Protection Serv., Inc. v. Survitec Survival Prods., Inc.*, 2022 WL 1815046 (Tex. June 3, 2022).

The Texas Supreme Court, answering a certified question from the Fifth Circuit Court of Appeals, held that the application of a state dealer law to an agreement entered into before the law's passage did not violate the Texas Constitution. *Fire Protection Serv., Inc. v. Survitec Survival Prods., Inc.*, 2022 WL 1815046 (Tex. June 3, 2022). Fire Protection Services (FPS) entered into an oral agreement with Survitec to become a dealer of Survitec life rafts in the 1990's, terminable by either party without cause. In 2011, the Texas legislature passed the Fair Practices of Equipment Manufacturers, Distributors, Wholesalers, and Dealers Act, which required good cause to terminate a dealer agreement. The Act applies to dealer agreements entered into or renewed after the Act's effective date, as well as to then-existing agreements that have no expiration dates. Several years later, Survitec terminated the parties' agreement without cause. FPS challenged the termination as a violation of the Act, but Survitec was granted judgment by the federal district court, which found that the retroactive application of the Act was prohibited by the Texas Constitution. FPS appealed, and because of a dearth of case law on the issue, the Fifth Circuit certified the question to the Supreme Court of Texas.

Answering the certified question, the Supreme Court concluded that applying the Act to the parties' agreement would not violate the state constitution's prohibition on retroactive laws. First, the court held that the parties' agreement had no expiration date, so the Act was applicable by its terms. Next, the court held that applying the Act would not violate the retroactivity clause because it would not disturb the parties' settled expectations. Survitec could have no reasonable settled expectation that it could continue to operate under the agreement in perpetuity under any particular set of terms, because the agreement could be terminated at any time by either party. Further, Survitec had the opportunity to terminate the agreement or negotiate a fixed-term agreement during the time between the Act's enactment and its effective date.

## Related People

### Justin L. Sallis

Partner

Washington, D.C.

202.295.2223

[justin.sallis@lathropgpm.com](mailto:justin.sallis@lathropgpm.com)

## Related Services

[Franchise & Distribution](#)