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State Franchise and Dealer Laws

Wisconsin District Court Grants Distributor's Motion for Summary Judgment as to Liability Under Texas Dealer Statute

A Wisconsin district court granted a distributor's motion for summary judgment finding that the distributor was entitled to the termination protections provided by the Texas Fair Practices of Equipment Manufacturers, Distributors, Wholesalers and Dealers Act (the "FPA") even though no written agreement existed between distributor and manufacturer. *Texas UJoints, LLC v. Dana Holding Corp.*, 2015 WL 3454431 (E.D. Wis. June 1, 2015). In 2012, Texas UJoints, a distributor, acquired the assets of Automotive Industrial Supply Co., Inc. ("AISCO"), a distributor of Dana's industrial drive lines and universal joints. While no written distribution agreement existed between AISCO and Dana at the time of the acquisition, the purchase agreement expressly transferred to Texas UJoints "all contracts" and "all contract rights." After the acquisition, Texas UJoints sent Dana a credit application and Dana fulfilled a number of product orders, but Dana later notified Texas UJoints that it would not continue a relationship with it.

In opposition to Texas UJoints' motion for summary judgment, Dana first argued that the FPA's provisions requiring notice and opportunity to cure did not apply, as it never entered into a dealer agreement with Texas UJoints, and any prior relationship it had with AISCO was irrelevant. The court reasoned, however, that the FPA applied not only to written agreements but also covered informal agreements, including the informal distribution agreement between Dana and AISCO which was transferred to Texas UJoints as a "dealer contract" in connection with the acquisition. In the alternative, Dana cited the FPA's language that good cause exists if "there has been a sale or other closeout of a substantial part of the dealer's assets related to the business" and argued it had good cause under the FPA to terminate without providing notice or an opportunity to cure. In rejecting this argument, the court noted that the FPA was not designed to preclude a dealer from transferring its dealer agreement to a qualified third party, but rather provided a manufacturer with immediate termination rights in the event a distributor sells all of its assets without an assignment of the dealership agreement or rights to a third party.

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