



# STATE LEGAL AFFAIRS MONITOR

Legislation and Litigation Insights

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NADA

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## **ILLINOIS DEALER AVOIDS ARBITRATION**

The U.S. Court of Appeals for the 7th Circuit has rejected Nissan’s motion to compel arbitration on an Illinois dealer. The first appeal regarding this matter vacated the district court’s instruction to compel arbitration and then the case was remanded. The district court held that Nissan did not have sufficient evidence to prove that a written arbitration agreement existed. This second appeal ruling affirms the district court’s decision that an arbitration clause must be in writing in order for it to be enforceable. **Nissan North America, Inc. v. Jim M’Lady Oldsmobile, Inc.**, (2007 U.S. App. LEXIS 11109).

In this case, Illinois dealer Jim M’Lady entered into a written dealership agreement with Nissan in 1992, with a termination date set for 1995. The agreement stipulated that all amendments to the agreement must be in writing. Adhering to this requirement, both parties agreed to ‘Amendment No. 1’ which extended the termination date until 1996. Despite a provision within the original agreement stating that the contract would automatically “terminate at the end of the stipulated term without any action by either party,” M’Lady’s dealership continued to sell new vehicles beyond the scheduled termination date. Amendments 2 and 3 were also agreed upon by the parties, but did not affect this litigation.

In May 1998, M’Lady and Nissan agreed to extend the termination date to May 1999 via ‘Amendment 4’. This Amendment also included changes to construction deadlines requiring M’Lady to complete an exclusive Nissan showroom by 1999. In addition, this Amendment also included an arbitration clause, making arbitration the “exclusive mechanism for resolving any dispute, controversy or claim arising out of or relating in any way to this agreement and Amendment No. 4...”

Two weeks prior to the 1999 termination date, Nissan sent M’Lady a “Notice of Default” letter, informing M’Lady that it will be in breach of the agreement if the requisite construction or commitment to construction is not completed within 60 days. M’Lady responded to this notice by explaining that due to a dispute with its landlord, the construction plans were delayed. In June 1999, after the agreement was scheduled to be terminated in May, Nissan responded and offered an additional 180 days to complete the construction requests, making the new deadline December 1999. M’Lady did not meet this deadline and Nissan ultimately sent a “Notice of Termination”, terminating M’Lady’s capacity as dealer effective March 2000.

In April 2000, M’Lady met with Nissan to inform them that he was in the process of selling the dealership and Nissan extended the termination by 90 days to July 2000 in order for M’Lady to complete negotiations and present Nissan with a suitable buy-sell agreement. Prior to the July deadline, Nissan offered M’Lady four options to settle the dispute. The first option was the original extension, with M’Lady agreeing to provide Nissan with a suitable buyer by July 2000. The second option had Nissan proceeding with termination immediately. The third option involved a new dealer agreement mandating that M’Lady become a Nissan-exclusive dealer, removing its Oldsmobile and Isuzu lines. The fourth option extended the July 2000 deadline an additional 90 days. M’Lady chose the fourth option.

In August 2000, Nissan proposed ‘Amendment 5’ to M’Lady, extending the agreement yet again until January 2001. It also required a new buyer by October 2000 or the removal of the other vehicle lines by January 2001. In addition, the Amendment also included an arbitration clause similar to the one

found in Amendment 4. Nissan threatened termination if the agreement was not signed and M'Lady responded that it did not agree with the arbitration clause. Nissan removed the arbitration clause but M'Lady remained opposed to the deal and in October 2000, Nissan sent a "Final Termination Letter" to M'Lady.

Upon receipt of Nissan's termination letter, M'Lady filed a Notice of Protest with the Illinois Motor Vehicle Review Board in October 2000, stating that Nissan did not have good cause to terminate the agreement. In November 2000, Nissan submitted the dispute to arbitration citing Amendment 4. Nissan also moved to stay the state board proceedings, however when that request was denied, Nissan petitioned the federal court to compel arbitration.

Given the above facts, the district court concluded that the only arbitration agreement between the parties was found in Amendment 4 and ruled that since the agreement as a whole expired in 1999, the arbitration clause is not enforceable. On appeal, Nissan argued four main points. First, Nissan insists that the parties did not form an oral agreement that abandoned Amendment 4 and that it remains valid. Second, M'Lady is estopped from disputing the arbitration clause because of its protest with the state board. Third, Nissan claims it waived the termination regarding the agreement and lastly, claims that both parties agreed that the agreement should be extended.

On appeal, the court addressed Nissan's first claim by reiterating that an arbitration clause must be in writing, therefore a contract that terminated on its own terms in 1999 effectively ended the arbitration agreement, whether there was an oral agreement or not. As for Nissan claiming it waived the termination dates, thus preventing Amendment 4 from expiring, the court ruled that Nissan can't prove that M'Lady "accepted Nissan's offers to extend the expiration date." The court added that although both parties continued to conduct business as specified in the original agreement, there is no proof

that the agreement to arbitrate disputes was part of that agreement. Furthermore, arguments regarding oral agreements are immaterial, given that the original agreement mandated written amendments.

In addition to these arguments, as specified in the Dealer agreement, Nissan further contends that this litigation be governed under California law where "terms of an implied contract are manifested by conduct rather than words." M'Lady urged the Court to follow Illinois law, which also recognizes parties' course of dealings. However, the Court ruled that regardless of which rule of law is used, Nissan still cannot provide a written modification to the agreement that extends Amendment 4. Therefore, the Court affirmed the district court's decision that an arbitration clause must be in writing in order for it to be enforceable. ■

### **DEALER LIABILITY ENDS WHEN PURCHASER SIGNS TITLE APPLICATION**

The Michigan Supreme Court in a split decision has ruled that a dealer's liability ends when a purchaser signs an application for title and the vehicle is delivered. It rejects an argument that liability should turn on whether the title had been submitted to the Secretary of State or recorded by the State. **Perry v. Golling Chrysler Plymouth Jeep, Inc.**, 477 Mich. 62; 729 N.W.2d 500 (Mich. Sup. Ct. 4/11/07).

This case presented the question of when ownership and liability passes from a dealer to a customer. Here, the court was asked to determine "whether pursuant to MCL 257.233(9), an application for title to a motor vehicle is "executed" and therefore title transferred to the new owner at the time the application is signed or if the application is not "executed" and the title transferred until the application is sent to the Secretary of State." Finding that the lower court had ruled against the dealer based on an earlier decision, **Goins v. Greenfield Jeep Eagle, Inc.**, 449 Mich. 1; 534 N.W.2d 467 (1995), the Michigan Supreme Court reverses

the appellate court's decision and reinstates the trial court's decision in favor of the dealer.

The case began after Nichols sought to purchase a vehicle from the dealer defendant. He filled out paperwork, including signing the application for title. Hours later, after taking possession of the vehicle, he was involved in an accident which resulted in injury to Brian Perry who had been sitting in a parked vehicle. Perry sued the dealer asserting that the dealership still owned the vehicle under the statute and was thus liable under MCL 257.401 for the acts of its permissive users.

Perry (Plaintiff) relied on the **Goins** decision and argued that the dealer was responsible because while the application for title had been signed, it had not been effectively delivered to the Secretary of State. In addition, Michigan law states that a vehicle "owner" is one who holds the title (except when a vehicle is leased). Specifically, MCL 257.401 states that "an owner of a vehicle is liable for injury resulting from operation of the vehicle, even if the owner is not the driver." Given these statutes, the plaintiff asserted that the dealer remained the true owner of the vehicle, thus liable for his injuries.

However, the Michigan Supreme Court disagreed with the plaintiff's assertions and reasoned that the question in the **Goins** decision centered on "whether a title application sent to and received by the Secretary of State is one that *has been executed*." The Court explained that this case merely expands the **Goins** decision by determining the exact moment of "execution".

Previous Michigan case law has held that delivery is separate from execution. Case law has also held that the signing of a document is needed for execution. Therefore, given these conclusions, the Michigan Supreme Court reversed the Court of Appeals decision and ruled that the application for title was executed and considered effective at the moment of signing and that the defendant did not need to send the application to the Secretary of State in order for it to be

considered fully executed. Thus, the dealer was not found to be the rightful “owner” of the vehicle at the time the accident took place and therefore not liable for any of the resulting damages suffered by the plaintiff.

Justice Kelly authored the Dissenting opinion and stated that the majority decision distorted the holding of the **Goins** case because that court actually did rule that the “title was executed when [the dealership] sent the necessary forms to the Secretary of State.” Kelly argues that this statement ultimately became the central issue in the **Goins** case, thus making it binding precedent applicable to the current case. Instead, Justice Kelly claims that the majority reworded that statement to say “the application for title *had been executed* by the time the dealership sent the necessary forms to the Secretary of State.” Therefore, Justice Kelly stated the majority’s decision was improper and the appeal should have been denied. ■

### **FORMER VEHICLE OWNER STILL HELD NEGLIGENT FOR IMPROPER MAINTENANCE BEFORE SALE**

The Oregon Supreme Court recently ruled on a case that may impact an owner’s responsibility to properly maintain a vehicle prior its sale. The Court reviewed a divided Court of Appeals decision and ruled that subsequent accidents caused by an owner’s negligent maintenance of a vehicle are indeed foreseeable, thus making prior owners liable if vehicles are not properly maintained. **Bailey v. Lewis Farm, et al.**, 343 Or 276 (2007), 171 P3d 336.

The May Trucking Company (defendant), purchased a 1993 Kenworth tractor-trailer in “new or nearly new” condition and proceeded to drive 500,000 miles over six years, failing to adhere to any of the manufacturer’s recommended maintenance for the vehicle with regard to the rear axle and bearings. In November 1999, the defendant sold the truck to another party, who then sold it to Lewis Farm, Inc. (Lewis) in January 2000. According to the complaint, in November 2000, 11 months after the sale to Lewis, “the

left rear axle assembly separated from the tractor and the dual wheels came off the 1993 Kenworth unit, bounced across the highway, hitting the plaintiff’s vehicle and causing [it] to careen down an embankment and become engulfed in flames.” The plaintiff sustained serious injuries in the accident. The plaintiff sued the defendant, Lewis Farm, and Paccar Inc., the manufacturer of the tractor-trailer. All of the claims against Paccar and Lewis were resolved, with the exception of the negligence claim against the defendant, May Trucking Company.

The defendant moved to dismiss this claim and argued that it did not own the truck for almost a year prior to the accident and that the resulting injury to the plaintiff was not foreseeable with regard to the negligence claim. The trial court agreed and ruled in favor of the defendant and the Court of Appeals affirmed that judgment by an evenly divided vote.

In deciding this case, the Oregon Supreme Court was faced with multiple issues regarding the defendant’s negligence. First, the Court had to decide whether the plaintiff’s injury was reasonably foreseeable given the defendant’s actions. Second, the Court had to decide if the defendant still owed the plaintiff a duty to maintain the vehicle after it had already been sold to a third party.

The defendant’s main argument was that since it no longer owned the vehicle in question for over a year prior to the accident, the plaintiff’s injury could not possibly be foreseeable. The concurring opinion in the Court of Appeals decision agreed with this argument and reasoned that “as a result of the sale, defendant had lost ownership, and more importantly, control of the tractor-trailer...” In addition, the defendant argued that a previously decided case held that a relationship or standard of conduct limits the defendant’s liability with regard to foreseeability. Specifically, the Court ruled in **Fazzolari v. Portland School Dist. No. 1J**, 734 P2d 1326 (1987), that “unless parties invoke a status, a relationship, or a particular standard of conduct that creates, defines,

or limits the defendant’s duty, the issue of liability from harm actually resulting from defendant’s conduct properly depends on whether that conduct unreasonably created a foreseeable risk...” Applied to the facts in this case, the Court disagreed with the defendant and concluded that “the type of harm that plaintiff suffered fell squarely within the scope of the risk that defendant’s negligence created; it was reasonably foreseeable that defendant’s failure to maintain the axle would cause the axle to fail and that the failed axle would result in the type of injury that occurred in this case.”

The defendant’s second argument was that as a matter of law, citing a federal regulation and a state statute, it did not owe a duty to the plaintiff because it was not the owner of the vehicle at the time of the accident, and it was Lewis’ duty to maintain the tractor in a safe condition since it owned/controlled the vehicle at the time the accident took place. The federal regulation mandates that motor vehicle owners “inspect, repair and maintain” all motor vehicles in their control. The state statute makes it a crime for an owner to knowingly drive or move a vehicle if it’s in an unsafe condition where it could injure any person. The Court ruled that neither the regulation nor the statute relieves the defendant from his duty to the plaintiff or the “consequences of its negligence.” Furthermore, the Court cited **Hills v. McGillvrey**, 402 P2d 722 (1965) which held that one party’s duty to another is not excused simply because of the negligence of another party. Therefore, the Court ruled that based on those prior decisions, the “allegation is not sufficient for a court to say, as a matter of law, that defendant is not responsible for the consequences of negligence.”

As a result, the Court concluded that the defendant owed the plaintiff a duty of care and that the resulting injury to the plaintiff was reasonably foreseeable given the defendant’s failure to maintain the trailer. The Court of Appeals decision was reversed and the case was remanded to the circuit court. ■

## SUNDAY BLUE LAW CONSTITUTIONAL IN RHODE ISLAND

A reoccurring issue in the automobile industry is the legality of Sunday Blue Laws. The Attorney General of Rhode Island, Patrick Lynch, asked the state's Superior Court to clarify the existing law and asked the Court to declare that the state's existing Sunday Motor Vehicle Law is valid and constitutional in **Lynch v. Norwood, et al.**, 2006 R.I. Super. LEXIS 98. The defendants (Dealers) sought a declaration that such laws are unconstitutional and no longer valid with the passage of the state's Holiday Business Law, G.L. 1956 5-23-2. The Court ultimately ruled in favor of the Attorney General, holding that the Sunday Blue Law is valid and constitutional in Rhode Island.

In addressing this issue, the Superior Court sought to address two main questions: 1) Are the Dealers currently prohibited from selling vehicles on Sundays, and 2) Are Sunday Blue Laws in general constitutional.

With regard to the first question, the court attempted to settle which state law rightly governs this issue. In Rhode Island, the General Assembly enacted the Sunday Motor Vehicle Law (SMVL) in 1950, which states that "no dealer shall have open for the conduct of business any display room or outdoor display lot where motor vehicles are exhibited on the first day of the week, commonly called Sunday." In 2005, the Assembly amended its Sunday Business Law to be named the Holiday Business Law (HBL), which states that a "retail establishment may be open on any day of the year except as specifically prohibited herein."

With the Attorney General arguing that the SMVL should govern and the Dealers stating that the two are in conflict and the HBL should prevail, the Court looked to the legislative intent and thoroughly analyzed each law. The Court noted that the word 'herein' presented an issue in the HBL because it was unclear whether that law effectively repealed the SMVL by not including it in the list of prohibited retailers, or if it meant they were merely two separate laws, without specific reference to each other.

The Court ruled that the latter reasoning is proper and that both laws should be treated equally as two distinct laws that are in conflict over the issue of auto dealerships being open on Sundays.

Acknowledging a conflict between the two laws, the Court relied on the principles of "statutory construction" in order to determine the relationship between the two laws. According to previous case law, the Court noted that when two laws are in conflict, "the special statute prevails over the statute of general application." **Whitehouse v. Moran**, 808 A.2d 626, 629-630 (R.I. 2002). Applying this rule to the current case, the SMVL is the more specific law, thus the controlling law in Rhode Island.

After determining that the SMVL law controls in this issue, the Court then turned to the question of whether the HBL repealed the SMVL. Citing previous case law, the Court noted that "generally, repeals by implication are disfavored and will not be pursued unless the statutory provisions are irreconcilably repugnant." **Blanchette v. Stone**, 591 A.2d 785, 786-787 (R.I. 1991). The Dealers argued that the SMVL was repugnant because passage of the HBL implies that a common day of rest "has been universally abandoned." To counter this, the Attorney General cited numerous statutes as "evidence that the Legislature did not intend to universally abandon Sunday as a day of rest." Based on the Attorney General's arguments, the Court ruled that the SMVL governs and is still applicable law.

The second major question the Court was asked to consider was whether the SMVL was constitutional. Specifically, the Dealers claimed that the law was unconstitutional and violated the Equal Protection and Due Process Clauses. To answer this question, the Court referred to previous case law which held that "when the classification does not involve a fundamental right and is not related to a suspect class, the test is more relaxed. In these circumstances, the legislation need only be rationally related to a legitimate state interest."

The Dealers argued that they were being treated differently than other 'retailers' and

were wrongfully singled out. However, despite these claims, the Court noted that given the low level of constitutional scrutiny, "the equal-protection safeguard is offended only if an act rests on grounds wholly irrelevant to the achievement of the State's objective." In this case, the Court referenced a similar case in Louisiana where "legitimate state objectives" were found in protecting smaller dealerships located in rural parts of the state, protecting consumers from higher prices, and protecting the general welfare of the car salesmen.

Given the Court's analysis on the state's Sunday Motor Vehicle Law and its constitutionality, the Court ruled that the SMVL remains valid and is constitutional. The Court also granted the Attorney General's request for summary judgment on this issue and denied the Dealers' cross-motions for summary judgment. ■

## SOUTH CAROLINA LAW DOES NOT REACH OUT-OF-STATE TRANSACTIONS

The U.S. Court of Appeals for the 4th Circuit has ruled that a South Carolina law prohibiting the sale of vehicles by manufacturers, unless such sales are through a franchise dealer in the state, does not extend to sales to South Carolina consumers who purchase vehicles outside of the state. The action was brought by Carolina Trucks & Equipment, Inc. (Carolina), which was a Volvo truck dealer from 1987-2002. Also denied was Carolina's second claim that Volvo breached its contract with Carolina. A jury had ruled in the dealer's favor at the district court level. **Carolina Trucks & Equipment, Inc. v. Volvo Trucks of North America, Inc.**, 492 F.3d 484 (4th Cir. 2007).

This litigation was in response to an Atlanta-based Volvo used truck distributor, Arrow Trucks (Arrow), placing advertisements in the Columbia, South Carolina phone book as well as other area publications, and doing direct mailings to residents of South Carolina. Arrow was a subsidiary of Volvo Trucks of North America. From 1998-2002, Arrow trucks sold 78 trucks to South Carolina citizens

from its Georgia branch. During this same time, Carolina's profits fell. No evidence was presented as to whether Arrow was directly selling in South Carolina or that Arrow's advertisements contributed to its sales. Carolina sued Volvo on eleven claims, including a violation of the South Carolina Regulation of Manufacturers, Distributors and Dealers Act (Dealers Act), which mandates that manufacturers "may not sell, directly or indirectly, a motor vehicle to a consumer in this State" except through dealers/franchises licensed by the state. Of the 11 counts in the complaint, only the claim under the Dealer's Act, prohibiting sales to consumers by a manufacturer, was ultimately at issue.

The Court had to determine whether the restrictions found in the Dealers Act pertained to sales within the state of South Carolina, or if those restrictions extended beyond the state's borders and whether Arrow's sales to South Carolina consumers were prohibited because it specifically advertised to South Carolina residents.

In interpreting the Dealers Act, the Court focused on the phrase 'in this State' as written in the Act. Carolina argued that the words referred specifically to South Carolina consumers. The Court disagreed with the plaintiff's interpretation and ruled that "consumer in the State" is very different from "consumer from the State" thus making this Act not applicable to sales made outside the state of South Carolina. Furthermore, the Court referred to the Supreme Court of South Carolina and its interpretation of the Dealers Act and found numerous references concluding that the Act does not extend beyond the state's borders. Because of this, the Court ruled that the Act only applies to sales in South Carolina. Thus, only manufacturers' sales to consumers in South Carolina are prohibited by the statute. To interpret the statute to reach sales made outside the state would raise constitutional issues said the Court.

The second issue the Court addressed was Carolina's assertion that Arrow effectively "entered" the state of South Carolina through its advertisements, thus effectively

making its sales occurring within the state and thus subjecting it to liability under the Dealers Act. The Court flatly rejected this argument and held that this rationale would not only present problems regarding extraterritoriality, but also present possible violations of the dormant commerce clause and First Amendment issues. Specifically, the court held that "concluding that Arrow's Atlanta sales occurred within South Carolina on the basis of such advertising contacts would transform the rule against extraterritoriality from a protection of commerce into a formality easily evaded."

In addressing Carolina's cross-appeal regarding breach of contract, the Court noted that South Carolina law requires the plaintiff to prove a contract existed, the breach of said contract, and the damages caused by the breach. Given the facts, a contract between Carolina and Volvo existed stating that Volvo "will not give any other *dealer* rights to locate a facility in the Dealer's Area of Responsibility." Carolina claims Volvo breached this by allowing a Petro Stopping Centers franchise to sell Volvo parts and warranty service in Carolina's designated area. However, according to the Court, the jury in this action "had ample basis to conclude that Volvo's arrangement with Petro comported with the contract", thus it rejected Carolina's cross-appeal with respect to this claim. The Court properly concluded that the franchise agreement, while it generally prohibited Volvo from authorizing another dealer in Carolina's designated area, Volvo was permitted under the agreement to sell parts to third parties and to authorize those companies to perform warranty work.

Based on these conclusions, the Court held that the Dealers Act does not apply to out-of-state vehicle purchases made by South Carolina residents, Arrow should not be subject to the Act or held liable for advertising in South Carolina, and Carolina's cross-appeal regarding breach of contract should be denied. The Court affirmed in part and reversed in part the district court's decision. ■

## 2007-2008 LEGISLATIVE UPDATE

### 1. Kentucky

#### Industry Reorganization

New provision provides that a change in ownership of a manufacturer or distributorship that contemplates a continuation of a line make in the state shall not, through the actions of any parent of the manufacturer, distributor, any related subsidiary or common entity, cause the termination or nonrenewal of a dealer agreement by a previous or present manufacturer or distributor of an existing agreement unless the manufacturer or distributor offers the new vehicle dealer an agreement substantially similar to that offered to other dealers of the same line make.

### 2. South Dakota

#### Dealer License Fees

The fees for an initial license for new and used motor vehicle dealers has been increased to \$300. Renewal of an existing license has been increased to \$175.

### 3. Utah

#### Line Make Defined for Recreational Vehicles

Retains current definition which provides that "line make" is defined as the motor vehicles that are offered for sale, lease, or distribution under a common name, trademark, service mark, or brand name of the franchisor, or manufacturer of the motor vehicle.

New provision defines a recreational vehicle as a specific series of product that: is identified by a common series trade name or trademark; is targeted to a particular market segment, as determined by décor, features, equipment, size, weight and price range; has a length and floor plan that distinguish the recreational vehicle from other recreational vehicles with substantially the same décor, features, equipment, size, weight, and price; belongs to a single distinct classification of recreational vehicle product type having a substantial degree of commonality in the construction of the chassis, frame, and body; and a franchise authorizing a dealer to sell.

Motor Vehicle Franchise Advisory Board

The number of franchised new motor vehicle members who serve on the Board has been increased from two to three. If the executive director of the Board modifies or rejects a finding of fact recommended by the Advisory Board, the director's decision shall be made available to the public.

Facility Changes/Relocation

New provision amends existing law which provides that a franchisor may not require a franchisee to relocate or make substantial alterations to the dealership facilities if the change would be unreasonable. Prohibition now covers action that would cause the franchisee to lose control of the dealership premises or impose any other unreasonable requirement related to the facilities or premises.

Use of Sales Performance Criteria

New provision provides that if a franchisee is meeting the sales performance criteria of its franchisor by using or considering the performance of other dealers holding the franchise in the state, a franchisor is restricted in using such measurement in determining: a franchisee's eligibility to purchase program, certified or other used motor vehicles, the volume, type or model of such vehicles; the price of any such vehicle; or the availability of any discount, credit or other incentive the dealer is eligible to receive from the franchisor.

RMA/Add Point/ Relocation

In determining whether there is "cause" for adding a dealer or approving a relocation, the advisor board and executive director are now required to consider whether the relocation or addition would cause any material negative economic effect on a dealer of the same line make in the relevant market area.

Termination Assistance/Discontinuation of a Franchise

Existing law amended to provide that if a franchisor terminates or discontinues a franchise: a franchisor must pay reasonable compensation to the franchisee for any unexpired dealership premises lease; pay the dealer the fair market value of the property if the dealer opts to sell the dealership premises; compensate the dealer for the blue sky or goodwill of the dealership in accordance with applicable industry standards taking into account the timing of the manufacturer's announcement of discontinuation of a line make has or will have on the future profitability of the dealership.

Note that the above provisions do not apply if the termination is for cause as defined in the statute.

Industry Reorganization/Change in Distribution Plan

If there is a change in the plan of distribution of a line make that contemplates a continuation of the line make in the state, a manufacturer or distributor may not terminate or fail to renew a dealer franchise agreement by a present or previous manufacturer or distributor unless, by the effective date of the action, the manufacturer or distributor offers a new dealer franchise agreement that is substantially similar to the dealer franchise agreement that existed with the previous manufacturer or distributor allowing the dealer to represent the line make under the new plan of distribution.

**4. Virginia**Titling and Registration of Company Vehicles of Automotive Manufacturers

While not part of the franchise law, new Section 46.2.2 provides for a definition of "company vehicles" and specifies the

titling and license plate requirements for such vehicles. The law also provides that a manufacturer headquartered in Virginia can obtain a dealer license or permit to allow it to dispose of company vehicles using a manufacturer certificate of origin. If a company car is to be disposed of in Virginia, it must be sold through a franchised dealer of the manufacturer.

License Plates

Law has been clarified as to the use of license plates issued to manufacturers.

Advertising

Amendment has repealed provision that provided that stock numbers of vehicles shall not be used in advertising a new vehicle unless the advertisement clearly and conspicuously discloses that it relates to only one vehicle. The law now states that use of a stock number is one way of satisfactorily disclosing a limitation of availability.

**5. Wisconsin**RMA/Ownership Changes/Location Changes –Standard of Review

The law has been amended to provide a specific standard for the agency to apply in determining whether good cause does not exist when a manufacturer proposes to take certain actions. Prior law provided that the agency could take into account "any relevant factor" including several specified in the statute. As amended, the agency is now directed to determine there is good cause for not permitting a proposed action only if the prospective benefits to the affected grantor, the dealer, the public and other dealers if the proposed action is not undertaken outweigh the prospective harm to the dealer and other parties if the proposed action is not undertaken. ■

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