

Dealer Defeats Retaliatory Termination Bid

A long-time truck dealer, Toledo Mack Sales & Service, Inc., has successfully defeated an attempt by Mack Trucks, Inc. to terminate its dealership in retaliation for an antitrust lawsuit filed against Mack Trucks by the dealer. This Alert provides you with the key aspects of the case and explains what it means for your business.

Background: The Antitrust Lawsuit

In the underlying antitrust case, Toledo Mack has asserted that Mack Trucks conspired with other Mack truck dealers to eliminate competition and drive up the prices paid by consumers for Mack trucks. Toledo Mack, a Mack dealer since 1982, also claims that Mack Trucks engaged in systematic price discrimination by making special discounts, delayed billing, free floor plan arrangements, and other attractive terms available to other franchised Mack dealers and non-franchised resellers of Mack trucks that were not similarly made available to Toledo Mack. In the antitrust case Toledo Mack has also challenged Mack Trucks' practice of selling a significant number of Mack trucks each year directly to certain large customers, altogether bypassing Mack dealers. Duane Morris litigators Wayne A. Mack and J. Manly Parks are currently handling this antitrust case on behalf of Toledo Mack.

Mack's Countersuit

Following the filing of the antitrust case by Toledo Mack, Mack Trucks responded by sending the truck dealer a letter informing Toledo Mack that its Mack truck franchise was being terminated. The letter identified several grounds that Mack Trucks claimed justified the termination. Toledo Mack immediately responded by filing a formal protest of the termination with the Ohio Motor Vehicle Dealers Board. The filing of the termination protest automatically gave rise to an administrative action before the Ohio Board to determine whether the termination was justified. Wayne Mack and Manly Parks joined forces with Columbus, Ohio-based Cooper & Elliot to represent Toledo Mack in the Ohio termination action.

The Hearing Examiner's Conclusion

A recommendation issued July 30, 2004, by an Ohio Motor Vehicle Dealers Board hearing examiner concluded that Mack Trucks did not establish good cause for the termination of the dealer agreement between Mack Trucks and Toledo Mack. Significantly, in rejecting the termination bid, the hearing examiner not only rejected each of the several grounds offered by Mack Trucks for the termination, but also found that "Mack Trucks has favored certain Mack dealers at the expense of Toledo Mack." In addition, the hearing examiner concluded that "Mack Trucks has provided discounts to certain dealers and not to Toledo Mack at times when Toledo Mack was competing against those dealers."

The Result

On August 30, 2004, the Ohio Motor Vehicle Dealers Board approved the recommendation of the hearing examiner. Under Ohio law, Toledo Mack, as the prevailing party in the termination action, is entitled to reimbursement from Mack Trucks for legal fees and costs incurred by Toledo Mack in that termination proceeding. The dealership was not terminated and it remains in operation, continuing to service its customers.

What This Means to Your Business

A dealer that believes it has been the subject of misconduct by an OEM (original equipment manufacturer) might think there is no alternative but to accept its fate. The Toledo Mack termination case demonstrates how state dealer protection laws can level the playing field between dealers and OEMs. When an OEM terminates a dealer for the wrong reasons, including in retaliation for an attempt by that dealer to assert or protect its rights, a dealer should know that there are laws in place to protect that dealer against such improper conduct. The Toledo Mack termination case illustrates the viability of the legal protections available to motor vehicle dealers against unjustified or retaliatory termination by an OEM.

For Further Information

If you have any questions about this Alert or would like to further discuss issues related to pricing, direct sales or termination, please contact Wayne A. Mack at 215.979.1152 or wamack@duanemorris.com or J. Manly Parks at 215.979.1342 or jmparks@duanemorris.com or the lawyer in the firm with whom you are regularly in contact.