

## Nebraska Dealership Wins Case Against Freightliner

Former Federal District Court Judge Layn Phillips has awarded \$819,550.00, plus the potential for attorneys' fees and costs, to Rose Equipment, Inc., a former Freightliner dealer, for Freightliner Corporation's "constructive termination" of Rose Equipment's right to continue as a Freightliner dealer in Lincoln, Nebraska. Judge Phillips found that Freightliner's conduct violated both the Nebraska Motor Vehicle Dealer's Act ("NMVDA") and the implied covenant of good faith and fair dealing.

In the four day arbitration, Rose Equipment, which had operated as the only Freightliner dealer in the Lincoln, Nebraska market since 1977, contended that the cumulative effect of Freightliner's conduct — including Freightliner's refusal to give it two new Freightliner product lines; Freightliner's shrinking its assigned area of responsibility and allowing a neighboring Freightliner dealer to establish a service facility in Rose Equipment's former territory; and Freightliner's engaging in direct sales to Rose's largest customer — had effectively terminated it as a Freightliner dealer.

Freightliner unsuccessfully contended:

that its conduct was permitted pursuant to the terms of the written dealer agreement;

that its conduct did not amount to a termination of the dealer relationship; and

that, even if its conduct did amount to a termination, Freightliner had "good business reasons" for engaging in this conduct which constituted the type of "good cause" which permitted termination under the NMVDA.

Prior to the arbitration hearing, Freightliner brought a motion seeking to dismiss Rose Equipment's claim that the conduct of Freightliner amounted to a constructive termination in violation of both the NMVDA and the implied covenant of good faith and fair dealing. Judge Phillips, in a lengthy memorandum decision, denied this motion by Freightliner, and, in doing so, recognized the following significant principles of law:

Nebraska would recognize a cause of action for constructive termination under the NMVDA, and any such termination must be for "good cause."

Under Oregon law, a party to a contract can be liable for violation of the covenant of good faith, even if the written agreement allows the conduct complained of, if the wrongdoer's conduct violated the reasonable expectations of the parties.

It is appropriate to look beyond the written integration clause at what was said, what was written, and the course of dealing between the parties to determine the parties' reasonable expectations.

While a manufacturer may take a number of discrete steps that, standing alone, would be permissible, if the effect of those small steps is to drive a dealer from business, the dealer has been constructively terminated and a manufacturer may be found liable for breach of both the implied covenant of good faith and fair dealing, and any applicable dealer protection statute.

*Editor's Note: This information was submitted by the Attorneys for Rose Equipment — J. Michael Dady and Ronald K. Gardner of Dady & Garner, P.A.*