

State Trial Courts

Verdict: \$7,256,744 plus \$500,000 attorney fees/costs, snowmobile dealership termination

A Billings jury found 11-1 that the operation of Hi-Tech Motors; business substantially relied on Bombardier vehicles, parts, and accessories (language from the Montana Dealer Protection Act), and 9-3 that \$7,256,744 will compensate Hi-Tech for its past & future pecuniary losses in connection with Bombardier's termination of its Ski-Doo snowmobile dealership.

Hi-Tech had been a Ski-Doo dealer since 1990. Bombardier terminated the agreement in 3/01 without warning or prior notice and entered an agreement with a competitor. Bombardier subsequently notified MVD of the termination and MVD initiated a proceeding under the Montana Dealer Protection Act. Hi-Tech moved to dismiss on grounds that Bombardier had failed to give notice prior to the termination pursuant to §61-4-205(3). Bombardier asserted that MVD lacked jurisdiction because the agreement was not a franchise. A hearing examiner concluded that MVD had been deprived of jurisdiction as a result of Bombardier taking action prior to notifying MVD. Hi-Tech sued Bombardier, asserting that the agreement constituted a franchise and Bombardier failed to follow administrative procedures prior to terminating. Bombardier contended that the relationship did not constitute a franchise. Judge Watters granted summary judgment for Bombardier. The Supreme Court affirmed that administrative exhaustion was not required for court jurisdiction over whether a franchise existed, and reversed the summary judgment, ruling that pegging "substantially reliant" under §61-4-201(5)(d) to 50% of revenues was too restrictive for determining whether a franchise existed (MLW 7/30/05:1).

At trial, Hi-Tech contended that under the DPA Bombardier could terminate only if MVD first decided that it had good cause. Bombardier contended that the Act did not apply to Hi-Tech because it was able to stay in business despite loss of its Ski-Doo dealership by selling motorcycles and ATVs through dealership agreements with other manufacturers, and that the DPA only protected businesses that could no longer operate and would be forced to close immediately if one of their dealership agreements was terminated.

Judge Baugh awarded \$500,000 stipulated attorney fees & costs under the DPA.

Plaintiff's experts Gerald Evans, UM Business School (substantial reliance); CPA Lenore Romney, Spokane (past & future pecuniary losses).

Defendant's experts; CPA Richard Hoffman, Salt Lake City (past & future pecuniary losses).

No negotiations or settlement conference following Supreme Court decision. Jury request, \$7,256,744; jury suggestion, \$550,000.

Jury deliberated 3 hours 6th day.

*Hi-Tech Motors v. Bombardier Motor Corp. of America (nka BRP US), Yellowstone DV
02-795, 5/16/06.*