



## AUTOMOTIVE ALERT: APPELLATE COURT ALLOWS TERMINATIONS NOTWITHSTANDING TECHNICAL DEFICIENCIES IN NOTICE TO DEALER

An appellate court in Texas recently held that Ford Motor Company could terminate its “franchise agreements” with two Ford dealerships, notwithstanding the dealers’ arguments on appeal that centered on the fact that Ford’s statutorily required notice of termination to the dealerships was based on an outdated version of the applicable statute. See *Ultimate Ford, Inc. v. Motor Vehicle Division of the Texas Department of Transportation*, 2010 WL 3370683 (Aug. 27, 2010).

The dealerships, which were both owned by the same owner, were in and out of bankruptcy twice. In May 2006, the bankruptcy court authorized Ford to begin the process of terminating the dealerships’ “franchises,” according to the court. See *id.* at \*1. The applicable statute at the time contained a requirement that specified that certain language be included in a notice of termination or discontinuance, including that the dealer could file a protest with the Motor Vehicle Board.

The appellate court found that the notice that Ford sent differed from the statutory language in two respects. “First, Ford’s notice referred to the ‘Motor Vehicle Commission’ rather than the ‘Motor Vehicle Board,’ tracking a version of the notice requirement found in the predecessor statute.... Second, Ford’s notice referred to the former motor vehicle commission code, while the form of notice specified by the statute had been updated to refer to chapter 2301, occupations code, when the code was replaced and recodified without intended substantive change in 2001.” *Id.* at \*2. (The court also noted that by the time of Ford’s notices, the “Motor Vehicle Board” no longer existed, and its functions had been transferred to the motor vehicle division of the Texas Department of Transportation. See *id.* at \*2.)

After unsuccessfully appealing the termination to Ford’s Dealer Policy Board, the dealerships filed protests with the state agency. An administrative law judge issued a proposed decision recommending

the termination of the agreements, but also found that: (1) “Ford’s notices of termination identified the Texas Motor Vehicle Commission rather than the Texas Motor Vehicle Board, as the agency with which a termination protest should be filed”; and (2) “Ford’s notices of termination referred to the Texas Motor Vehicle Commission Code, rather than Chapter 2301 of the Texas Occupations Code, as the governing statute.” *Id.* at \*2-3. In light of those findings, the administrative law judge concluded that “Ford Motor Company’s notice[s] of termination fail to comply with the requirements” of the statute and further recommended that the Division order that Ford “cease and desist from failing to comply with the requirements” of the statute. *Id.* at \*3. “The ALJ did not, however, determine that this noncompliance should alter the Division’s ruling regarding termination of the franchise agreements.” The Division’s director amended the administrative law judge’s conclusions of law to correct typographical errors but otherwise adopted the findings, conclusions, and recommendations in their entirety. “The director ordered that the Dealerships’ franchise agreements would terminate on the date after the order became final and that Ford ‘shall cease and desist from failure to comply’ with the requirements of the statute. *Id.* at \*3.

On appeal, the dealerships did not challenge the Division’s findings and conclusions that good cause existed for termination, but instead raised the issue of the adequacy of the notices. See *id.* at \*3. The dealerships argued that the legislature’s use of the word “must” in the statute denoted a condition precedent in requiring that a manufacturer must provide the notice specified in the statute before termination occurs. See *id.* at \*3. The Court of Appeals stated that a reviewing court in Texas is to give “serious consideration” to the agency’s construction of a statute, “so long as that construction is reasonable and consistent with the statutory language.” *Id.* at \*4. The court explained that “it does not necessarily follow” that any noncompliance with the notice requirements must automatically invalidate the ultimate

good cause determination. Rather, “[t]o determine the consequences of a failure to satisfy a condition precedent, we look to the legislative intent reflected in the statute.” *Id.* at \*5. The court found that “[t]he evident purpose” of the notice requirement “is to ensure that a dealer facing termination is notified of its statutory rights to protest the termination and obtain a hearing, and how to do so. The Division’s findings and the record reflect that those purposes were satisfied here.” *Id.* at \*5. The court noted that there was no contention that any defect in the notices prejudiced the dealers’ abilities to assert their protest. See *id.* at \*5. Finally, the court distinguished an earlier decision that determined that a letter constituted an ineffective termination attempt based on a “vastly different” record. See *id.* at \*6. A motion for extension of time to file a petition with the Supreme Court of Texas has been granted.

*Ultimate Ford* supports the notion that alleged technical deficiencies in a notice of termination do not necessarily void the attempted termination. Although careful attention to statutory language is always warranted, where a dealer suffers no prejudice as a result of technical failure of notice, the notice may be found to be valid, depending on the specifics at issue.

## LAWYER CONTACTS

For further information, please contact your principal Firm representative or either of the lawyers listed below. General email messages may be sent using our “Contact Us” form, which can be found at [www.jonesday.com](http://www.jonesday.com).

### **Jeffrey J. Jones**

Columbus

+1.614.281.3950

[jjjones@jonesday.com](mailto:jjjones@jonesday.com)

### **J. Todd Kennard**

Columbus

+1.614.281.3989

[jtkenard@jonesday.com](mailto:jtkenard@jonesday.com)