



## APPELLATE COURT RULES THAT “EVOLVING AND CONTINUOUS” BREACHES OF “FRANCHISE AGREEMENT” ALLOW TERMINATION EVEN THOUGH MANUFACTURER HAD PRIOR KNOWLEDGE OF PROBLEMS

The Supreme Court of Alabama recently ruled that a manufacturer was not precluded from terminating a “franchise” agreement under a state dealer statute even though the manufacturer had knowledge of the problems at issue more than 180 days before the proposed termination (the length of time specified in the statute). See *Smith’s Sports Cycles, Inc. v. American Suzuki Motor Corp.*, — So.3d —, 2011 WL 4867651 (Ala. 2011).

The trial court had entered judgment in American Suzuki Motor Corporation’s (“Suzuki”) favor on the dealer’s claim that Suzuki wrongfully terminated the parties’ dealer agreement. See *id.* at \*1. Suzuki had sent a Notice of Default and Opportunity to Cure in April 2006, which listed six areas of the dealer agreement that Suzuki believed had been violated, mostly dealing with the appearance of the dealership’s

facility. After Suzuki sent another letter in June 2006 stating that the dealer remained in default, Suzuki issued a notice in October 2006 that it intended to terminate the agreement. See *id.*

The dealer brought a breach of contract claim and a claim under the Alabama Motor Vehicle Franchise Act (“Franchise Act”). On appeal, the Alabama Supreme Court concluded that the dispositive issue was whether Suzuki met the requirements of the Franchise Act for terminating a “franchise” relationship. See *id.* at \*1-2. The dealer argued that the lower court improperly applied the statute, which provides that a manufacturer may terminate a dealer agreement provided that the manufacturer “‘first acquired actual or constructive knowledge of such failure not more than 180 days prior to the date on which notification is given by the manufacturer’” under the

statute. *Id.* at \*4 (quoting statute). Specifically, the dealer argued that Suzuki had notice of the issues related to the appearance of the dealership and its deteriorating conditions more than 180 days before Suzuki provided the notice of termination. See *id.*

The Alabama Supreme Court found that while Alabama state courts have yet to address the time notification requirement in the statute, other courts with similar statutes have addressed “continuous and evolving breaches.” See *id.* at \*5-6 (discussing cases). After analyzing those cases, the Court concluded:

Because the appearance problems with Smith’s dealership were both evolving and continuous, Suzuki is not precluded from terminating the franchise relationship based on the fact that it had knowledge of those problems 180 days before giving actual notice of termination. To hold otherwise would allow Smith to continue to operate the dealership in a manner inconsistent with, and in violation of, the franchise agreement.

*Id.* at \*6. The Court rejected the dealer’s other contentions as well. See *id.* at \*7-8.

The *Smith’s Sports Cycles* decision is important because it provides helpful guidance with respect to statutory limitations that appear in various forms in multiple jurisdictions. The decision also underscores the importance of creating a clear record with respect to any efforts made to address alleged breaches by the manufacturer and any responses by the dealer, particularly where the breaches can be characterized as “continuous and evolving.”

## LAWYER CONTACTS

For further information, please contact your principal Firm representative or one 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).

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