

## **U.S. UPDATE**

### **FARM AND CONSTRUCTION EQUIPMENT MANUFACTURERS SUFFER SETBACK IN NEW HAMPSHIRE**

Previously, we reported on an expansive dealer's rights law enacted by the New Hampshire legislature. *Motor Law*, Volume 13, Number 10, July/August 2013. That law was immediately challenged in court by several farm and construction equipment manufacturers, namely John Deere, AGCO Corp. and CNH, which sells Case and New Holland machines. The Court in the Northern District of Hillsborough County Superior Court handed the farm and construction equipment manufacturers an initial victory, issuing a preliminary injunction blocking the law from affecting existing contracts between the three companies and their New Hampshire based dealers. The case was then transferred to the Merrimack County Superior Court in Concord, New Hampshire for further proceedings. *Motor Law*, Volume 13, Number 12, November/December, 2013. In April, the Merrimack County Superior Court has ruled against the manufacturers, upholding the law.

The issue before the Court was whether the new law, designed to protect dealers, unconstitutionally impairs twenty-one existing contracts between farm and construction equipment manufacturers and their New Hampshire dealers. The manufacturers argued that the law had an unconstitutional retroactive effect on those existing contracts. The parties agreed that the law had a retroactive effect, but disagreed as to the significance of the law's impact.

The manufacturers pointed to ten different ways in which the new law supposedly impaired their existing contracts, including, among other things, that it removed the manufacturers' discretion to: (1) define a dealer's relevant market area; (2) add or relocate dealerships; (3) set minimum equity levels; (4) decline to fill orders; and (5) terminate, cancel or non-renew a dealership agreement. After reviewing the contracts in question, the Court found

that the new law did not substantially impair them. In so ruling, the Court reasoned that the new law was just a refinement of an existing statutory scheme. Had the Court been comparing the new law to a completely unregulated industry, then the result might have been different. Because the dealer relationships were already regulated by statute, albeit a less restrictive one, the Court found that the new law survived the Constitutional challenge. Essentially, the Court viewed the new law as just an incremental change to an already regulated industry, as opposed to a completely unregulated industry, and thus found it to be reasonable.

p:\working\gene\articles\farm and construction equip mfg suffer setback in nh - 5-14.docx