

## **U.S. UPDATE**

### **Texas Court Rules That a Manufacturer's Best Efforts are Not Enough**

The Texas Court of Appeals recently handed a victory to auto dealer Tommy Manuel in Manuel's long-running dispute with DaimlerChrysler Motor Company. In doing so, the Court found that Chrysler had failed to use its best efforts to resolve a dealer protest, preventing Manuel from opening a new location in a timely manner.

The facts of the Manuel case date back to the 1990's, when Chrysler developed a realignment plan called "Project 2000." Its purpose was the reorganization, relocation and establishment of dealerships in the Dallas-Fort Worth area. Manuel had been an auto dealer in the area for over forty years.

In 1999, Manuel and Chrysler entered into two agreements. Pursuant to one of those agreements, Manuel received the right to open a new dealership in South Arlington, Texas. As part of that agreement, Chrysler promised to use its best efforts to "litigate or settle" any protest that another dealer might file in an attempt to keep Manuel from opening his new location. Such a protest was in fact filed.

In response to the protest, Chrysler chose to litigate with the protesting dealer, fighting it in proceedings before the Texas Motor Vehicle Commission and in federal court. Although Chrysler eventually settled with the protesting dealer, paving the way for Manuel to open, the settlement was not reached for some time. As a result, Manuel missed two years (2000 - 2001) when auto sales were brisk, instead opening in February, 2002 when sales began a steep decline throughout America. Manuel sued Chrysler, alleging it failed to use its best efforts to resolve the protest. Although the case turned on an interpretation of contract language, the Court of Appeals

mentioned the federal Automobile Dealer's Day in Court Act and similar state statutes that were enacted to protect retail dealers from perceived abusive and oppressive acts by manufacturers.

The trial court awarded Manuel damages of \$370,668.50. Chrysler appealed.

In its appeal, Chrysler first argued that the best efforts clause was too vague to be enforceable. The Court of Appeals rejected this argument, in part because the best efforts clause had been drafted by Chrysler's lawyers.

Next, Chrysler argued that it had vigorously litigated with the protesting dealer, satisfying the agreement's best efforts clause. In rejecting this argument, the Court of Appeals was swayed by evidence showing that Chrysler had allocated \$50 million to buy out dealer protests and was holding open dealerships to grant to potential protestors, yet chose to litigate with this protestor. Although eventually Chrysler did settle with the protestor, the Court of Appeals essentially faulted Chrysler for litigating with the protestor for some eight months and making "no effort" to settle with the protestor until late in the process, damaging Manuel by the delay. As the Court pointed out, "no efforts cannot be best efforts."