masuda funai

News & Types: Commercial, Competition & Trade Update

Dealer's $6.5 Million Judgement Against Supplier Reversed Under Indiana Franchise Law

9/6/2017

Practices: Commercial, Competition & Trade, Litigation

Courts and lawyers must deal with ambiguous statutes all the time. But Judge Wood's frustration with the Indiana Deceptive Franchise Practices Act (IDFPA) was palpable in her recent opinion that took away a $6.5 million judgement awarded to an Indiana dealer. *(Andy Mohr Truck Center, Inc. v. Volvo Trucks North America, a division of Volvo Group North America, LLC., 7th Circuit Court of Appeals, Nos. 16-2788 and 16-2839, August 28, 2017)*

Andy Mohr Truck Center (Mohr) and Volvo Trucks North America (Volvo) concluded their Dealer Agreement in 2010. But it didn't take long for the relationship to go south. Litigation commenced in 2012 when Volvo sought a declaratory judgment that it was entitled to terminate Mohr's dealership. Mohr filed its separate claim (later consolidated) that Volvo had breached the dealer agreement and, moreover, caused damages to Mohr by giving it less favorable concessions on truck pricing compared to other dealers. In the language of the IDFPA, Mohr claimed Volvo was guilty of "[d]iscriminating unfairly among its franchisees . . ." Indiana Code, Sec. 23-2-2.7-2(5)

There was considerable irony in the legal positions taken by Volvo and Mohr. Volvo wanted to terminate Mohr because Mohr failed to build a long-term facility, as Mohr allegedly promised. Mohr had a good answer to this. The promise to build a facility was not part of the integrated dealer agreement. While Judge Wood did not view the integration clause as conclusively barring Volvo's claim, she agreed with the district court that the plan to build a facility was more a hope than a misrepresentation of a material fact.

Mohr had a similar claim outside the contract. Mohr alleged that Volvo intentionally misrepresented that it would grant Mohr a Mack Truck franchise. Like Volvo's claim of Mohr's promise to build a facility, Volvo responded that the alleged promise to grant a Mack Truck franchise was not part of the integrated dealer agreement. As Judge Wood noted, "For purposes of this claim, the integration clause is no longer Mohr's friend." Mohr tried to avoid this inconsistency by arguing fraudulent inducement. But Mohr and Volvo were both sophisticated parties "who knew, or should have known, that any terms or promises that were material to the Volvo dealership agreement ought to have been included in their contract." So any reliance by Mohr on the promise of a Mack Truck franchise was not reasonable.

So the result on these two claims was a standoff. So where did the $6.5 million judgment come from?

©2025 Masuda, Funai, Eifert & Mitchell, Ltd. All rights reserved. This publication should not be construed as legal advice or legal opinion on any specific facts or circumstances. The contents are intended solely for informational purposes and you should not act or rely upon information contained herein without consulting a lawyer for advice. This publication may constitute Advertising Material.

This required Judge Wood to explain the competitive heavy-duty truck market. The types of trucks manufactured and sold by Volvo were specially ordered based on customers' business requirements and specifications. The dealer negotiated with the customer and the manufacturer (i.e., Volvo) simultaneously. While Volvo maintained list prices for trucks, based on model and options, it also had a program called Retail Sales Assistance (RSA) in which dealers could submit information about a potential order in an effort to obtain additional price concessions from Volvo. Mohr claimed that Volvo's operation of the RSA was unfairly discriminatory against Mohr.

From the procedural history of the litigation, it seemed this claim was almost an add-on by Mohr. But it was the only claim that survived summary judgment. A jury awarded Mohr $6.5 million on its claim of discriminatory treatment. Volvo then appealed the verdict claiming that, as a matter of law, the verdict should be set aside. Volvo had an uphill battle, as Judge Wood noted the verdict will be reversed "only if no rational jury could have found in Mohr's favor." So Volvo had to show not just that the verdict was wrong, but that it was *irrational*.

Mohr's evidence rested on 13 transactions that Mohr alleged showed discriminatory treatment by Volvo. In these transactions, Mohr compared the concessions it received under the RSA compared to the concessions Volvo awarded other dealers in other states. Volvo argued that no rational jury could have found unfair discrimination because the evidence did not support such a verdict.

Judge Wood lamented the dearth of Indiana case law that would shed light on what constituted "unfair discrimination" under the IDFPA. Judge Wood explicitly rejected a comparison to price discrimination under the Robinson Patman Act (a complex federal statute that prohibits charging different prices to different purchasers of like commodities, but subject to many defenses). So Judge Wood went back to a 1983 7th Circuit opinion in a franchise case that required a plaintiff to prove discrimination by showing "arbitrary disparate treatment among similarly situated individuals or entities."

Then Judge Wood went in a surprisingly different direction. She analogized Mohr's claim of unfair discrimination under the IDFPA to a claim of employment discrimination under federal law. Under federal employment law, "precise equivalence is not required" to avoid discrimination.

Volvo claimed that Mohr received an equal or greater percentage concession than 79% of other dealers. So the 13 transactions were "cherry-picked" from the RSA data that could be manipulated to show almost any conclusion.

> "At its heart, this disagreement is about what it takes to "discriminate unfairly" as the IDFPA uses the term. Is every instance of arbitrary and less favorable treatment unfairly discriminatory? Or must individual instances demonstrate a pattern? Has a manufacturer such as Volvo violated the law vis à vis someone every time a price varies by as much as a penny? Under Mohr's theory, every instance in which it received a concession that did not match the best concession on a similar transaction would show discrimination. Under Volvo's approach, the only time a single transaction could be branded as discriminatory is if Volvo provided different concessions based on precisely the same customer specifications (i.e., one in which a customer was shopping around for price quotes between multiple dealers). Otherwise, a plaintiff must show a systematic analysis of transactions over time to demonstrate that its treatment was the disfavored exception."

©2025 Masuda, Funai, Eifert & Mitchell, Ltd. All rights reserved. This publication should not be construed as legal advice or legal opinion on any specific facts or circumstances. The contents are intended solely for informational purposes and you should not act or rely upon information contained herein without consulting a lawyer for advice. This publication may constitute Advertising Material.

Judge Wood again lamented the vague statute and lack of guidance in Indiana case law as to what is "unfair discrimination." But the court had to decide.

In a portion of the opinion that would be familiar to any parent of small children, Judge Wood pointed out that "different" does not mean "unfair." Noted Judge Wood, "[N]ot every unexplained variation in treatment . . . can be classified as unfair disparate treatment." The unfair discrimination must be in relation to the dealer agreement. And the dealer agreement gave discretion to Volvo to treat its dealers / franchisees differently without being deemed "unfair."

> "But what Mohr offered to the jury did not suffice to permit a finding of unfair discrimination. At most, the evidence showed that Volvo offered no reasoned explanation for giving Mohr a relatively worse concession than it gave to a sample set of other franchisees on similar transactions. But it did not show that such treatment was unfair or discriminatory (i.e., that it was not the norm among franchisees)
>
> .. . . . .
>
> The 13 transactions on which Mohr relied showed no more than the fact that sometimes Mohr received the better concession and sometimes a competitor did. More is needed to show "unfair" discrimination."

The court clearly struggled with defining "unfair" in the context of the IDFPA. The court acknowledged that Mohr was treated differently in the RSA, but sometimes the treatment was more favorable and sometimes less favorable. But to go a step further, as the jury apparently did, and call such treatment "unfair" was a step too far for the court.

Perhaps this relates to Judge Wood's multiple complaints about the lack of Indiana case law (which, after all, is mostly beyond the control of the Indiana courts, but more controlled by potential claimants). It would seem that affirming the verdict could embolden aggrieved franchisees who could cite even minor differences to make claims of unfair discrimination, claims that would be difficult to resolve or settle. In fact, the instant litigation started more than 5 years ago. Judge Wood was no doubt sincere in finding that different treatment did not mean unfair discrimination. But she also may have been mindful of the litigation burden that could have fallen on the Indiana state courts if the jury verdict had been affirmed. If a court wanted to give a broad interpretation of "unfair discrimination", perhaps it should be an Indiana state court, rather than a federal court. Indiana courts should decide whether to expand litigation under the IDFPA.

©2025 Masuda, Funai, Eifert & Mitchell, Ltd. All rights reserved. This publication should not be construed as legal advice or legal opinion on any specific facts or circumstances. The contents are intended solely for informational purposes and you should not act or rely upon information contained herein without consulting a lawyer for advice. This publication may constitute Advertising Material.