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SALES AND DISTRIBUTORSHIP CONTRACTS IN PENNSYLVANIA

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Pennsylvania's Economy

Pennsylvania is bordered by numerous states with New York to the north, New Jersey to the east, Delaware, Maryland, Virginia and West Virginia to the south and Ohio to the west. Lake Erie grants Pennsylvania access to Michigan and Canada while the Delaware River provides a waterway to the Atlantic Ocean. Pennsylvania is the 6th most populous state in the nation and likewise has a gross state product which ranks 6th in the nation. Pennsylvania is increasingly a services driven economy with the state government as the largest employer but remains the 11th largest exporting state with goods like coal, iron, steel and petroleum products.

The Commissioned Sales Representative Act

In Pennsylvania, the Commissioned Sales Representative Act, 43 P.S. § 1471 *et seq.* (the "CSRA"), grants sales representatives certain rights with respect to payment for their services. Under the CSRA, a sales representative is classified as, "a person who contracts with a principal to solicit wholesale orders from retailers rather than consumers and who is compensated, in whole or in part, by commission. The term does not include one who places orders or purchases for his own account for resale or one who is an employee of a principal." 43 P.S. § 1471. The CSRA states that the principal (the person manufacturing, importing or producing the product and contracting with the sales representative) must pay the sales representative all unpaid commission within 14 days of termination of the contract or within 14 days of the date the commission became due if such commission arose after termination of the contract. If the principal neglects to make such payment, the sales representative will be entitled to damages in the amount of three times the commission plus the cost of the suit, including attorney fees. These rights cannot be waived; however, if the court determines that the sales representative's suit was frivolous the principal will be entitled to attorney fees and court costs.

Pennsylvania is generally an at-will state. This means that a written contract of employment is not required and the employment relationship can be terminated at any time provided the

termination does not contravene any specific contractual provision or violate any law. However, in the case of an employment relationship between the sales representative and the principal, a written contract must be entered into providing, among other things, “a specified period for the performance of services.” 43 P.S. § 1472.

Freedom of Contract

Pennsylvania law allows parties to freely negotiate contracts and permits them a great deal of discretion in allocating risks of loss. The State has a public policy favoring the enforcement of contracts. Contracts will generally be enforceable even if the terms are unfavorable to one of the parties; however, they can be voided for being unfair or unconscionable, formed by a party lacking capacity, formed under duress, constituting fraud, containing mutual mistakes, lacking consideration or otherwise violating the law.

The phrase “intending to be legally bound” can make a contract binding even without consideration. The language comes from the Uniform Written Obligations Act. However, the Act is only effective in Pennsylvania and may be relied upon only for contracts governed by State law. 33 Pa. C.S.A. § 6.

Conflict of Laws and Forum Selection

In Pennsylvania, a forum selection clause is presumptively valid and will only be deemed unenforceable when: (1) the clause itself was induced by fraud; (2) the forum selected is so unfair or inconvenient that a party will be deprived of an opportunity to be heard; or (3) the clause violates public policy. When a contract is silent as to which state’s law should apply, courts undertake a step-by-step analysis to determine the proper forum. First, a court will determine whether there is any conflict between the potentially applicable laws. If there is a relevant difference, the court will examine the governmental policies underlying each law, and classify the conflict as a, “...‘true,’ ‘false,’ or an ‘unprovided-for’ situation.” The analysis proceeds only if there is a ‘true’ conflict, specifically if “both jurisdictions’ interests would be impaired by the application of the other’s laws.” If such a true conflict exists, the court must first apply the Second Restatement of Conflict of Laws and then apply Pennsylvania’s “flexible interest analysis” to determine which state has the “greater interest in the application of its law.” This “flexible interest analysis” requires courts to prioritize the interests based upon each state’s policies and their relation and relevance to the disputed matter.

Pennsylvania Franchise Laws

Pennsylvania does not generally regulate franchise relationships. Certain specific franchise relationships, such as those between petroleum product suppliers and dealers, motor vehicle suppliers and dealers and malt beverage suppliers and dealers, to name a few, are governed by statutory law. However, Pennsylvania common law provides that, “...in the absence of a provision in a franchise agreement authorizing termination or non-renewal without cause, a

franchisor must act in good faith and in accord with the franchisee's commercially reasonable expectations in terminating a franchise relationship." Thus, a franchisor wishing to reserve the right to terminate without cause should expressly set forth such a clause in the franchise agreement. Franchise relationships must still comply with federal regulations such as those imposed by the Federal Trade Commission.

About the Firm

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