

Press Release

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ONTARIO AFRAAT TRIBUNAL UPHOLDS BREACH OF REGULATION DECISION IN CNH CANADA LTD. APPEAL

GUELPH, ON, MARCH 24, 2014: Upholding its landmark 2011 decision, the Ontario Ministry of Agriculture, Food and Rural Affairs' (AFRAAT) Tribunal ruled in Appeal on March 24, 2014 that U.S. corporate giant, CNH Canada Ltd. did in fact, breach Ontario Regulation 123/06 by not renewing the Dealer Agreement of Chesterman Farm Equipment Inc (CFEI).

In early 2011 the AFRAAT Tribunal released an interim decision regarding liability and warranty issues. CNH then appealed the Tribunal's liability determination to the Divisional Court and on March 21, 2012, the Divisional Court remitted certain aspects of the liability issue to the Tribunal for reconsideration. The remitted issues flowed from the Tribunal's interpretation and application of Regulation 123/06.

In its 2014 decision, Tribunal acknowledged the *Chesterman vs. CNH* case as not only precedent-setting and of considerable importance to both parties, but one of significant impact to others within the industry. The 2014 decision both incorporates and reaffirms parts of the Tribunal's findings from the 2011 decision.

Beverly Leavitt, President/CEO of Canada East Equipment Dealers' Association (CEEDA) acknowledged the historic nature of the Tribunal's award of damages to CFEI in the amount of \$139,846, interest of \$60,670.61 plus costs in an amount yet to be determined. Says Leavitt, "Legislature created in the Tribunal, a dispute resolution mechanism for farm equipment buyers, sellers and manufacturers that is an alternative to the Ontario court system. The Court of Appeal has recognized the authority of decision makers in the administrative justice system to make awards of damages and interest. While not commonplace, it is within the rights of the AFRAAT Tribunal to award compensatory damages and interest."

The 2014 ruling is one with momentous impact for CEEDA dealer members as well as equipment dealers across North America, in that it clearly establishes:

- The retroactive nature of the 2005 amendments to *the Act* including warranty reimbursement requirements as well as Regulation 123/06 to existing dealer agreements;

- that an auto renewal provision of a Dealer Agreement satisfies the renewal requirement of Regulation 123/06;
- the obligation of a manufacturer or distributor to provide dealers with written notice of intention to withhold renewal approval but also the opportunity to cure any defect or address the manufacturer's concerns as established within Regulation 123/06.

"Ontario farmers, dealers and the manufacturer/distributors doing business with them can interpret this 2014 Tribunal Ruling as a clear message that the laws of the land will be enforced and upheld with consequences for those who do not abide by them," suggests Ms. Leavitt. She goes on to add, "This ruling could potentially have considerable influence and impact upon other sectors and industries who conduct their business through retail dealer agreements similar to the agricultural equipment industry."

CNH Canada Ltd. has filed an appeal of the damages award with the Ontario Superior Court of Justice Division Court.

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