

COMMONWEALTH OF PENNSYLVANIA
HOUSE OF REPRESENTATIVES
COMMERCE COMMITTEE

RUSSELL E. CARSON AGRICULTURAL CENTER
THEATRE AREA
ROCK SPRINGS, PENNSYLVANIA
AUGUST 18, 2009
3:45 P.M.

BEFORE :

HONORABLE PETER J. DALEY, MAJORITY CHAIRMAN
HONORABLE DICK HESS, MINORITY CHAIRMAN
HONORABLE MARK LONGIETTI
HONORABLE JOHN YUDICHAK
HONORABLE MIKE FLECK
HONORABLE CARL WALKER METZGAR
HONORABLE DONNA OBERLANDER
HONORABLE TIM KRIEGER
HONORABLE RICHARD MIRABITO

1 ALSO PRESENT:

2 JOHN SCARPATO, COMMITTEE LEGISLATIVE ANALYST
3 DESTINY ZEIDERS, RESEARCH ANALYST
4 SANDY ALTLAND, LEGISLATIVE ASSISTANT

5 TRACY L. MARKLE,
6 COURT REPORTER/NOTARY PUBLIC

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CHAIRMAN DALEY: My name is State Representative Pete Daley, and I Chair the House Commerce Committee. To my immediate right is Chairman Hess, the Republican Chairman.

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We're here today to have a public hearing on House Bill 1498. Before we turn the microphone over to Chairman Hanna for discussion on this Bill, I'd like to have the members of the Committee and staff to identify themselves, starting with Donna Oberlander.

11

REPRESENTATIVE OBERLANDER: Donna Oberlander from Clarion and Armstrong Counties.

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REPRESENTATIVE METZGAR: Representative Carl Metzgar, Somerset and Bedford County.

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JOHN SCARPATO: John Scarpato; Committee staff with Representative Hess.

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MINORITY CHAIRMAN HESS: Dick Hess; Minority Chair, Republican side.

19

DESTINY ZEIDERS: Destiny Zeiders, Democratic staff of Representative Daley.

21

REPRESENTATIVE YUDICHAK: John Yudichak, Luzerne County.

23

REPRESENTATIVE LONGIETTI: Mark Longietti from Mercer County.

25

CHAIRMAN DALEY: I am Pete Daley from

1 Washington and Fayette Counties; and I'd ask that any
2 member or staff that would ask any questions, the
3 stenographer has told me by force of beating me to death
4 with a baseball bat, to please identify yourself before
5 you ask your question.

6 I'm going to thank everyone for taking the
7 time to come out this afternoon. I apologize for the
8 dress of certain people sitting in front of you. I've
9 been up many, many times as a former Democratic Chair of
10 the Ag Committee; and I decided to dress down today, and
11 unfortunately my colleagues didn't get the same memo.

12 We also have another gentleman from the
13 Legislature. Would you identify yourself?

14 REPRESENTATIVE FLECK: Representative Mike
15 Fleck; Blair, Huntingdon and Mifflin Counties or right
16 at the top of that ridge (indicating). How's that?

17 CHAIRMAN DALEY: That's great. Thanks,
18 Mike.

19 Chairman Hanna.

20 REPRESENTATIVE HANNA: Thank you, Chairman
21 Daley and Chairman Hess; and I thank all the members for
22 coming out today, and I really appreciate the
23 Committee's consideration of my bill. I appreciate you
24 coming to Ag Progress Days, as well. It gives me an
25 opportunity to be here today; because as I think some of

1 you know, the Ag Committee, which I have the honor of
2 chairing, had to cancel its hearing that was scheduled
3 for here tomorrow; so I appreciate you having this
4 hearing today so that I can enjoy my time here at Ag
5 Progress Days, as we all have to be back in Harrisburg
6 tomorrow.

7 My House Bill 1498 amends the Pennsylvania
8 Fair Dealership Law. The Fair Dealership Law was
9 enacted in 1987 to govern the relationship between
10 manufacturers and suppliers and their distributors or
11 dealers. House Bill 1498 was introduced --

12 (Loud buzzing noise in background.)

13 CHAIRMAN DALEY: Was that because you didn't
14 like what he was saying or --

15 (Chairman Daley speaking to the technical staff.)

16 REPRESENTATIVE HANNA: House Bill 1498 was
17 introduced to address the imbalance in the relationship
18 between the manufacturers and their dealers. In 1987,
19 Pennsylvania had 1500 dealers; today there are
20 approximately 500. Let me repeat that: In 1987, there
21 were 1500 dealers; today there are approximately 500.
22 That's not an accident; and, in fact, what it tells you
23 is that, in fact, we're losing dealers; and it's because
24 of the imbalance in the law when it comes to these
25 contracts between the manufacturers and the dealers.

1 What I'm asking you to do here in
2 Pennsylvania is not unique; it's happening all across
3 the country. Other states that have already done this
4 include Vermont, New York, Nebraska, Iowa, Wisconsin.
5 Think about some of those last ones that I mentioned
6 there: Iowa, Nebraska, Wisconsin; we're talking about
7 some of the biggest agriculture states in the Nation.

8 Just like Pennsylvania, agriculture's a huge
9 industry in these states; and the impact that this law
10 has on agriculture is phenomenal, and it's not a good
11 impact. And one of the things that you need to
12 understand about the imbalance is, it doesn't just
13 affect the dealers; it also affects the end-users, the
14 farmers.

15 When you have a reduction in the number of
16 dealers, you have a reduction in choice. When you have
17 an imbalance in the warranty provisions, you really
18 impact the farmers. When you require farmers, under the
19 warranty, to bring back a huge piece of equipment to the
20 dealership for warranty work, you are affecting that
21 farmer in financial ways that you can only imagine, when
22 you look at the size of some of the equipment that we're
23 talking about out here.

24 House Bill 1498 amends the Act to expand the
25 definition of equipment to include all-terrain vehicles,

1 golf, turf and grounds maintenance machinery that has
2 other types of equipment and accessories. It also
3 redefines supplier to include a distributor,
4 manufacturer or wholesaler of equipment, repair parts
5 and specialized repair tools. It allows the dealer to
6 terminate a dealer agreement with good cause. Now,
7 that's the key; this is the change in the law, the big
8 change in the law: allow a dealer to terminate a dealer
9 agreement with good cause. Establishing good cause
10 under this law is important. Prohibit a supplier from
11 cancelling or failing to renew a dealer agreement or
12 substantially changing the agreement without good cause.

13 There are still provisions in the original
14 Act that protect the suppliers; but when those
15 particular provisions don't apply for the termination of
16 the agreement, good cause under my amendment, would be
17 necessary; and that's the key element here. It defines
18 good cause, so the dealers are held to the same standard
19 as other dealers for the purposes of determining whether
20 a dealer is complying with the requirements of the
21 dealer agreement. And this way it creates an even
22 playing field for all dealers. It provides for the
23 repurchase of specialized support products that a
24 manufacturer requires: signage, data processing,
25 hardware and computer equipment.

1 House Bill 1498 does define violations under
2 the new law. Requiring a dealer to agree to relinquish
3 their rights under the Act would be against the law, and
4 this is important. Let me repeat that. Requiring a
5 dealer to agree to relinquish their rights under the
6 Act. Currently, a number of these agreements carry a
7 provision that requires the dealer to waive any
8 applicable state law that may protect the dealer; and my
9 amendment to this law would not allow such a provision.
10 It would refuse to allow dealers to sell -- it prohibits
11 suppliers from refusing to allow dealers to sell
12 competing equipment. Again, that's very important.

13 If you think about choice for the end-user,
14 for the farmer, oftentimes, we have dealers in remote
15 areas who are trying to offer a variety of equipment
16 from a variety of manufacturers; yet they're forced,
17 under some of these manufacturing agreements, to
18 terminate their relationship with some of the other
19 suppliers because of their exclusivity provisions; and
20 that would be illegal under my amendment.

21 My amendment would make it illegal to refuse
22 to allow a dealer to engage in other businesses. Right
23 now, there are often provisions that says that a dealer
24 cannot be engaged in other business, that he must be
25 solely involved in the business of marketing the

1 particular equipment that the manufacturer's supplying
2 under the agreement.

3 My amendment would make it illegal to refuse
4 to deliver equipment and supplies covered under the
5 agreement timely, with certain exceptions. It would
6 make it illegal to discriminate in filling orders, and
7 it would make it illegal to discriminate in the price of
8 equipment or repair parts without justification relating
9 to the cost of manufacturer's sale or delivery or if the
10 supplier acted in good-faith to meet an equally low
11 price of a competitor.

12 So what I'm trying to do with this is
13 balance the playing field. And let me go back to what I
14 started with. Currently, we're down to, approximately,
15 500 dealers across this state. As recently as 1987,
16 there were 1500 dealers. So the lack of choice that's
17 out there for the end-user, for the farmer, is dramatic;
18 and we really need the provisions of this law to protect
19 the dealers and to protect the end-users.

20 Thank you, Mr. Chairman, for allowing me to
21 testify on the Bill; and thank you again for considering
22 it. I'd be happy to answer any questions.

23 CHAIRMAN DALEY: Thank you, Chairman Hanna.
24 I'd like to acknowledge the presence, but I don't see
25 him right now, of Senator Brubaker. Well, he's just

1 standing outside; he's floating around, so he may be
2 back in; but I would like to acknowledge his presence.

3 Representative Oberlander, questions?

4 REPRESENTATIVE OBERLANDER: No.

5 CHAIRMAN DALEY: There's Senator Brubaker
6 (indicating), Ladies and Gentlemen.

7 Questions? Any questions? Chairman Hess.

8 MINORITY CHAIRMAN HESS: Mike, just a couple
9 questions. I've seen the Bill, and I haven't read it in
10 its totality, but just based on what --

11 (Microphone not working properly.)

12 MINORITY CHAIRMAN HESS: -- is the
13 heavy-construction equipment dealers included in this
14 Bill?

15 REPRESENTATIVE HANNA: The way it's
16 currently drafted, yes. The original Act, the
17 heavy-construction industry was involved in the original
18 Act; and under my amendment, they would remain included.
19 That's an issue that's been brought to our attention as
20 a result of your scheduling this hearing; it's an issue
21 that we're willing to look at further.

22 MINORITY CHAIRMAN HESS: And I would like to
23 speak with you and your staff, at some point, on that
24 particular issue. On the 1500 dealers down to 500
25 dealers, that wouldn't all be because of the -- I'm

1 trying to stay away from the mic., so I don't make so
2 much noise -- you said it was 1500 dealers, what, last
3 year, five years ago, ten years ago?

4 REPRESENTATIVE HANNA: 1987.

5 MINORITY CHAIRMAN HESS: That's quite
6 awhile. But the loss of the dealers, was that basically
7 on -- the company put them out of business, or did they
8 decide to sell the business; did they decide to retire?
9 Probably covering a lot of different reasons why they're
10 not in business, not simply because the company forced
11 them out.

12 REPRESENTATIVE HANNA: That would be
13 correct. But let me add that you're going to hear from
14 a number of dealers today -- on your agenda, you have a
15 number that are going to testify today; and they're
16 going to be able to relate to you some of the instances
17 of what has, essentially, forced them out of business.

18 Now, you know, there may be retirements; but
19 they may not be retirements that were necessarily when
20 people wanted to retire or how people wanted to retire.
21 There may have been sales, and they may have been sales
22 that were essentially forced because these agreements
23 just made it impossible for them to continue.

24 I mean, oftentimes, when you have a dealer
25 that is actually offering several different brands of

1 equipment and then he's told that under his agreement
2 there's an exclusivity provision and he has to get rid
3 of all the other equipment that he's offering made by a
4 different manufacturer, that dealer will ultimately sell
5 rather than go through that. So you've essentially
6 allowed them to continue, but continue under much
7 different financial circumstances for the dealer and
8 also much different circumstances for the end-user, the
9 farmer; you've reduced the choice when you have dealers
10 who can no longer carry all equipment.

11 So, Chairman Hess, I think that, to a
12 certain extent, there's a lot of factors that
13 contributed to the over a thousand dealerships being
14 lost over the course of the last twenty years; but I
15 think, to a great extent, it has been the imbalance in
16 the agreements, in the contract agreements, which are
17 pretty much handed to these dealers as take-it-
18 or-leave-it contracts when they want to get the
19 equipment that they would like to deal and sell in their
20 area.

21 MINORITY CHAIRMAN HESS: Thank you, Mike.

22 CHAIRMAN DALEY: Representative Longietti.

23 REPRESENTATIVE LONGIETTI: Thank you, Mr.

24 Chairman. And thank you, Chairman Hanna, for your

25 testimony and for introducing this Bill.

1 Just to clarify, you talked about the Good
2 Cause Provisions. I see that there are a couple of
3 amendments. One would be to allow a dealer to terminate
4 a dealer agreement with good cause, and the other one
5 relates to the supplier or the manufacturer. On the
6 dealer side, is there a definition of what good cause
7 is? And if not, generally, what is it that you envision
8 in this Bill to be good cause for a dealer to terminate
9 the dealer agreement?

10 REPRESENTATIVE HANNA: There is -- give me
11 one moment. On page 3 of the Bill, Section 3,
12 Subsection (c) says, "For the purpose of this Act, good
13 cause means the failure by a dealer to substantially
14 comply with the requirements imposed upon the dealer by
15 the dealer agreement, provided such requirements are not
16 different from requirements imposed on other similarly
17 situated dealers, either by their terms or in the manner
18 of their enforcement."

19 So, in essence, we're still protecting
20 manufacturers here because the agreement is being
21 enforced; but they have to be able to point to
22 something in that agreement as the good cause for the
23 termination of an agreement.

24 REPRESENTATIVE LONGIETTI: Okay. And I take
25 the last part of that to be that they can't necessarily

1 favor one dealer over the other so that the requirements
2 that are imposed upon the dealers need to be somewhat
3 uniform, at least the dealers that are similarly
4 situated.

5 REPRESENTATIVE HANNA: Exactly.

6 REPRESENTATIVE LONGIETTI: I wasn't sure on
7 3(a)1, whether -- it seems like the Good Cause Provision
8 is written more in terms of the seller or the
9 manufacturer terminating the agreement and not so much
10 the dealer terminating the agreement; and I didn't know
11 if I was missing something there or perhaps that's an
12 area to look at further.

13 REPRESENTATIVE HANNA: In Section 3,
14 letter A deals with the dealer in Subsection No. 1 and
15 with the supplier in Subsection No. 2; and the Good
16 Cause Requirement is imposed on the supplier in No. 2;
17 so there are provisions for how a dealer may terminate
18 with good cause, as well as a separate provision as to
19 how a supplier may terminate with good cause.

20 REPRESENTATIVE LONGIETTI: And I take it, in
21 general, part of the rationale for this legislation is
22 that there's an unequal bargaining position between some
23 of the dealers, perhaps, particularly smaller dealers
24 and rather large manufacturers. You and I both have law
25 degrees, and we've seen some contracts and agreements

1 where you read through it; and it seems to be, perhaps
2 there's an imbalance there, as you've described it;
3 because, perhaps, a manufacturer may have additional
4 bargaining power over a dealer when you get those
5 contracts. Is that, essentially, what you're looking
6 at?

7 REPRESENTATIVE HANNA: That is absolutely
8 what we're looking at. And in a lot of cases, these
9 contracts are presented to the potential dealer as a
10 take-it-or-leave-it option. And you or I, if we were
11 the attorney for the dealer, would be in a position of
12 making recommendations and comments about the contract
13 that the dealer may take back to the manufacturer and
14 simply be told, We don't care what your attorney says;
15 we're not changing our franchise agreement; we're not
16 changing our dealer agreement. It's a
17 take-it-or-leave-it proposition; if you want to sell our
18 product, you will do it according to our terms.

19 REPRESENTATIVE LONGIETTI: Thank you, Mr.
20 Chairman.

21 CHAIRMAN DALEY: Thank you, Representative
22 Longietti. Representative Metzgar.

23 REPRESENTATIVE METZGAR: This is a follow-up
24 to Chairman Hess' question. I know he posed the
25 question of whether industrial construction equipment

1 was included in --

2 CHAIRMAN DALEY: Carl, pull that microphone
3 a little closer, please.

4 REPRESENTATIVE METZGAR: Sorry. As a
5 follow-up to Chairman Hess' question about the
6 industrial construction equipment being included in the
7 Bill, it's my understanding that, according to your
8 definitions in Section 2, that industrial construction
9 equipment is specifically excluded from the provisions
10 of the Bill; however, you did insert light construction,
11 which I'm not sure if anyone really knows the difference
12 between industrial construction and light construction.
13 Is there a line in our specific equipment? Perhaps our
14 dealers can tell us a little bit better, but I'm
15 somewhat confused on that provision.

16 REPRESENTATIVE HANNA: Well, the existing
17 law does have it that it says the terms shall not
18 include equipment manufactured solely for the purpose of
19 industrial construction.

20 REPRESENTATIVE METZGAR: Correct.

21 REPRESENTATIVE HANNA: But there's also a
22 definition of supplier that says a distributor,
23 manufacturer or wholesaler of equipment, repair parts or
24 specialized repair tools, who enters into a dealer
25 agreement with a dealer. So in reading those together,

1 those two sections together, as well as the definition
2 of equipment, there certainly is, at least by
3 implication, the likelihood that some construction
4 equipment would be included, some construction
5 manufacturing equipment.

6 REPRESENTATIVE METZGAR: All right. Well,
7 would you then agree then that we could probably have an
8 issue with definition there?

9 REPRESENTATIVE HANNA: We may, and I'm
10 willing to look further at that. As I said to Chairman
11 Hess, we can look closely at that. My primary interest
12 is agriculture, and that's why I introduced the Bill.

13 REPRESENTATIVE METZGAR: Is it not your
14 intent then to include construction equipment at all?

15 REPRESENTATIVE HANNA: I'd be happy to
16 discuss that further with you. My focus has been on
17 agriculture, and I would like an opportunity to discuss
18 with you and discuss with some of the stakeholders how
19 broad our definition needs to be, how the act has
20 affected those in the construction industry since it was
21 first adopted in 1987 to the current time and whether or
22 not we have the same problems in the construction arena
23 that we are seeing in the agriculture arena. So I'm
24 open to that discussion; and as I indicated to Chairman
25 Hess and I'll likewise say to you, I'm happy to have

1 that discussion with you.

2 CHAIRMAN DALEY: Any other questions from
3 members of the Committee? And, Chairman Hanna, thank
4 you very much for your testimony. You're welcome to
5 join us at the rostrum head table and participate, if
6 you so desire.

7 REPRESENTATIVE HANNA: I appreciate the
8 offer, Chairman; but because of my change in schedule
9 for tomorrow, where I had planned to be here all day, I
10 have a number of other obligations here at Ag Progress
11 Days that I need to fulfill. I really appreciate you
12 considering the Bill, and I really appreciate your
13 questions; and I look forward to working with you on
14 moving this piece of legislation. I thank you very
15 much.

16 CHAIRMAN DALEY: Thank you, Chairman. The
17 next testifier will be my good friend, the Honorable
18 Dennis Wolf, Secretary of the Department of Agriculture.
19 While we're waiting for Secretary Wolf to come up front,
20 the Chair is in receipt of a letter dated August 17,
21 from Barry L. Engle, President and CEO of New Holland
22 Agricultural Equipment. I want to make sure that every
23 member of the Committee will be supplied a copy of this
24 letter and should be considered as part of this hearing
25 today.

1 Secretary Wolf.

2 DENNIS WOLF: Thank you, Chairman Daley.
3 It's a pleasure to be here. I'm going to keep my
4 remarks brief and also very general.

5 Chairman Hess, and members of the Commerce
6 Committee, it's good to see you at Ag Progress Days.
7 This is certainly one of the highlights of agriculture
8 every year. Some states have state fairs; we have Ag
9 Progress days and the Farm Show. One's usually the
10 hottest week of the year, and the other one's the
11 coldest week of the year. So kind of unique, but
12 certainly does a great job in terms of giving our
13 farmers the opportunity to come out and see new
14 equipment and new technology here at State College.

15 I reviewed the Bill; and just looking at
16 some of the general information, as I said, without
17 getting into great details, the concern I have is, and
18 being a farmer from northeastern Pennsylvania, I was in
19 an area where we had four or five equipment dealers
20 within five miles of the farm, and today we have none;
21 so I've experienced that and lived through that
22 transition and trend of less dealerships further away
23 from where the farming operation is, which certainly
24 creates some challenges in terms of servicing,
25 especially large equipment. However, I would say that

1 the large equipment dealers have done a great job with
2 overnight delivery and sending service trucks out; so
3 we've seen many changes in agriculture that way. But
4 certainly the 1500 down to 500 is concerning, because we
5 look at that as part of the infrastructure; and we know
6 one of the concerns we have in agriculture in some parts
7 of the State is when we see the deterioration of the
8 infrastructure, that's the beginning of the end of
9 agriculture in those areas, whether it's agronomy
10 centers, equipment dealers, in feed mills,
11 veterinarians, whatever it is. So any time that we see
12 that kind of a decrease, it raises a flag for us; it's a
13 concern.

14 We understand that this Bill takes a look at
15 a bill that's now 22 years old. I think that's always
16 good, looking at the year 2009, how that fits
17 agriculture and the needs of our farmers today, how
18 there may be some changes in there in terms of fairness,
19 how it defines and explains different parts of the
20 relationship and responsibilities of the manufacturers
21 and suppliers and the dealers here in Pennsylvania.

22 So we have 68 (sic.) farm families in
23 Pennsylvania that rely on the equipment dealers. We
24 think that competition is good. That's when we get a
25 little bit nervous about seeing those numbers decrease

1 from 1500 down to 500; it comes down to decisions that
2 are taken away from the farmers, such as choices that
3 they may make, competition that may be there to give
4 them an advantage, as well as service.

5 So with that, once again, we appreciate you
6 taking up this very important subject. It is great to
7 be here at Ag Progress Days with you, and I'm glad to
8 see such a good turnout. I'd be glad to answer any
9 questions, if I can.

10 CHAIRMAN DALEY: Thank you, Mr. Secretary.
11 We'll start down with Representative Longietti.

12 REPRESENTATIVE LONGIETTI: No questions.
13 Thank you.

14 CHAIRMAN DALEY: Representative Yudichak?

15 REPRESENTATIVE YUDICHAK: No questions.

16 CHAIRMAN DALEY: Representative Fleck?

17 REPRESENTATIVE FLECK: No.

18 CHAIRMAN DALEY: Chairman Hess?

19 MINORITY CHAIRMAN HESS: No.

20 CHAIRMAN DALEY: Representative Metzgar?

21 REPRESENTATIVE METZGAR: No, sir.

22 CHAIRMAN DALEY: Representative Oberlander?

23 REPRESENTATIVE OBERLANDER: I do have one.

24 Secretary Wolf, you said in your last comment there, 68
25 families that depend on these dealerships. Can you

1 explain that a little bit further?

2 DENNIS WOLF: 68,000 family farms in
3 Pennsylvania.

4 CHAIRMAN DALEY: Thank you. I missed those
5 three zeros.

6 DENNIS WOLF: Agriculture is still our
7 number one industry, especially when you kind of put an
8 umbrella over all facets of it; and it represents about
9 1 in 7 jobs and \$50 billion to our State's economy.

10 REPRESENTATIVE OBERLANDER: Thank you.

11 CHAIRMAN DALEY: Mr. Secretary, that's a
12 good sign. Seven years ago when you took over as the
13 Secretary, I think there were like 68,000 family farms
14 in Pennsylvania. Other states, I know it's dropping
15 very rapidly, especially in the midwest; and it's good
16 news to hear that we still have about 68,000 families
17 that earn their living from farms in Pennsylvania, and I
18 attribute a lot of that to your leadership and guidance
19 in the Department.

20 DENNIS WOLF: Well, I'd love to take the
21 credit but, you know, once again, we have a great
22 legislature that has been very supportive and put
23 programs in place that have really focused on trying to
24 maintain our number one industry.

25 CHAIRMAN DALEY: Well, we're going to give

1 you some credit, Secretary, because I've worked with you
2 for all those years, and I know the job you do. Thank
3 you very much.

4 DENNIS WOLF: Thank you.

5 CHAIRMAN DALEY: The next testifier will be
6 Joel Rotz. Joel is with the Pennsylvania Farm Bureau;
7 he is Government Relations Director.

8 CHAIRMAN DALEY: The reason why we closed
9 the curtain is that the stenographer's having a terrible
10 time hearing with the sound coming from the floor in the
11 arena area, so to speak, the main meeting room; so we're
12 just trying to deaden that sound so she won't have to
13 keep telling me to please speak up and use the
14 microphone.

15 Mr. Rotz. Good to see you.

16 JOEL ROTZ: Chairman Daley, glad to be here;
17 Chairman Hess; and it's good to see so many Committee
18 members show up today for this important issue.

19 I'm not going to add a lot to the record
20 today, but I do want to speak a little more on behalf of
21 the end-users, as we're being called here, the farmers,
22 certainly a great portion of the customers that these
23 equipment dealers are serving and certainly this issue
24 is impacting our members directly.

25 Maybe I should back up a little. I am Joel

1 Rotz. I'm State Governmental Relations Director for the
2 Pennsylvania Farm Bureau. We represent over 47,000
3 rural and farm families across the State. Our farmers
4 face a lot of risk in their business, as you know. We
5 always think of the weather being one of the primary
6 risks that they face; we think of the markets that swing
7 back and forth, and certainly if you have dairy
8 interests in your districts at home, you've been hearing
9 about how the markets are taking its toll on our dairy
10 industry; and certainly our dairy industry is the
11 backbone of our agricultural industry in this State, and
12 we're certainly very concerned that if milk prices don't
13 soon take a turn for the better, that that backbone is
14 going to be shattered.

15 I think one of the risks that our members
16 are facing right now is the one we're talking about
17 today, and that's the loss of the infrastructure that
18 support them out there across the State, and certainly
19 implement dealers are a big part of that infrastructure.
20 The more we lose the dealers, and we've already heard
21 the numbers from Representative Hanna; we've gone from
22 1500 down to 500 since 1987. That loses a lot of access
23 to sales, parts, and service on equipment that is
24 utilized on the farms essential to running a profitable
25 operation. When you have delays in planning and

1 harvesting of crops, it literally can mean tens of
2 thousands of dollars to the farmer. Equipment dealers
3 have disappeared and gone out of business over the
4 years, and farmers find themselves traveling further and
5 waiting longer to receive parts and service on their
6 equipment.

7 Many of our members, and the Secretary just
8 alluded to his situation in Columbia County, very
9 typical; many of our members that used to have several
10 choices within 15 to 20 minutes of their farming
11 operations are now telling me that they have to drive
12 two hours or more one way just to reach the nearest
13 service provider who will have the proper parts for the
14 repair that they need. This forces farmers to do many
15 things they don't like to do, and one of them is
16 carrying the inventories of parts on their farms that
17 they anticipate they may need. And when you talk about
18 situations like we're having right now with our dairies,
19 this is not a good time for farmers to be looking for
20 money to tie up in expensive parts and equipment to keep
21 handy in case they might need it. But that's what has
22 to be done in normal wear and tear of machinery that
23 they can try to anticipate, and obviously you can't
24 anticipate every need that you may have on the farm.
25 And those situations, of course, can be devastating when

1 a farmer has a major breakdown in the middle of a
2 planting or a harvest and he can no longer reach the
3 part he needs to get back in a few hours' time. That
4 situation calls for now they may have to contact the
5 nearest major implement dealer by phone and have a part
6 shipped, which can take days, and depending on where the
7 part has to be shipped, probably could take a week or
8 longer. And again, time truly is money in these
9 situations.

10 The other issue that pops up is the warranty
11 issues on new equipment. The further these dealers get
12 away from the farms -- and with the new agreements the
13 way they've been playing out, we're finding more and
14 more farmers are talking about the fact that they have
15 to pay for the transportation of the equipment back to
16 the dealer; and, of course, the further away the dealer
17 is, the more time and money that also takes.

18 Farmers don't always know and understand why
19 their local dealer goes out of business; so, you know,
20 much of what I'm testifying to, again, on behalf of the
21 end-user, we're depending on our dealers. You know, the
22 dealers are telling our farmers what it is they're
23 facing and the hard choices it's forcing them to make
24 that comes back to raise the cost on our members.

25 Farmers do understand the need for equipment

1 dealers to remain profitable, and it's our farmer
2 members' general understanding through their dealers
3 that requirements and restrictions and agreements with
4 equipment manufacturers are hindering their ability to
5 stay in business and provide needed services.

6 Pennsylvania Farm Bureau supports the
7 provisions of House Bill 1498 to amend the existing PA
8 Fair Dealership Law to provide the balance in fairness
9 in agreements between farm equipment dealers and
10 manufacturers that is needed for the dealers to remain
11 viable and profitable.

12 With that, I'll take any questions you may
13 have.

14 CHAIRMAN DALEY: Thank you very much, Joel.
15 Representative Oberlander?

16 REPRESENTATIVE OBERLANDER: No.

17 CHAIRMAN DALEY: Representative Metzgar?

18 REPRESENTATIVE METZGAR: Joel, I think I'm
19 probably fairly sensitive to this issue, myself having a
20 farm and having a hodgepodge of equipment, none of which
21 is in any great repair; and I've seen most of my dealers
22 go from 15 miles to 50-plus miles away from my farm.
23 And I'm very sympathetic to that, because I have to make
24 that trip myself. But we've also seen the same thing
25 occur with our car dealerships and many other of our

1 enterprises around the area.

2 Is there a particular reason, other than the
3 one that is most apparent to us, that this involves our
4 food supply, that we should focus on this alone?

5 JOEL ROTZ: Well, again, I think it really
6 does get into the backbone industry of our State in
7 that, as I said, it truly is tens of thousands of
8 dollars that it can cost a farmer to have equipment down
9 and can't get a fast repair. And I think what's been
10 really troubling to our members, as I talk to them about
11 this issue, is the concern that the local dealer that
12 may used to have been able to carry a variety of repairs
13 for a variety of equipment that's used on the farm is
14 being more and more restricted in doing that. And the
15 restriction may not be so much that, as I understand it,
16 that they just can't do it anymore; but if they're going
17 to do it, they have to have a certain volume of
18 equipment sold or parts that they have to have on
19 inventory that's cost prohibitive to the dealer
20 themselves. So instead of being able to run to the
21 local dealer and find repairs for a variety of equipment
22 that you may have on the farm, you now have to look for
23 the equipment dealer that specializes in that particular
24 brand of equipment that may not necessarily even be in
25 the State.

1 REPRESENTATIVE METZGAR: You say that
2 farmers, myself, we don't understand what makes our
3 dealer shut down. From your perspective, what is the
4 single biggest factor that makes our dealers close shop;
5 and does this Bill address that?

6 JOEL ROTZ: Well, again, I have to speak
7 about what our members' general understanding is through
8 talking to their dealers; and certainly this seems to be
9 a key issue, yes. That's not to say that every dealer
10 that's gone out of business in Pennsylvania is a direct
11 result of what's going on with these agreements, but
12 certainly it seems to be a leading factor.

13 REPRESENTATIVE METZGAR: Thank you, Joel.

14 CHAIRMAN DALEY: Thank you. Chairman Hess?

15 MINORITY CHAIRMAN HESS: No.

16 CHAIRMAN DALEY: Any other questions?

17 Joel, thank you very much for your testimony today.

18 JOEL ROTZ: I didn't know if Representative

19 --

20 CHAIRMAN DALEY: Mark, did you have a
21 question?

22 REPRESENTATIVE LONGIETTI: We're going to
23 hear, obviously, from the manufacturer side of the story
24 on this Bill; but I assume that, you know, trying to put
25 yourself in the shoes of the family farmer, that you're

1 really out there looking and saying, Well, what brand of
2 equipment should I buy? Because I am concerned that if
3 it's an exclusive arrangement, and it sounds like in
4 many cases it is today an exclusive arrangement, if my
5 dealer goes out of business, then, you know, how far am
6 I going to have to travel to address my warranty issues
7 or my repair issues? Is that some of the feedback that
8 you get is, that they're very concerned about who they
9 select?

10 JOEL ROTZ: Well, that can certainly be a
11 factor when you're looking at purchasing new equipment.
12 You're going to be looking at, okay, who can best serve
13 my farm operation? So you're not going to necessarily
14 buy green or red just because you like green or red.
15 But what I think you need to understand is, farmers,
16 particularly in an economy like we're having now,
17 farmers are not out there buying a lot of new paint;
18 they're trying to keep the old paint running, as we call
19 it, the old equipment. And the equipment that they used
20 to be able to go to the local dealer to get serviced and
21 no longer can, that becomes a real problem for them;
22 because they can't afford to go out and buy the color of
23 equipment that that dealer may now have to handle, need
24 to primarily handle.

25 REPRESENTATIVE LONGIETTI: And what you're

1 telling me is actually consistent with -- we had our
2 farm tour in Mercer County -- our legislative farm tour
3 on Friday and toured the Paxton Farm in Mercer County,
4 which is a dairy farm; and they basically said, We just
5 don't -- we don't buy new equipment; we just don't have
6 the wherewithal to do that, but they buy multiple pieces
7 of old equipment or used equipment because of, in part,
8 what we heard today about the repair issues and the
9 length of time it takes to perhaps bring it to the shop
10 for repair and get the repair done; and so they have
11 another piece of equipment waiting, or they have parts
12 available to try to repair it themselves.

13 Do you have any sense for how much -- you
14 know, who is buying the new equipment? Is it the larger
15 farms; is it the larger operations? And what percentage
16 of your membership is -- like in the case of the
17 Paxton's, pretty much exclusively buying used equipment;
18 do you have any sense for that?

19 JOEL ROTZ: Well, it's always hard to
20 generalize. But, certainly, I think it is true that
21 larger operations will tend to be buying more new
22 equipment than maybe smaller operations; however,
23 they're only able to do that when markets are favorable.
24 For instance, the dairy industry, you know, a year ago,
25 you would not have heard any complaints about the price

1 of milk on farms; and large dairy farms were doing quite
2 well, so were small dairy farms; but obviously if you're
3 large, you're rolling in more cash in a quicker term,
4 then you might have more ability to go out and buy the
5 new equipment. Right now, the larger farms are probably
6 losing -- well, they are losing more money than small
7 farms by the nature of the volume; so those large farms
8 are also not buying new equipment. But, generally,
9 yeah; it's the larger guys that will tend to buy the
10 newer stuff.

11 But the other factor that's out there that
12 we can't deny, Mr. Daley was talking about the -- how
13 incredible it was that we're holding our farm numbers so
14 well, and actually the latest Ag Census will show we've
15 gained farm numbers. What we're seeing, of course, is
16 more and more part-time, what we would refer to as
17 gentlemen-type farmers out there; and certainly those
18 folks are not making their primary income off the land
19 or off the farm. And if they have substantial off-farm
20 income, they also might be buying new equipment to do
21 their hobby-type farming; so they're certainly a big
22 factor in new equipment sales for dealers, I'm sure.

23 REPRESENTATIVE LONGIETTI: Thank you, Mr.
24 Chairman.

25 CHAIRMAN DALEY: I'd like to acknowledge the

1 presence of Representative Rick Mirabito. Thank you,
2 Joel, for your testimony.

3 JOEL ROTZ: Thank you.

4 CHAIRMAN DALEY: Do you have a question,
5 Rick?

6 REPRESENTATIVE MIRABITO: Not right now.

7 CHAIRMAN DALEY: Thank you. The next group
8 to testify will be the Northeast Equipment Dealers
9 Association: Tim Wentz, Field Director; Brad Finch,
10 Finch Services, Inc.; Jaye Meyers, retired, Meyers
11 Implement; and Ralph Perilli, M & R Power Equipment,
12 Inc.

13 You're all welcome to come to the table.
14 And identify yourselves before you begin. And hold on
15 one second; I want to make sure the stenographer's okay.

16 Are you Tim?

17 TIM WENTZ: Yes. Yes, sir. My name is Tim
18 Wentz. I live in Carlisle, Pennsylvania; and I serve as
19 the Field Director of the Northeast Equipment Dealers
20 Association. Chairman Daley, Chairman Hess, thank you
21 for the opportunity to provide testimony to the Commerce
22 Committee today. As I said, I work as a Field Director
23 for the Northeast Equipment Dealers Association. Such
24 businesses employ 10,000 individuals in Pennsylvania and
25 pay \$330 million in wages and compensation to

1 Commonwealth citizens. That's no small number,
2 especially in the current economic climate that we're
3 in.

4 Our membership fully supports House Bill
5 1498, as introduced by Representative Mike Hanna. This
6 Bill intends to update the Pennsylvania Fair Dealership
7 Law passed in 1987, as Act 86, and provide current
8 protections to ensure that the law will enable small
9 businesses to fairly operate, compete, and more
10 importantly, service Pennsylvanians, whether they be
11 homeowners, farmers, or contractors.

12 The dealers with me today will deliver
13 insight into the equipment industry of the 21st Century
14 and compelling reasons why House Bill 1498 should move
15 quickly through the legislative process. They will
16 focus on the inherent inequities of the franchised
17 equipment dealer, manufacturer, supplier relationship.

18 In the current industry climate, as it has
19 been said before today, there is no such thing as a
20 negotiated franchise agreement; but rather, they are
21 contracts of adhesion; they're offered to dealers on a
22 take-it-or-leave-it basis.

23 The next issue will be forced dealer purity.
24 When a manufacturer artificially inhibits competition,
25 the consumer is the one who loses. Fair competition

1 drives success. Without competition, consumers are
2 denied excellence through innovation, increased
3 performance, productivity, and most importantly,
4 reliability.

5 The last thing that we will address is fair
6 compensation for warranty parts and service work.
7 Dealers state that today they're lucky if they, after
8 expenses, receive 75 cents on the dollar for warranty,
9 product improvement, and safety campaigns required by
10 the manufacturer. Compensation for diagnostic time and
11 transportation costs desperately need addressed.

12 With me today are Mr. Ralph Perilli of M & R
13 Power in Hermitage, Pennsylvania; Mr. Jaye Meyers, a
14 retired dealer from Waynesboro, Pennsylvania; and Mr.
15 Brad Finch of Finch Services in Hanover, Pennsylvania.

16 A healthy and profitable dealer network
17 guarantees that Pennsylvanians will have access to
18 quality parts and service and, therefore, provide them
19 the maximum return on their machinery investment. Even
20 the very best machines fail. Our dealers keep them from
21 becoming worthless.

22 Again, we urge the timely passage of House
23 Bill 1498; and we appreciate the opportunity to present
24 today. We would gladly answer any of your questions.
25 The Northeast Equipment Dealers want to remain a vital

1 part of their community's landscape.

2 One final point: Our legislation is
3 strengthening and amending current law. It addresses
4 changes needed if that law is to continue to be
5 effective in the current economic climate and into the
6 future.

7 Thank you for the opportunity to appear
8 before the Committee and to explain our position and the
9 need for the passage of House Bill 1498. We have
10 prepared a one-page summary of our testimony for the
11 Committee's use and reference in the future.

12 CHAIRMAN DALEY: We'll make sure that one
13 page is given to Sandy Altland, the Committee Secretary,
14 who will, in turn, make sure that it's distributed to
15 all the members of the Committee.

16 TIM WENTZ: Yes, sir.

17 CHAIRMAN DALEY: Mr. Perilli, you may begin.
18 Slide the microphone down the table.

19 RALPH PERILLI: My name's Ralph Perilli,
20 and I want thank everyone involved in the creation of
21 this forum to discuss amending Pennsylvania Fair
22 Dealership Law, in particular, the revisions in House
23 Bill 1498.

24 I operate an equipment dealership that my
25 parents started in a small garage in 1967. I was 13

1 years old when I got my first job there as an
2 assemblyman putting together riding mowers that my
3 father sold to local customers. Today, we operate two
4 stores: the original in Mercer County, and a second
5 store in Butler County. Together, we employ 40-plus
6 coworkers with an annual payroll in excess of \$1.3
7 million.

8 My purpose today is primarily to point out
9 the core reasons that typical equipment dealers like
10 ourselves began and to highlight the guiding business
11 principles that allowed us to survive through decades
12 of numerous economic and market changes. Also, I want
13 to bring awareness to the new changes in manufacturers'
14 behavior that affect us at our operating core, that
15 break up our open-market approach in doing business and
16 may ultimately force small local dealerships like myself
17 out of business.

18 My parents began the business with a simple
19 desire to bring to our local market a product that made
20 life easier, a riding mower. The business model's even
21 simpler. If they could deliver and support affordable
22 products that add value to people's lives, then they
23 could create enough satisfied customers to grow a
24 business. I want to stress the word "value". My
25 parents realized, to succeed, it was all about being a

1 valued producer. To create value, they had to
2 constantly define the customers' needs and search out
3 the best solutions. Equipment solutions were supplied
4 by many manufacturers, and our business always
5 represented several brands to best serve those
6 customer's needs. They earned the customers' trust by
7 always recommending the best products for their needs.
8 They recommended and sold products that added value
9 because they worked for the customer rather than simply
10 selling a product brand.

11 I'm an advocate for free trade and favor
12 business practices that abide by the golden rule and
13 utilize traditional business ethics rather than relying
14 on government regulation. Ethical parity aligned the
15 way our business has governed itself over four decades
16 in our industry. Dealers and manufacturers agreed, in
17 principle, that everyone had to receive value to create
18 and grow the market for the products.

19 Years ago, we felt the need to come up with
20 a symbol to represent the value-based principles that
21 the business was founded on. We decided we needed
22 something to remind us of the principles in change and
23 always define what the business was about. Looking
24 deeply but simply, we came up with what we call the Five
25 C's: the customers, the coworkers, the corporate

1 manufacturers, the community, and lastly, but not least,
2 our company. This became our governing entity. The
3 customer, coworkers and company together guide us to
4 balance decisions day-to-day internally. The other two
5 C's, the corporate manufacturers and the community,
6 guide our long-term decision-making. We banded around
7 the five C's as the ultimate benefactor. The goal was
8 to equally create value for all five C's. This helped
9 define our responsibilities to each other and centered
10 the need to support each other.

11 All decision-making had to take into account
12 the effect it would have on each component of the five
13 C's. We realized we are in a partnership together and
14 that each needs the other to survive. This approach
15 created a team outlook and a team spirit amongst the
16 workers, vendors and customers alike.

17 We budget our charity giving, we plan our
18 orders, we negotiate our wages, we manage our price
19 structures all from the approach of how each detail
20 affects the complete package for all the players. It
21 worked for us in keeping the business in balance, but
22 today we have lost the ear of one of the C's; it's our
23 corporate business partners that have forgotten. We
24 keep reminding them of the Five C model and continue to
25 bring them back to the table; but each time, there's

1 less of an ear.

2 Today, manufacturers are attempting to
3 remove this core operating model that our customers have
4 come to trust in us by attempting to dictate what we
5 sell and what not to sell. In this environment, we will
6 lose on both ends. Selling by brand alone, we will lose
7 the customer's faith and trust in our creative equipment
8 solutions that is the foundation of our success.

9 Also, we will lose products and product
10 mixes that they have come to rely on. Our business
11 model, without the ability to provide a variety of
12 products or the ability to provide products to fill all
13 niches, will not survive. Our corporate manufacturers
14 no longer act like partners, but more like an adversary
15 that dictates our operation for their own ease and
16 short-term reward.

17 We find it hard to continue without all the
18 five C's holding up their end and being responsible for
19 the long-term health of the market as a whole.

20 Please help us keep the manufacturers accountable to a
21 free market and honest dealings where all five C's can
22 flourish. Manufacturers have got to stop undermining
23 dealer's core operating model, which is not conducive to
24 our customers' needs and the long-term market.

25 I thank you for your time and attention. I

1 hope you will support the amendments in House Bill 1498,
2 and I will address any questions that you may have at
3 this time.

4 CHAIRMAN DALEY: Without objection by the
5 members, we'll go down the list, unless someone has a
6 compelling question that they would like to ask.

7 Mr. Meyers.

8 JAYE MEYERS: My name is Jaye Meyers. I'm a
9 retired dealer from the Greencastle area. Tim said I
10 was from Waynesboro, but really I'm from Greencastle;
11 it's a lot better. I want to thank you for the
12 opportunity to speak to you today here.

13 Our family business operated in the
14 Greencastle area for over 70 years. I started working
15 at the business with my dad and my uncles when I was 17.
16 At 29, I bought the business and operated it for 36
17 years until 6 or 7 years ago when I sold it. We
18 continually employed 15 to 18 community people. Only
19 one time in my 36 years did I ever have to lay anybody
20 off for lack of work.

21 Long ago, an older gentleman told me
22 something that became my personal philosophy for the
23 business: If you don't make a profit, you can't take of
24 your customers. This would be a great disservice to
25 their confidence in you. Over the years, I really

1 enjoyed working with the manufacturing companies. We
2 obviously depended on each other; and I felt we tried to
3 treat each other fairly, not that we always agreed,
4 because we didn't. Today the relationship has changed.
5 Too many dealers are working in a hostile relationship
6 with their manufacturer or supplier, and I would like to
7 mention some unfair practices being forced on dealers;
8 namely, forced dealer purity and dealer succession
9 policy.

10 Every dealer knows that selling a few short
11 line items to supplement your major line is profitable,
12 plus it gives the customer some options and comparisons
13 at the point of purchase. By some contract standards,
14 no competing equipment dare be on the line.
15 What I can't understand is why the same manufacturers
16 are willing to place their equipment at Lowe's and Home
17 Depot side by side and interspersed with other
18 competitive brands.

19 I personally don't advocate dual franchising
20 of two major brands, but denying a dealer any outside
21 options is a bit narrow. In some contracts, the
22 manufacturers are requiring prior approval of the dealer
23 or stockholder to spend time or money other than for the
24 dealership, money which is already covered under the
25 personal guaranties. In my years as a bank director, I

1 never saw guaranties like the ones the manufacturers
2 use. Even with all the above, they want to deny the
3 dealer the right to local litigation.

4 Dealer succession: When my two sons
5 finished college, I wanted to bring them into the
6 business as stockholders. This was acceptable with both
7 manufacturers. After several years, the one
8 manufacturer came with an expanded line, which required
9 an additional contract. We applied and were approved.
10 Several days later, I received a call from the branch
11 manager asking if I would be available; they wanted to
12 talk with me. When they arrived, they stated they
13 wanted their price books back and that they had changed
14 their mind. I asked why. Their quote, If you have ten
15 pieces of equipment come due, you'll write a check for
16 it. We want dealers who can't write a check and will
17 need to dispose of it somehow and order ten more pieces
18 of equipment. They agreed I could continue selling the
19 original contract items, so long as I remained active
20 and owned over half the stock. My sons soon lost
21 interest in the prospect of something happening to me
22 and they would immediately lose fifty percent of their
23 earning ability. I continued to operate the business
24 until I sold. Today, the business sets there as an
25 empty shell. Today, our town of 5,000 people and the

1 area surrounding, is left without a farm equipment
2 dealer. Farmers don't have a place to get a piece of
3 steel or a heavy bolt. My company operated -- supported
4 community organizations and events; we supported several
5 little league teams and groups like 4-H and FFA. The
6 hardest thing for me personally is to attend community
7 events and have people confront me with the concerns of
8 what this has cost our community.

9 I would love today to be in business helping
10 my sons continue to serve our clientele; but a
11 nonnegotiable stance of a major supplier made it
12 impossible. Please help ensure that family business
13 owners like me can successfully transition dealerships
14 for the next generation.

15 There's enough artillery in the
16 manufacturers' contracts that I fully believe that they
17 can find some reason to terminate any dealer in the
18 State. Help level the playing field by passing House
19 Bill 1498. Thank you, gentlemen. And if you have any
20 questions later, I'll take those.

21 CHAIRMAN DALEY: And lady.

22 JAYE MEYERS: And lady, yes.

23 CHAIRMAN DALEY: Thank you. Mr. Myers,
24 thank you very much.

25 Mr. Finch.

1 BRAD FINCH: Thank you, Chairman Daley. I
2 thank the Committee for allowing us the opportunity here
3 on behalf of the Pennsylvania Equipment Dealers
4 Association.

5 Two specific issues that I'm going to be
6 talking about. First is warranty; and that will be
7 warranty work, product improvements, product recalls and
8 upgrade programs. I'm going to refer to those
9 collectively as warranty. The second issue is
10 dealer/manufacturer conflict resolution through forced
11 arbitration, denying equipment dealers a Constitutional
12 right to a trial by jury.

13 To fully explain the warranty issue, I want
14 to clarify a misperception. The public perception is
15 that dealers are reimbursed by the manufacturers a
16 hundred percent for the repairs to make whole the cost
17 to perform the work. This is not reality, nor is it
18 true.

19 In order to correct the warranty concern,
20 dealers are asking for these specific items: To be
21 compensated in a timely manner, to be compensated for
22 diagnostic time, to be compensated for actual time it
23 takes to do the repair, to be compensated for
24 transportation time to and from the customer, to be
25 allowed a small percentage over the cost of the parts

1 needed and the freight to absorb those costs to acquire
2 the parts needed for the warranty repair. HB 1498 would
3 address all of these issues. Dealers have lost money on
4 warranty repairs; and for decades, equipment dealers
5 have been trying to negotiate fair and equitable
6 treatment from equipment suppliers. Unfortunately,
7 contracts of adhesion protect and foster no-choice
8 options on behalf of the dealers and condone a
9 take-it-or-leave-it attitude by suppliers.

10 The health and sustainability of the
11 Pennsylvania Equipment Dealers is at risk now more so
12 than ever in our history, because costs to service our
13 customers are at an all-time high. Several factors that
14 are influencing those costs are the entry of a lot of
15 major suppliers into the national box store chain, such
16 as Home Depot, Lowe's and the like and the subsequent
17 requirement that dealers handle warranty repairs and the
18 service and parts associated with those warranty
19 repairs.

20 As was testified by Joel and others, the
21 distance to travel to do warranty repairs has become a
22 significant cost for us today. Most manufacturers offer
23 customers unconditional return policies with which the
24 dealer must comply with; we don't have a choice in that.
25 Many manufacturers sell products directly online to

1 customers, cutting the dealer out of the sale but
2 requiring him to handle the warranty issues and the
3 warranty failures. All manufacturers are changing
4 design and model configurations at a record pace, at an
5 all-time pace, typically, 2 to 3 years today versus 8 to
6 10 in the past. Products are being overengineered;
7 consequently, quality and materials and workmanship are
8 diminished. Customer expectations and product life
9 cycles have become significantly reduced.

10 Currently, there are no lemon laws
11 protecting Pennsylvania consumers for the products our
12 industry sells. Many manufacturers do not have
13 mandatory recalls. Often, instead of recalling all of
14 the models, they will only authorize warranty on a
15 fix-as-fail basis. Consequently, timely repairs for
16 customers rarely occur; and as a result, customer
17 relations with the dealers deteriorate. Fix-as-fail
18 programs are a standard practice by manufacturers and
19 suppliers.

20 Case in point, just a few years ago, one of
21 the largest commercial and compact equipment
22 manufacturers in the country introduced a new line of
23 products. From the factory, these products had inherent
24 design and engineering flaws. We sold 107 of them; 63
25 of those had warranty failures; many were multiple

1 failures on the same components. That's a 59-percent
2 failure rate. I can guarantee you, and I know for a
3 fact, that many Pennsylvania dealers experienced a
4 hundred percent failures on those products. Across the
5 State, for a period of four years, dealers and its
6 employees were put at odds with our customers. All
7 attempts by the manufacturer to remedy the problem with
8 field modifications, product improvements, and updated
9 parts never resolved the product deficiencies nor took
10 care of our customers.

11 Through this four-year period, every dealer
12 across the State did everything they could to take care
13 of the customers. In many cases, negotiations boiled
14 down to convincing the customers not to litigate against
15 a dealer. As a result, we no longer do a significant
16 amount of business with any of those 107 customers; and
17 for four years later, a bumper-to-bumper, completely
18 redesigned product ended up becoming the fix.

19 In summary, we're only asking that the
20 manufacturers and suppliers pay us in a timely manner
21 like we are required to pay them. We're not asking for
22 our truck fleets to be paid for. What we're asking for
23 is small compensation for the time it takes to pick up
24 and deliver back to the customer an expected service
25 from an authorized dealer. We're not asking for

1 full-list price on warranty parts, but are asking for
2 the cost of the freight and a mere 20 percent over the
3 cost of the parts. Statewide, the total dealer
4 investment to support manufacturers' warranty costs
5 millions of dollars annually. That's in the State of
6 Pennsylvania; that doesn't include any other state.
7 That is in the State of Pennsylvania.

8 A few small compromises addressed in
9 HB 1498 will allow dealers to support our equipment
10 providers products and to ensure the health and safety
11 of all our mutual customers. Arbitration: Very simple;
12 couple of sentences. Current franchise agreements force
13 dealers to resolve conflicts with manufacturers to
14 binding arbitration, requiring them to waive a trial by
15 a jury. This is contrary to the fundamental principles
16 set forth by our founding fathers and the authority
17 given by the United States Constitution and our Bill of
18 Rights, which says a trial by a jury shall be preserved.

19 Bottom line: Very simple; it's illegal to
20 force dealers into those kinds of agreements. In
21 conclusion, you may be assured that the few things we
22 are asking for have nothing to do with self/personal
23 gain; but everything we are asking for is about
24 honorable partnerships, jobs for our employees, consumer
25 protection from antitrusts, and the sustainability of

1 healthy and vibrant communities.

2 I wish I was not able to draw comparisons
3 between the demise of the auto industry to what
4 equipment dealers are experiencing today.
5 Unfortunately, the reality is, these comparisons mirror
6 their fate.

7 Currently, as Representative Hanna
8 mentioned, there's 32 states across the country that
9 have dealer protection laws on the books; and in the
10 past four years, many of those are either in the process
11 or already have amended bills to address these franchise
12 agreements.

13 We please ask you to pass HB 1498. I'd like
14 to thank you for the opportunity to be before you. Do
15 we have any questions?

16 CHAIRMAN DALEY: Thank you, Mr. Finch.
17 Representative Oberlander?

18 REPRESENTATIVE OBERLANDER: No. Thank you.

19 CHAIRMAN DALEY: Representative Metzgar?

20 REPRESENTATIVE METZGAR: Just two quick
21 things. Number one, I wanted to thank Mr. Meyers for
22 pointing out the issue of succession. I didn't have any
23 idea about it, and I noticed that my reading of the Bill
24 doesn't have any response for that, to that particular
25 issue, and I look forward to working on that. The

1 second thing is, the entire panel, I note that you all
2 mentioned contracts of adhesion with the dealers. Have
3 you seen a marked change in the actual contracts with
4 the dealers, or has something else changed to make the
5 contracts unacceptable?

6 TIM WENTZ: Within the last five years,
7 every major manufacturer has issued a new franchise
8 agreement to all their dealers; and so, you know, it
9 really doesn't matter what color you pick; they've all
10 gone to a markedly more adverse franchise agreement, and
11 it's brutal. I mean, any reasonable -- I think the
12 thing that you have to understand is that, you know,
13 I've heard it said, Well, why not just not sign it? But
14 what's important, I think, to understand is that, you
15 know, these guys have invested their lives (indicating),
16 their parents' lives, their kids' livelihood; you can't
17 walk away from that. They've invested their whole life
18 in this equipment dealership, and the manufacturers come
19 in and they give them a contract and they say, This is
20 it; and, you know, take it or leave it. They have \$3
21 million in their building. What are you going to do?

22 REPRESENTATIVE METZGAR: Thank you.

23 CHAIRMAN DALEY: Chairman Hess?

24 MINORITY CHAIRMAN HESS: Yeah, just a few.
25 You mentioned them selling online. Are a lot of the

1 equipment manufactures selling the equipment and/or just
2 parts online?

3 BRAD FINCH: Some of the manufacturers are
4 selling equipment online. They pay the dealers an
5 additive to hand over a situation, which is -- it's a
6 losing proposition for the equipment dealers to do that.

7 MINORITY CHAIRMAN HESS: If they was to
8 sell, say, an axle for a tractor online, right from the
9 manufacturer and you were selling an axle, would the
10 prices be comparable or they undercutting you in price,
11 or are they selling it for the same comparable price
12 you're selling it for?

13 BRAD FINCH: You're referring to a part, and
14 I'm not -- I can't speak to that, specifically, other
15 than, yes, if there was an opportunity on a whole
16 product, which is what they do today, that whole product
17 is being sold less than we can afford to sell it for,
18 just as the Home Depots and the TSE's and the Lowe's and
19 so forth; those products are not sold at prices that we
20 can live with as dealers.

21 MINORITY CHAIRMAN HESS: Thank you very
22 much.

23 CHAIRMAN DALEY: Destiny Zeiders?

24 DESTINY ZEIDERS: No.

25 CHAIRMAN DALEY: Representative Fleck?

1 REPRESENTATIVE FLECK: No.

2 CHAIRMAN DALEY: Represent Mirabito?

3 REPRESENTATIVE MIRABITO: Are you required
4 to do the warranty work for Lowe's and Home Depot? Is
5 it your experience that the products that they are
6 selling -- I know with some products that they sell,
7 they make it a lower-grade product to match the price
8 point they want. So, for example, on a mower, they may
9 use a thinner grade of metal. Is that your experience,
10 that the products are different that you see coming in?

11 RALPH PERILLI: Yeah, those products are
12 thinner and lower grade and they're offered to us, also,
13 to sell simultaneously. Part of it -- the whole thing
14 was for us, you know, over the years, you know, and what
15 I was speaking about, our partnership with everybody.
16 These -- the manufacturers requested us to upgrade and
17 service products and, you know, constantly reinforce the
18 idea that they were going to be marketed through us;
19 therefore, because they're exclusively marketed through
20 us, you need to build a new building, you need to add
21 these extra service parts and inventory, build service
22 trucks and create, you know, higher models and high
23 standards. So part of that was is the switching of
24 gears all the time. So in my case, we actually went to
25 a -- built a brand-new facility; and we built it

1 basically for them, for the future model that we had
2 both agreed on. And it wasn't very shortly thereafter
3 that then they said, These products are -- now, you
4 can't sell nothing but this; but then they take that
5 product and put it with the same products maybe some of
6 us were selling in another store, but yet we're not
7 allowed to do that.

8 And then it even got to the point where,
9 yes, they wanted us to volunteer to do the warranty
10 work; they didn't make it mandatory. But they asked us,
11 Okay, now that we're putting them in all these stores --
12 we were left out of the loop now, so we almost had to go
13 service them and not get paid for most of the warranty
14 work. But the real threat came in -- is when we built
15 that new facility, they would come in and say, Hey, you
16 got a new -- they would use the contract, nuts and bolts
17 of it, and say, You changed locations; you have to sign
18 a new agreement. We're not signing it unless you get
19 rid of all these other things and threaten us, and those
20 are the kind of behind-the-scenes things that are
21 happening over and over and over again, that we almost
22 don't know which way to jump next.

23 REPRESENTATIVE MIRABITO: Can you expand on
24 the succession problem? Was it a question of them not
25 having faith in your sons' ability to maintain the

1 business, or was it that they were looking for a reason
2 to try to squeeze you out?

3 JAYE MEYERS: We signed on with this company
4 in about 1942 or 3, my dad did; and during the War,
5 every -- in the wintertime, he'd take a load of
6 Mennonite boys down to the factory; and they would build
7 equipment, which we got some rationed out of that. But
8 as far as my boys, my boys -- the one has graduated from
9 American University in International Business and
10 Finance, and is very qualified; the other boy, I think,
11 graduated in History; but the boys could have done well,
12 and I would have loved to have been there to help them.
13 But they put dealers on either side of me, younger guys;
14 and that was, I think, their main calling, that they
15 wanted to -- they didn't want me there being financially
16 able to do as I said, pay for the equipment if it came
17 due; they wanted somebody that had to get rid of the
18 equipment that was not able to do that. And that was
19 their -- the only reason they give me that they would
20 not continue with us in succession. There was nothing
21 ever said that the boys didn't fit the bill or anything;
22 it was that -- that was the reasoning, and then the boys
23 lost interest then.

24 CHAIRMAN DALEY: Thank you. Representative
25 Longietti?

1 REPRESENTATIVE LONGIETTI: Thank you, Mr.
2 Chairman, and thank you to the panel for your testimony
3 and your stories of your businesses; and I want to
4 particularly recognize Mr. Perilli who's from my
5 legislative district; we've known each other. It's a
6 well-established business; it's respected in the
7 community, and I know in your Five C's, community is a
8 big part of that because you're a community player; we
9 want to see you continue to be able to succeed. We
10 appreciate your driving the three hours out here to
11 State College to testify on this important Bill.

12 One area I was a little bit curious, on the
13 warranty work, you hear out there that if you're an auto
14 dealer, that the bulk of the money that they make is on
15 repair work; and it sounds like that's not so much true
16 in your business, and it almost sounds like in many
17 cases that you're losing money. Could you talk a little
18 bit more about that? It seems the inverse of the model
19 of the auto dealer.

20 BRAD FINCH: To clarify, I have personal
21 friends in the automobile business, large dealerships,
22 that are still, fortunately, in business today. Those
23 guys, it's a break-even business, nothing but a
24 break-even proposition for them, for as long as they've
25 had warranty. For us, it's an extremely losing

1 proposition because we have hundreds of thousands of
2 dollars invested in transportation equipment. Distances
3 are further apart from where we sell equipment today, so
4 our costs associated with handling warranty is
5 significantly higher than the automobile industry.
6 Typically, the auto business has one tow truck if they
7 get in a bind or they sub that work out. Transportation
8 trailers and trucks range anywhere from a truck and
9 trailer to a \$50,000 investment up to a quarter million
10 dollar investment; and there's multiple of those in most
11 dealerships.

12 REPRESENTATIVE LONGIETTI: So a good part of
13 the issue with warranty repair work is that the
14 transportation costs that you have to go to the
15 end-user, pick that equipment up, bring it back; the
16 manufacturer doesn't compensate you for that time and I
17 guess either you're not able to charge the end-user or
18 it's noncompetitive to charge the end-user for that
19 transportation?

20 TIM WENTZ: Representative Longietti, the
21 equipment dealers pay on warranty repair work according
22 to a flat rate manual; and so, in other words, you could
23 have, let's just take a simple lawn mower, and the
24 spring on the carburetor, you know, breaks. Okay?
25 Well, you have to talk to that customer because they

1 have a problem, the lawn mower broke; so you have to
2 negotiate with the customer, bring that equipment in,
3 figure out what's wrong; you don't get paid for that
4 time, order the part, receive the part, and then install
5 it on the machine. The equipment dealers get paid for
6 simply replacing that spring on the carburetor and the
7 spring, so they could conceivably have three hours in a
8 repair that they get \$15 worth of flat-rate labor on.

9 REPRESENTATIVE LONGIETTI: Understood.
10 Thank you, Mr. Chairman.

11 CHAIRMAN DALEY: Thank you, Representative
12 Longietti.

13 I have a severe problem with franchise
14 agreements in Pennsylvania, across the board. Our
15 franchise law is vague and almost really doesn't exist,
16 as opposed to other states. I'm concerned about them
17 dropping a new franchise agreement on you. When you
18 sign a franchise agreement, do you do multiple years,
19 like a five year but three five-year agreements; or do
20 you just do one franchise agreement, and is that usually
21 for a duration period of time? But, nevertheless, they
22 have the opportunity under their agreements that they
23 can change that agreement at any time, even if you sign
24 the franchise agreement? I think -- I don't know if you
25 had mentioned, Mr. Perilli, that they had done a new

1 agreement for you; is that how that worked, or they just
2 dropped one on you?

3 RALPH PERILLI: They -- yeah, to my
4 surprise, we had talked about building a new facility,
5 picking a location in which they were involved in; never
6 mentioned anything, and I didn't read the agreement.
7 But somewhere in there, as soon as you change locations,
8 you have to have a new agreement signed, put the new
9 address in; and we thought it was simple as that. Well,
10 they used it against us to try to say that, No, there's
11 not going to be a new agreement signed until you do get
12 rid of this line and do all these other things the way
13 we want to do it.

14 Now, ultimately, after we all had blood
15 under our fingernails, they signed it; but it was a
16 pretty scary situation, and we actually had to abandon
17 the whole idea of ever signing the contract and starting
18 all over again with a brand-new building going up.

19 CHAIRMAN DALEY: One of the big problems,
20 most people don't realize that when you sign a franchise
21 agreement with a large company, be it a manufacturer of
22 McDonald's or Quizno's, for example, that you enter into
23 an agreement usually, which is multiple pages, written
24 in legalese, written in such a way that it's so hard to
25 understand, that even attorneys that I know don't

1 understand them. There are form agreements for
2 conflicts, like you said, that relegate you to an
3 arbitration or a mediation process as opposed to a due
4 process through the courts. Also, in many cases, and I
5 don't know if any of your agreements do this, that it
6 also relegates you to a home forum of the manufacturer
7 or the franchisor. Therefore, instead of you fighting
8 here in Mercer County or Centre County or Washington
9 County, you'll be fighting in a federal court somewhere
10 in another state; and usually, and I have had the
11 pleasure of being in federal court as a litigator
12 regarding a franchisee before a federal court in
13 Colorado. And believe me, the judge was a homer; and
14 you know what a homer is, he cares about that
15 manufacturer in Colorado.

16 So I understand what you're going through
17 vaguely, specifically, although it's another type of
18 entrepreneurial adventure, to say the least; but I think
19 that the franchise aspect is so crucial to look at, not
20 only in your situation but all of franchising in
21 Pennsylvania; but there are other problems that I know
22 you're specifically trying to deal with.

23 If there are no other questions, I want to
24 thank the panel for your participation; and thank you;
25 it was good to see you again.

1 The last person to testify is Penn Ag
2 Industries Association, Christian Herr, who's not here;
3 but he has sent Jennifer Reed-Harry to provide brief
4 testimony, 35-page testimony; it's double spaced, but I
5 think it's only a few pages. And, Jennifer, thank you
6 for your coming today. Our last testifier is the
7 Association of Equipment Manufacturers, Dan Meeder; he's
8 not going to be in attendance. We do have the letter
9 from New Holland, which is supposed to exchange his
10 testimony in order to provide that letter to all the
11 members.

12 I also want to acknowledge former Secretary
13 of Agriculture, Boyd Woelfel's (phonetic) here; I think
14 he went out the side door, and also the Executive
15 Director of the Senate Ag Committee, Miss Kristin
16 Crawford, who is sitting in the back row; she's giving
17 me one of these (indicating) signs, so I didn't say that
18 she was here; but I do see you smiling back there; I'm
19 sure you're texting someone about the budget that we're
20 going to pass.

21 Jennifer, please testify before we're all in
22 trouble.

23 JENNIFER REID-HARRY: Mr. Chairman, and
24 Committee members, thank you for the opportunity to
25 provide testimony. I am Jennifer Reed-Harry with PennAg

1 Industries Association. PennAg Industries Association
2 supports House Bill 1498 introduced by Representative
3 Hanna. In particular, we are pleased to see the
4 terminology and definitions of equipment expanded to
5 reflect the variety of items used within agriculture.

6 House Bill 1498 goes into great detail on
7 what is and is not permitted within the Fair Dealership
8 Act. PennAg supports the clarity and detail provided
9 with the proposed amendment.

10 Suppliers and dealers have been at odds in
11 the past and need clear language that outlines how each
12 can operate in a manner that is mutually beneficial
13 without restricting the spirit of the entrepreneur, nor
14 hindering a dealer's ability to provide a variety of
15 services to his or her customers and ultimately
16 providing the consumer with the best price, service, and
17 products.

18 It is legislation such as House Bill 1498
19 that will help agriculture prosper for years to come.

20 Thank you.

21 CHAIRMAN DALEY: Thank you. Questions from
22 the panel? Representative Longietti?

23 REPRESENTATIVE LONGIETTI: No questions.

24 CHAIRMAN DALEY: Representative Mirabito?

25 REPRESENTATIVE MIRABITO: No questions.

1 CHAIRMAN DALEY: Representative Fleck?

2 REPRESENTATIVE FLECK: No.

3 CHAIRMAN DALEY: Destiny Zeiders?

4 DESTINY ZEIDERS: No.

5 CHAIRMAN DALEY: Chairman Hess?

6 MINORITY CHAIRMAN HESS: No, sir.

7 CHAIRMAN DALEY: John?

8 JOHN TORQUATO: No.

9 CHAIRMAN DALEY: Representative Metzgar?

10 REPRESENTATIVE METZGAR: No, sir.

11 CHAIRMAN DALEY: Representative Oberlander?

12 REPRESENTATIVE OBERLANDER: No. Thank you.

13 CHAIRMAN DALEY: Thank you for your
14 testimony, brief as it was. I thought you had more
15 pages than that. I want to thank everyone for their
16 attendance today. It is 5:05, and this Commerce
17 Committee is adjourned.

18 (Whereupon, the hearing concluded.)

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CERTIFICATE

I hereby certify that the proceedings and evidence are contained fully and accurately in the notes taken by me on the within proceedings and that this is a correct transcript of the same.

Tracy L. Markle,
Court Reporter/Notary