



GENERAL COUNSEL CORNER

By Peter H. Gunst, Esquire

The Right to Attorney Fees Under the PMPA – Real or Illusory?

On its face, the Petroleum Marketing Practices Act mandates that any dealer who “prevails in any action” brought under the Act “shall be entitled,” among other things, “to reasonable attorney and expert witness fees” to be paid by the defendant supplier.

Given the huge economic disparity that almost always prevails between supplier and dealer, the PMPA’s provision of attorney fees is critical to the statutory scheme. Many if not most dealers could not afford to assert their rights under the Act, without assurance that their attorney fees would be paid in the event that their challenge proved successful.

Another important component of the PMPA is the preliminary injunction provision, which permits a dealer to seek to bar his or her supplier from effecting termination or non-renewal during the pendency of the dealer’s lawsuit. Without a preliminary injunction, the dealer’s business will be destroyed long before the claimed violation of the Act can be adjudicated at trial.

Because of the importance of the preliminary injunction phase of PMPA litigation, an action brought under the Act is peculiarly “front-loaded”. Early and expensive discovery and briefing is usually required to prepare adequately for the all-important preliminary injunction hearing.

Indeed, it is not unusual for the preliminary injunction hearing to be dispositive of the entire litigation. If the supplier loses, it quite often will fold its hand and abandon its termination or non-renewal effort.

Two federal court decisions entered in September of this year interpret the attorney fee provision of the Act in the context of a dealer’s pursuit of injunctive relief against termination.

In *Pruitt v. New England Petroleum Limited Partnership*, decided by the federal district court in Connecticut, the dealer demonstrated at a bench trial that his supplier had failed to provide him with sufficient notice of termination as required by the PMPA.

Shortly after the trial he voluntarily abandoned his franchise. His supplier contended that he never actually intended to continue to operate his station, citing his limited hours of operation both before bringing his suit and during the pendency of the litigation.

Given that the dealer had no real intention of ever utilizing the injunctive relief that he sought, his supplier argued, he should not be entitled to collect attorney fees under the Act.

The court disagreed. It held that because the dealer “brought suit alleging that his rights under the PMPA had been violated, and succeeded in vindicating their claim,” he was entitled to recover

his reasonable attorney fees. His “manner of operating his franchise, subjective intent in bringing this lawsuit, and decision to voluntarily surrender the franchise after trial,” said the court, were “all irrelevant.” Rather, the Act created a clear right that the court was bound to enforce.

Compare that decision with *Yousuf v. Motiva Enterprises, LLC*, decided by the Fifth Circuit Court of Appeals. In that action, a dealer facing termination sued for preliminary and permanent injunctive relief under the PMPA.

During the course of discovery leading up to the preliminary injunction hearing, the supplier – presumably to avoid an adverse ruling at the hearing on the dealer’s preliminary injunction motion – agreed to the entry of a consent judgment ordering that the dealer’s franchise continue in force pending a final trial on the merits. The litigation was rendered moot, however, when the dealer’s station was destroyed by Hurricane Katrina.

Affirming the district court’s complete denial of attorney fees to the dealer, the Fifth Circuit Court of Appeals emphasized that no judicial determination had been made concerning the validity of the dealer’s claim. For that reason, the court concluded, it could not be said that the dealer had “prevailed” within the meaning of the Act.

Indeed, the court questioned whether the dealer would have been entitled to an award of attorney fees even if the court had decided after a hearing to enter a preliminary injunction prior to the station’s destruction. This was so, said

the court, because the legal standard for entering a preliminary injunction under the PMPA is looser than that applied at a final trial on the merits, and also because a preliminary injunction simply maintains the status quo between the parties pending a trial on the merits.

Not voiced by the appeals court, but considered by the lower court, was an additional concern that an award of attorney fees in the context of a consent agreement might discourage suppliers from entering voluntarily into such interim arrangements.

Generally, federal courts will do all that they can to lighten their dockets by encouraging accommodations between the parties. By encouraging suppliers to enter into consent orders through the removal of the sanction of attorney fees, a court might reduce its obligation to conduct arduous preliminary injunction hearings.

Ironically, the opposite may be true. If attorney fees are not available unless a final judgment on the merits is achieved, a dealer may be left with no alternative other than to fight out his or her litigation to the bitter end, through a preliminary injunction hearing followed by a full trial on the merits.

pgunst@agtlawyers.com

To access the latest articles by the Service Station Dealer’s legal counsel, please visit the “Service Station Dealers: Legal Issues” section of the Astrachan Gunst & Thomas P.C. website at: <http://www.agtlawyers.com/resources/petroleum.html>.