



General Counsel Corner

By Peter H. Gunst, Esquire

Recent Developments

Dennis DeCota, Executive Director of the California Service Station and Automotive Repair Association, forwarded an article about a recent jury verdict in California state court.

In *Valu Gas v. Equilon Enterprises*, twelve southern California Shell dealers sued Equilon charging that it had intentionally misled them about their right to appeal high rent increases on their stations. A jury awarded them five and a half million dollars in actual damages and a whopping 66 million dollars in punitive damages.

Equilon can, of course, attack the verdict both in post trial motions and on appeal. Whether such attacks will be successful is impossible to say.

Significantly, this is just one of a series of recent verdicts punishing oil companies for unfair pricing policies, where the oil companies were charged with attempting to use high prices as part of a scheme to force out independent dealers, and convert their stations to company-operation.

Earlier decisions include *Mathis v. Exxon*, in which a federal appeals court earlier this year upheld an eight million dollar jury verdict in favor of a group of Texas dealers who had complained that Exxon was setting its wholesale prices at uncompetitive levels to drive them out of business, and the national class action lawsuit proceeding in Florida, *Allapattah Services v. Exxon*, where a jury found that Exxon had engaged in unfair pricing

policies in part to weed out its "non-keeper" dealers.

These cases reached a sympathetic ear — the jury — because they were simply good old-fashioned breach of contract claims. If the dealers instead had attempted to assert federal statutory claims under the Petroleum Marketing Practices Act, they might never have reached a jury.

The dealers in *Valu Gas v. Equilon Enterprises* could have couched their claims under the PMPA. This appears clear from the news article of their victory, in which one dealer was quoted as saying that Equilon had sought to convert his station to company-operation.

The dealers could have complained that Shell was attempting to "constructively terminate" their independent franchises, arguably a PMPA violation. Such a charge, however, might well have been heard by a judge and not by a jury.

In *Chevron USA v. El-Khoury*, the dealer charged Chevron with violating the PMPA by attempting to terminate him, in order to convert his station to company-operation. A federal judge hearing the case threw out his complaint, but the federal court of appeals reversed and remanded the case for trial. Chevron, not surprisingly, wanted trial by judge and not by jury and so moved to dismiss the dealer's jury demand.

In a decision issued in late September, the trial judge agreed with Chevron. She held that, by its very nature,

the dealer's PMPA claim was asserted to keep Chevron from taking over his station. His claim, therefore, was for equitable relief and not money damages.

Because only claims for money damages normally entitle a plaintiff to demand a jury trial, the dealer was out of luck.

The same judge reached the same conclusion last year with respect to the PMPA claims brought by a group of Shell dealers in *Coast Village, Inc. v. Equilon Enterprises*. The dealers claimed that they were being priced out of business by high rents, a claim which was quite similar to the dealers' claim in *Valu Gas v. Equilon Enterprises*, which resulted in the 71 million dollar plus jury award.

In *Coast Village v. Equilon Enterprises*, however, after ruling that the dealers had no right to a jury trial on their PMPA claims, the judge then ruled on the merits and dismissed those claims.

The right to a jury trial is a significant constitutional protection, particularly to independent dealers who have to fight goliath oil companies. If the way to secure a jury trial is to forego a PMPA claim and sue for breach of contract, then so be it.

On a completely different note, this past month I had the privilege of traveling to El Salvador to testify before its legislature's Economic Commission concerning a bill aimed at protecting independent dealers from company-operation. It perhaps is not surprising that independent dealers elsewhere face problems so similar to those faced by dealers here, given the multinational nature of their oil company suppliers. The strong

effort by the El Salvador dealers and their allies in Guatemala to protect their independence against encroachments by oligopolistic oil companies is to be applauded, and hopefully will bear fruit.

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