

Ninth Circuit Rules That Attorney Fees are Properly Awarded Under Petroleum Marketing Practices Act

October 31, 2011 by [David J. McMahon](#)

In [Chevron U.S.A. Inc. v. M&M Petroleum Services Inc.](#), 2011 DJDAR 13854 (2011), the [U.S. Court of Appeals for the Ninth Circuit](#) decided a novel case involving the recovery of attorney fees under the [Petroleum Marketing Practices Act](#), 15 U.S.C. Section 2805, et seq.

[Chevron U.S.A. Inc.](#) (“Chevron”) sold gasoline to consumers at Chevron “**name brand**” gas stations. M&M Petroleum Services Inc. (“M&M”) operated a Chevron gas station under a franchising agreement with Chevron.

As is typical with most franchise relationships, Chevron subsequently audited M&M’s financial records to determine whether it had paid all of the rent and other compensation which was due to Chevron under the franchise arrangement.

Chevron apparently discovered alleged discrepancies between M&M’s actual sales and the amounts reported to Chevron through the audit. Chevron viewed this as grounds for termination.

Chevron filed a declaratory judgment claim against M&M seeking termination of the franchise. Chevron alleged the termination was in accordance with the governing contracts and the Petroleum Marketing Practices Act (“PMPA”).

M&M responded with a counterclaim, alleging that Chevron’s attempt to terminate the franchise did not comply with the PMPA. The district court found in Chevron’s favor. The Court also awarded Chevron its reasonable attorney fees, finding that M&M’s counterclaim was frivolous and not in good faith.

The Ninth Circuit affirmed the trial court’s decision.

The court noted that only a franchisee may recover attorney fees under PMPA. The Ninth Circuit noted, however, that under [15 U.S.C. Section 2805\(d\)\(3\)](#), the statute permits a district court to award attorney fees to a franchisor if a franchisee has brought a frivolous PMPA action.

The Ninth Circuit concluded that by filing a counterclaim, M&M instituted a civil action against Chevron and exposed itself to liability for attorney fees as the counterclaim was ruled to be frivolous.