

STATE OF NORTH CAROLINA
COUNTY OF WAKE

FILED IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
File No. 05 CVS 13975

2007 JUL 30 A 10:20

STATE OF NORTH CAROLINA,)
ex rel. ROY COOPER, ATTORNEY WAKE COUNTY, CSC)
GENERAL,)

Plaintiff,)

v.)

MCLEOD OIL COMPANY, INC., HOME)
OIL, INC., WESLEY C. MEHRING, and)
John Doe 1 through 100,)

Defendants.)

**CONSENT JUDGMENT AND
ORDER OF DISMISSAL**

THIS CAUSE came on to be heard and was heard by the undersigned Superior Court Judge on the motion of the parties for entry of a Consent Judgment, and the Court finding that:

- (1) The undersigned parties consent hereto,
- (2) The parties stipulate and agree to plaintiff's motion to further amend its complaint;
- (3) Defendants deny that their acts or practices violate the law, including N.C.G.S. §§ 75-1, 75-1.1 or 75-2;
- (4) The parties stipulate and agree to the dismissal without prejudice of Wesley C. Mehring as a defendant in this action, and said defendant shall not be subject to the terms of this Consent Judgment other than in his capacity as an agent or employee of the corporate defendants;
- (5) For the purposes of this lawsuit and Consent Judgment only, defendants stipulate and agree with plaintiff that the provision in the Meter Marketing Plan agreements, entered into by defendants and the independent dealers they supply, whereby the parties thereto agree that

defendants may set the dealers' resale price of motor fuel, is illegal under G.S. § 75-1 and void;

(6) For the purposes of this lawsuit and Consent Judgment only, defendants stipulate and agree with plaintiff that the acts or practices of defendants of periodically entering into agreements with the independent dealers they supply, whereby defendants and those dealers agree that the dealers shall set their resale price of motor fuel above a "base price" established by defendants, are illegal under G.S. § 75-1 and void;

(7) The Court approves the terms of the parties' agreement and hereby adopts them as its own determination of this matter and the parties' respective rights and obligations;

(8) The parties waive the entry of further findings and conclusions in support of this Consent Judgment; and

(9) Entry of this Consent Judgment is just and agreeable with respect to both parties and is in the interest of justice;

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED THAT:

I. INJUNCTIVE RELIEF

(1) The undersigned defendants and their successors and assigns are hereby restrained and enjoined from:

(a) Directly or indirectly, or expressly or by implication, entering into any contract, combination or conspiracy to raise, fix, peg or stabilize prices for any goods or services, including but not limited to the price to the public of motor fuel sold at dealers supplied by defendants. Such conduct includes but is not limited to:

(i) delivering motor fuel to a dealer on a consignment basis and, based thereon, asserting the right to set the price at which motor fuel is sold to

the public, and

(ii) establishing a floor price above which any dealer must, may or does agree to sell to the public.

(b) Taking any action to invite, encourage or induce any person or firm to join or participate in any such agreement;

(c) Taking any action seeking to enforce compliance with or participation in any such agreement;

(d) Making or participating in any communication with any motor fuel dealer or its representatives, agents, or employees concerning any motor fuel dealer's past, present or future price to the public of motor fuel;

(e) Directly or indirectly soliciting any person or entity to do any of the acts proscribed herein or to enter into any express or implied agreement regarding the acts proscribed herein;

(f) Failing to abide by the terms of any agreement with any motor fuel dealer concerning the price at which motor fuel is supplied to such dealer;

(g) Falsely or deceptively representing, by implication or otherwise, to any motor fuel dealer supplied by defendants that the charge or invoice to the dealer for motor fuel is consistent with the price term in defendants' contract or agreement with such dealer.

II. AMENDED COMPLAINT

Plaintiff's motion to further amend its complaint is granted.

III. DISMISSAL OF THE INDIVIDUAL DEFENDANT

Defendant Wesley C. Mehring is dismissed without prejudice from this action.

IV. VIOLATIONS OF THIS CONSENT JUDGMENT

Without limitation upon the Attorney General's authority to seek civil penalties under G.S. § 75-15.2, violations of this Consent Judgment are enforceable by contempt proceedings.

V. COMPLIANCE

Defendants shall make the terms of this Consent Judgment known to all of its employees whose job responsibilities require them to be familiar with its terms and shall use all reasonable efforts to ensure that each such employee understands and complies with its terms. Such employees include but are not limited to the employees who are defendants' primary contacts with the dealers they supply.

VI. CIVIL PENALTIES AND RESTITUTION

On the date of and as a condition of entry of this Consent Judgment, the undersigned defendants shall jointly and severally pay by certified check \$25,000.00 in civil penalties to the North Carolina Department of Justice.

VII. NON-RETALIATION

The undersigned defendants and their directors, officers, agents, employees and all affiliated persons and entities shall not directly or indirectly encourage or participate in any retaliatory action or omission adverse to any person or entity that:

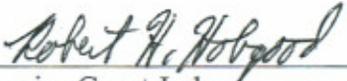
- (1) Did not or does not join in or assist, or by word or deed opposed or made efforts to oppose, any contract, combination or conspiracy in restraint of trade in violation of N.C.G.S. §§ 75-1 or 75-2, or the commission of any unfair or deceptive act or practice or any unfair method of competition in violation of N.C.G.S. § 75-1.1; or
- (2) Assisted, assists, cooperated or cooperates in any way with plaintiffs or any law

enforcement agency's past, present or future investigation or prosecution of any person or entity for any actual or potential violation of N.C.G.S. §§ 75-1, 75-1.1, 75-2 or 15 U.S.C. §§ 1, *et seq.*

VIII. DISMISSAL OF ACTION

Except as otherwise provided in this Consent Judgment, the claims and causes of action asserted by plaintiffs in their further amended complaint against the undersigned defendants, and defendants' counterclaim against plaintiff, are hereby dismissed with prejudice.

SO ORDERED this the 30th day of July, 2007.

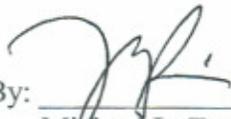


Superior Court Judge

WE CONSENT:

MCLEOD OIL COMPANY

ROY COOPER
Attorney General

By: 

Michael L. Tompkins, President

By: 

K. D. Sturgis
Assistant Attorney General
North Carolina Department of Justice

HOME OIL, INC.

By: 

Michael L. Tompkins, President



David H. Permar, Esq.
Hatch, Little & Bunn, LLP
*Attorney for Defendants McLeod
Oil Company, Inc., Home Oil, Inc.
and Wesley C. Mehring*

CERTIFICATE OF SERVICE

I do hereby certify that I have this day served upon counsel for defendants a copy of the foregoing CONSENT JUDGMENT AND ORDER OF DISMISSAL by depositing a copy in the U.S. Mail, first class postage prepaid, addressed to:

David Permar, Esq.
Hatch, Little & Bunn, LLP
327 Hillsborough Street
Raleigh, NC 27603

This the 30th day of July, 2007.



K. D. Sturgis
Assistant Attorney General