

## Win for Dealers: Federal Court Gives Green Light to Antitrust Claim Against Truck OEM

In a major development in long-running litigation brought by a dealer challenging the pricing practices of Mack Trucks, Inc., a federal court in Philadelphia has ruled that there is evidence that the manufacturer violated federal antitrust laws forbidding agreements restraining trade and prohibiting price discrimination. The court also ruled that there is evidence that the manufacturer violated state motor vehicle dealer protection laws restricting direct sales by OEMs (original equipment manufacturers). The court denied the manufacturer's request to have the case dismissed and, as a result, the case will now be slated for a jury trial likely to take place during 2005. The dealer, which is seeking damages of \$25 million that would be trebled under the antitrust laws to as much as \$75 million, is being represented by [Wayne A. Mack](#) and [J. Manly Parks](#) of Duane Morris' [Dealer Services Group](#).

### Background

In July 2002, Toledo Mack Sales and Service, Inc. filed suit against Mack Trucks for violations of the antitrust laws. The dealer claimed that the manufacturer conspired to eliminate competition and allocate markets and that the manufacturer engaged in systematic price discrimination against the dealer by providing special discounts, delayed billing and free floor plan arrangements to other dealers and non-franchised resellers of Mack trucks that were not also offered to the dealer. The dealer also raised a challenge under Ohio and Michigan State Motor Vehicle Dealer Protection Laws to the manufacturer's practice of selling large numbers of trucks each year directly to certain large customers, altogether bypassing franchised dealers.

Two other cases have since been filed by Duane Morris against the same manufacturer raising antitrust claims. Those cases are pending before the same judge in federal court in Philadelphia.

### The Federal Court Ruling

After extensive discovery was completed prior to trial, the manufacturer sought to have all of the dealer's claims thrown out. The federal court rejected every argument advanced by the manufacturer, finding evidence supporting each of the dealer's claims. The court's significant findings include the following:

- "In this case, Toledo Mack's evidence suggests that the defendant committed overt acts in furtherance of the price fixing and market allocation conspiracy during the statutory period. For instance, Plaintiff evidences that Mack Trucks delayed sales assistance discounts so Toledo Mack would lose sales; refused to ship parts to customers outside of Toledo Mack's AOR; imposed arbitrary restrictions on Toledo Mack's ability to compete with other Mack dealers

outside of Toledo Mack's local AOR; failed to grant Toledo Mack the discounts available to other competing dealers; and terminated Toledo Mack's franchise."

- "Toledo Mack has presented evidence from which a reasonable jury . . . may infer that Mack Trucks' discriminatory concessions resulted in lost profits and sales to Toledo Mack and other dealers, and that favored competitors received substantial price reductions."
- "Toledo Mack presents evidence that shows Mack Trucks' price discrimination practices date back to 1989, when Mack Trucks instituted pricing policies to suppress Toledo Mack's sales to customers outside of its AOR. Toledo Mack, in its expert report, further found it consistently received less favorable pricing than Mack Trucks' favored purchasers."
- "the evidence adduced by Plaintiff describes affirmative acts allegedly performed by Mack Trucks to conceal the conspiracy . . . ."
- "Toledo Mack has presented direct and circumstantial evidence from which a rational jury . . . may infer that Mack Trucks advanced pretextual reasons for its policies, and might in turn infer that Mack Trucks acted in concert with its dealers to fix prices and allocate markets in violation of Section 1 of the Sherman Act . . . ."
- "Toledo Mack has adduced evidence indicating that the agreements between Mack Trucks and the Body Builders were intended to and caused harm to Toledo Mack because it received less favorable pricing which affected its ability to compete with the Body Builders for sales to non-established Mack customers."
- "Mack's policy was effective in restricting Toledo Mack's ability to compete . . . ."
- "[T]here is evidence in the record that suggests that Toledo Mack's injury – lost sales to existing and potential customers – is the direct result of horizontal agreements to allocate markets and fix prices, precisely the type of injury the antitrust laws are intended to redress."
- "Toledo Mack has presented substantial evidence to prove competitive and actual injury. Toledo Mack's expert report concluded that Mack Trucks' price discrimination caused Toledo Mack damages of \$18.7 million."
- "Toledo Mack has introduced evidence that demonstrates Mack Trucks tortiously interfered with Toledo Mack's customer relationships by inducing specific customers not to buy from Toledo Mack. Mack Trucks allegedly interfered with Toledo Mack's attempts to sell to certain large end-users, and Mack Trucks ultimately usurped all sales to these National Accounts. Additionally, Mack Trucks offered its National Account leasing companies special pricing that was unavailable to dealers."

- “Toledo Mack has presented evidence that Mack Trucks offered special deals and low prices to National Accounts – and these special deals and prices were not readily available to [franchised Mack truck] dealers.”

## Related Proceeding

The federal court ruling in favor of Toledo Mack is the second significant victory for Toledo Mack over Mack Trucks. Following the filing of the antitrust case by Toledo Mack, Mack Trucks responded by sending Toledo Mack a letter stating that its Mack Truck franchise was being terminated. Toledo Mack immediately responded by filing a formal termination protest with the Ohio Motor Vehicle Dealers Board, giving rise to an administrative action before the Ohio Board to determine whether the termination was justified.

Following several days of hearings, the Hearing Examiner concluded that Mack Trucks did not have good cause for the termination. The Ohio Board subsequently approved the findings of the Hearing Examiner, negating the attempted termination and entitling Toledo Mack to receive its legal fees and costs incurred in the termination proceeding. Mack Trucks appealed the ruling of the Ohio Board and that appeal remains pending.

## For Further Information

If you have any questions about this Alert or would like more information about the Dealer Services Group, which provides a full range of legal services to automobile and truck dealers, please contact Wayne A. Mack at 215.979.1152, [wamack@duanemorris.com](mailto:wamack@duanemorris.com), or J. Manly Parks at 215.979.1342, [jmparks@duanemorris.com](mailto:jmparks@duanemorris.com), or the lawyer in the firm with whom you are regularly in contact.