

**IN THE UNITED STATES DISTRICT COURT
IN AND FOR THE DISTRICT OF IDAHO**

PRO-FORMANCE LUBE CENTER, INC.,
an Idaho Corporation,

Plaintiff,

vs.

BP LUBRICANTS USA, INC., formerly
CASTROL CONSUMER NORTH
AMERICA; DOES 1 through 10, and
CORPORATIONS A through Z, inclusive,

Defendants.

CASE NO. CIV 08-00290-N- BLW

**ORDER ON MOTION FOR COSTS
AND ATTORNEYS' FEES**

The Court granted BP's motion for summary judgment on July 31, 2009. Now pending is BP's motion for costs and attorneys' fees. The written "Supply Agreement", which the Court found to be the decisive document in this case, provides for costs and fees as follows:

ATTORNEYS' FEES. If either party employs attorneys to litigate any rights arising out of or relating to this Agreement, the mostly prevailing party shall be entitled to recover its reasonable attorneys' fees and costs, including such costs and fees as may be incurred on appeal or in bankruptcy proceedings.

BP seeks \$8,147.30 in costs and \$131,737.50 in attorneys' fees, for a total of \$139,884.80. While the Court made no mention of costs and fees in its summary judgment order, the initial judgment entered by the Clerk noted "this case is hereby dismissed with prejudice, and with each side bearing its own costs and attorney's fees." This judgment was amended on

September 3, 2009, and Pro-Formance filed an opposition brief on September 14, 2009.

Pro-Formance's opposition is remarkably feeble. Barely two pages in length, it insinuates that counsel for BP litigated this case as long and far as possible when "an early motion to dismiss/summary judgment" would have done the trick, and that BP prevailed on a "technical point" anyway. It also asks a series of rhetorical questions: Were two out-of-state lawyers necessary? Did the case really require legal expertise? Was the billing excessive? These rhetorical questions would serve better as assertive points with supplemental argument, but Pro-Formance offers none. Finally, Pro-Formance submits the billing statements of BP's counsel, with certain entries highlighted, and argues "[e]ach of the highlighted entries is objected to as duplicative, unnecessary, excessive and unreasonable," but offers no further explanation.

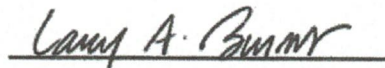
Unfortunately, without more concrete objections from Pro-Formance, the Court is poorly-positioned to reduce the costs and fees award BP seeks. This case may have been decided by a single line in the Supply Agreement ("This agreement represents the entire understanding and agreement between the parties hereto relating to the purchase and sale of the Castrol Products"), but that doesn't mean, as Pro-Formance suggests, that it was an easy case that could have been disposed of early, with more straightforward briefing and less discovery. Pro-Formance initiated this case and litigated it to the very end. BP can't be faulted for defending itself, nor for the tactical legal decisions it made in that effort.

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The Court finds no basis for reducing the rates charged by BP's counsel or the number of hours BP's counsel billed. Pro-Formance was as responsible as BP for the litigation, and not all "technical" victories are simple victories. BP is entitled to the **\$139,884.80** it seeks.

IT IS SO ORDERED.

DATED: January 7, 2010

Handwritten signature of Larry A. Burns in cursive, written in black ink, positioned above a horizontal line.

HONORABLE LARRY ALAN BURNS
United States District Judge