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## Judicial restraint

Courts get more reluctant to step into price disputes

By Terry Kosdrosky

As auto suppliers and their customers fight in court like never before, a legal tool used by larger companies to prevent vendors from raising prices is getting greater scrutiny, some automotive attorneys say.

Two large suppliers recently were denied - at least in part, in one case - preliminary injunctions that would have blocked metal suppliers from raising prices while lawsuits were pending. That's a hopeful sign for smaller suppliers, many of whom are losing money as soon as the parts leave their door.

The cases underscore how serious raw-material prices are in the auto supplier chain. Automakers typically won't accept higher prices, leaving suppliers with already thin margins little room to absorb the cost. That means large, tier-one suppliers and their own suppliers are left to duke it out.

Large suppliers often file breach-of-contract lawsuits, followed by requests for temporary restraining orders and preliminary injunctions when faced with price increases and threats to stop shipping. A preliminary injunction is basically an emergency request to maintain the status quo.

But some judges are giving preliminary injunctions greater scrutiny, automotive attorneys say. While most cases are settled after an initial filing and a temporary restraining order, two recent cases went further.

Canadian supplier Multimatic Inc. felt it had no choice but to give Fraser-based auto supplier Venture Holdings Co. L.L.C. an ultimatum: Let us raise the price on steel components, or we'll stop shipping.

Venture, which is in bankruptcy reorganization, sued to force Multimatic to continue shipping cross-bar beams at \$40.40 apiece. Multimatic said it was losing \$18 on each beam due to the high cost of steel. It wanted to raise the price to \$51.81 and threatened to stop shipping if denied.

Venture argued that a failure to ship would close its plant on Masonic in Fraser and would lead to the closure of assembly lines at Chrysler Group's Jeep plant on Jefferson Avenue. Venture requested a preliminary injunction to force Multimatic to ship at the original price.

U.S. Bankruptcy Judge Thomas Tucker on March 29 denied Venture's motion in part and granted it in part. Tucker ruled that Venture had to pay the increased price, \$51.81, for the beams. But he didn't make the price retroactive to November, which was a victory for Venture.

**Steven Susser**, Multimatic's attorney, said Tucker properly focused on the correct issue - price. He said preliminary injunctions are only for cases where irreparable harm would occur unless something is stopped.

"There's no irreparable harm here," said **Susser**, a partner at Southfield-based Young & Susser P.C. "There's still a lawsuit pending, and Venture can get the differential back if they prevail. Between the words, 'I'm going to stop shipping' and 'I'm going to stop shipping unless I get \$10 more' is a world of difference."

An attorney who's handled clients on both sides of this dispute says judges are less likely to be swayed by threats of plant closures than they were in the recent past.

"Judges are taking a harder look at these," said William Jansen, the partner in charge of the Warner Norcross & Judd L.L.P. office in Southfield. "Keep in mind, this is all about pricing . . . . We've been involved in cases where, for want of a bar, all of a North American enterprise would be shut down. But claims of irreparable harm are only there if the customer doesn't pay. So if you want to avoid shutting GM or somebody down, all you have to do is pay the increased price. If we're wrong, you already have the breach-of-contract suit on file, and we'll pay it back if we lose."

That's basically what U.S. District Judge Nancy Edmunds told a division of ThyssenKrupp Budd Co. when it sued Heidtman Steel Products Inc. and sought a preliminary injunction to force the steel supplier to ship at the original price. Heidtman sought a price increase for steel coils from 35.85 cents a pound to 51.85 cents a pound and threatened to halt shipments if the price wasn't met.

ThyssenKrupp Fabco Corp. argued it would force a shutdown of its plant and a Nissan Motor Co. plant in Tennessee. ThyssenKrupp Fabco used the steel to produce beam assemblies for Nissan's Pathfinder and Xterra.

Edmunds denied the injunction and canceled the restraining order. In a Jan. 18 ruling, she wrote that no shutdowns will happen if ThyssenKrupp Fabco simply pays the higher price. The company will be entitled to relief if it wins the case. The two sides have since settled with a confidential agreement.

Daniel Sharkey, a partner at Butzel Long who represented ThyssenKrupp Fabco, doesn't see a trend. He said particular judges see these supplier price disputes differently.

"Some judges see it as a holdup or extortion," said Sharkey, who has handled several of these cases. "Others say, 'Just because I have a robe doesn't mean I'm going to stick myself into a commercial relationship.' "

Sharkey, who usually represents buyers, said every case is unique. Some judges, he said, have ruled differently on the same type of case.

"It's just tough because you have a long-term, fixed-price contract but then you have a lot of suppliers struggling out there," he said. "But the tier ones, while they may look a lot bigger, they have hundreds of suppliers, and all of them are knocking on their door. The automakers expect the tier ones to deliver their parts at the fixed price. The supply chain is stuck in the middle. Somebody is going to be the stuckee."

*Terry Kosdrosky: (313) 446-1626, tkosdrosky@crain.com*