

PA Superior Court

Case: *Croft v. P & W Foreign Car Service, Inc.*, 383 Pa.Super. 435, 557 A.2d 18, 57 USLW 2628

Judges: Del Sole*, Rowley, Montgomery

Date: April 6, 1989

Tags: Attorney fees, Magnuson-Moss Warranty Act, consumer protection action

Facts: Appellant is trying to recover attorney fees for “time actually expended in pursuing Appellant’s claims for damages arising from her purchase of a car from P & W with a broken odometer.” (19/436) Wanted \$7,539, but was only awarded \$1000 by trial court.

Gravamen/Question(s) at issue: Did trial court err in not awarding attorney fees as requested under Magnuson-Moss Warranty Act?

Holdings: “We hold that the jury award should not serve as a cap or a ceiling on the amount of counsel fees awarded to the prevailing party’s attorney.” (20/438) Lower court reversed and remanded to reconsider appropriate fees in light of this opinion.

Rationale: “the amount received is but one factor to be considered in determining an award of counsel fees.” (20/438)

Trial Court Input:

- “It appears to this Court inappropriate, in light of all of the circumstances of the case, to award counsel fees in an amount approximately 2 ½ times the amount of the jury verdict and in excess of the amount claimed as damages by Plaintiff in her Complaint.” (20/438)
- (Otherwise, no rationale given for the \$1000 that they DID award.)

Dicta/Discussion:

- **Legislative History of Act:** attorney fee award should be based on actual time spent, NOT on percentage of recovery. Goal: encourage consumer private action to protect rights.
- Award is within court’s discretion.
- “the entitlement to attorneys’ fees under § 503 and in actions under the Magnuson-Moss Act, is designed to make the pursuit of certain public rights economically feasible” (439/20)

Attorneys’ Arguments:

- Spent 89 hours of time in preparation for trial; attached itemized costs and time records.

Appeals to Statute & Precedent:

- **Magnuson-Moss Warranty Act, 15 U.S.C. § 2310(d)(2):** “If a consumer finally prevails in any action, [brought under this Act], he may be allowed by the court to recover as part of the judgment a sum

equal to the aggregate amount of cost and expenses (including attorney's fees based on actual time expended) determined by the court to have been reasonably incurred by the plaintiff for or in connection with the commencement and prosecution of such action, unless the court in its discretion shall determine that such an award of attorneys' fees would be inappropriate."

- **41 P.S. § 503 Reasonable Attorney's Fees Recoverable (Interest cases):** "in determining the amount of the fee, the court may consider: (1) The time and labor required, the novelty and difficulty of the questions involved and the skill requisite properly to conduct the case; (2) The customary charges of the members of the bar for similar services; (3) The amount involved in the controversy and the benefits resulting to the client or clients from the services, and (4) The contingency or certainty of the compensation." (439/20)