UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA, Plaintiff, v. TEXACO, INC., AND COASTAL STATES GAS PRODUCING COMPANY, Defendants.	Civil No. 73 CIV 2608 Filed June 12, 1973

COMPLAINT

The United States of America, plaintiff, by its attorneys, acting under the direction of the Attorney General of the United States, brings this civil action to obtain equitable relief against the above-named defendants, and complains and alleges as follows:

I

JURISDICTION AND VENUE

1. This complaint is filed and these proceedings are instituted against the above-named defendants under Section 4 of the Act of Congress of July 2, 1890, as amended (15 U.S.C. § 4), commonly known as the Sherman Act; and under Section 15 of the Act of Congress of October 15, 1914, as amended (15 U.S.C. § 25), commonly known as the Clayton Act, in order to prevent violations by them jointly and severally as hereinafter alleged of Section 1 (15 U.S.C. § 1) of the Sherman Act and of Section 7 (15 U.S.C. § 18) of the Clayton Act.

2. Texaco, Inc., transacts business and may be found within the Southern District of New York.

II

DEFENDANTS

3. Texaco, Inc. (hereinafter referred to as "Texaco") is made a defendant herein. Texaco is a corporation organized and existing under the laws of the State of Delaware and has its principal office in New York, New York. Each reference to Texaco herein includes its subsidiaries.

4. Coastal States Gas Producing Company (hereinafter referred to as "Coastal") is made a defendant herein. Coastal is a corporation organized and existing under the laws of the State of Delaware and has its principal office in Corpus Christi, Texas. Each reference to Coastal herein includes its subsidiaries.

III

DEFINITIONS

5. (a) As used herein the term "majors" means: Texaco; Exxon Corp. [formerly Standard Oil Company (New Jersey)]; Shell Oil Company; Standard Oil Company (Indiana); Standard Oil Company of California; Gulf Oil Corporation; Mobil Oil Corporation; Atlantic Richfield Company; Sun Oil Company; Union Oil Company of California; The Standard Oil Company (Ohio); Phillips Petroleum Company; Ashland Oil, Inc.; Continental Oil Company; Cities Service Company; Getty Oil Company (including its majority-owned subsidiary Skelly Oil Company); and Marathon Oil Company; and their respective subsidiaries.

(b) As used herein the term "crude oil" means crude oil, condensate and natural gas liquids.

(c) As used herein the term "gasoline" means automotive gasoline of all grades.

(d) As used herein the term "District" means the Petroleum Administration for Defense districts as designated by the Bureau of Mines of the United States Department of the Interior. "District I" is comprised of all states on the Atlantic Coast plus Vermont, Pennsylvania and West Virginia. "Districts I-IV" are comprised of Idaho, Utah and New Mexico, all states east thereof and the District of Columbia. "District V" is comprised of the remaining states.

(e) As used herein the term "Atlantic and Gulf Coast Refinery Area" means an area comprised of the coastal areas of Texas, Louisiana, Mississippi and Alabama (described by the Bureau of Mines as the "Texas Gulf Coast and Louisiana Gulf Coast Refining Districts") and District I.

IV

TRADE AND COMMERCE

6. The oil industry is divided into phases, commonly called: (a) exploration and production; (b) transportation; (c) refining; and (d) marketing. Literally thousands of business entities are engaged in the various phases of the oil industry. A vast disparity exists in the size and scope of operations of these entities. They range from multi-billion dollar corporations with worldwide operations which engage in all phases of the industry down to individual

proprietorships which may have but a divided interest in a single oil well or which may operate but one or two gasoline pumps for retail sales to the ultimate consumer.

7. The majors are the 17 largest domestic oil companies in terms of refining capacity. The majors are, to varying degrees, vertically integrated from exploration and production through to the distribution and marketing of refined petroleum products.

8. In 1971, the gross production by the majors accounted for approximately 66.5% of all crude oil produced in the United States. Concentration in crude oil production has increased substantially since 1963, when the gross production of the 17 largest companies was approximately 55.5%.

9. Substantially all of the crude oil produced in the United States is transported to refineries by pipelines. Most of the crude oil gathering and trunk pipelines are owned and controlled by the majors. Through their ownership of crude oil production, their oilfield purchasing organizations, and their control of pipelines, the majors have access to and control of the overwhelming majority of all crude oil produced in the United States.

10. As of January 1, 1972, the majors operated 110 refineries representing 82.5% of the total refining capacity in the 48 contiguous states. Concentration in oil refining has increased substantially in the last 10 years. In 1963, there were 140 firms operating 286 refineries and the 17 largest firms accounted for 76.2% of the total refining

capacity. By 1972, the number of firms had declined to 120 and the number of operating refineries to 247. In 1971, the majors accounted for 84.3% of the total refinery runs in the United States.

11. All of the majors have marketing with brand identification at least for the sale of gasoline, which is both by volume and by revenue the most important of the refined petroleum products. The majors, either directly or through branded wholesalers, distributors or jobbers, supply gasoline to retail service stations which bear their logos. In 1971, the majors' branded sales accounted for approximately 75% of all tax-paid sales of gasoline in the United States.

12. In addition to the majors and their respective jobbers and dealers, there are other gasoline marketers which are commonly called "independents." The independents vary in their degree of integration. A few are fully integrated from exploration and production through marketing. Others are partially integrated and operate in two or more phases of the petroleum industry. Most independent marketers are non-integrated and are totally dependent on others for supply. They are frequently referred to as "rebranders" or "private-brand marketers."

13. Because of mergers and acquisitions of oil refiners within the last ten years there has been a marked decline in the number of refined petroleum product supply sources for independent marketers.

14. In most marketing areas in the country, the branded gasoline of the majors is sold at prices higher than the gasoline marketed by the independents. The majors attempt to appeal to consumers on the basis of non-price forms of competition such as mass media advertising, claims of product superiority, road maps and credit card services, and generally avoid competing with each other on the basis of lower prices. The independents tend to base their customer appeal on lower prices. Retail price levels for gasoline generally tend to be lowest in those geographic areas where independents have the greatest market penetration.

15. Texaco is one of the majors and is engaged in all phases of the industry. Texaco's worldwide operations in 1971 encompassed exploration in some 44 countries; production of crude oil or natural gas in 17; manufacturing through full or partial ownership at 72 refineries located in 38 countries; and marketing in some 135 countries and territories throughout the free world. With assets of approximately $10.9 billion it is the second largest oil company in the United States and the third largest in the world. In 1972, Texaco had gross income of $8.9 billion on which it reported a net profit of $889 million.

16. Texaco is the second leading producer of crude oil in the United States with approximately 8.4% of the industry total. In 1971, its domestic production, which is principally in Texas and Louisiana, averaged about 940,000 barrels per day. With domestic crude oil reserves of 3.4 billion

barrels, Texaco owns about 7.5% of total domestic reserves in the 48 contiguous states.

17. Texaco owns alone and jointly with others numerous and substantial pipeline systems to transport crude oil from producing areas to refineries. Substantial quantities of crude oil that Texaco purchases from other producers are transported through these pipelines.

18. Texaco is the nation's largest refiner of petroleum products. It operates 12 oil refineries in the United States with a total operating capacity of 1.1 million barrels per day. This represents about 8.6% of total domestic refining capacity.

19. Texaco is the nation's leading marketer of gasoline with over 36,000 branded retail outlets located throughout all 50 states and the District of Columbia. Texaco holds first place among gasoline marketers in the United States and has increased its share of the United States market at a time when many other major marketers have experienced declines in market shares. In 1971, Texaco's tax-paid sales of gasoline in the United States were approximately 7.9 billion gallons, which accounted for about 8.3% of all gasoline sold in the United States. Texaco ranks among the top 8 marketers in each of the 50 states and the District of Columbia and among the top 4 in each of 34 states. By virtue of the geographic distribution in its marketing, Texaco has the ability to use profits in market areas with high, stable prices to offset losses or lower profits in market areas where gasoline price wars occur.

20. Texaco, with a single exception, maintains a policy not to sell gasoline to independent marketers. More than 99.6% of the gasoline sold by Texaco is sold as branded Texaco product.

21. Coastal is a company engaged primarily in the production, gathering, transportation and sale of natural gas. Coastal has assets of $795.7 million and with gross income of $453.9 million made net profits of $40.9 million during its fiscal year ending June 30, 1972.

22. In 1962, Coastal acquired from the former Sinclair Oil Corporation a refinery located at Corpus Christi, Texas, which then had a crude oil capacity of 29,500 barrels per day. Between 1962 and 1972, Coastal expanded and modernized the refinery, raising its capacity to 135,000 barrels per day.

23. As of January 1, 1972, Coastal was the second largest independent refining company in the United States with 1.04% of total refining capacity in the 48 contiguous states. It ranked 19th among all companies in terms of refining capacity, and all but one of the firms ranking above it were majors.

24. Coastal has no retail marketing operations for gasoline or for No. 2 fuel oil, a distillate fuel used primarily for residential heating. All of its sales are on the wholesale market, where most of its customers are independent distributors and marketers located in many parts of the United States. Coastal is the largest non-major supply source for independent marketers of gasoline and No. 2 fuel oil in the United States.

25. Coastal accounts for 6% of the total independent refining capacity in the United States. In Districts I-IV, Coastal accounts for 6.7% of the total independent refining capacity.

26. Refined products are shipped from Coastal's Corpus Christi refinery by truck or pipeline to local market areas in Texas, by tanker or barge to inland markets along the Mississippi River waterway, by tanker or the Colonial Pipeline to customers on the East Coast, and by tanker to customers in California.

27. Substantially all of the gasoline and No. 2 fuel oil consumed in District I is manufactured at refineries located in the Atlantic and Gulf Coast Refining Area. In this area, Coastal's Corpus Christi refinery accounts for 2.1% of total refining capacity and 16.7% of total independent refining capacity. In the Atlantic and Gulf Coast Refinery Area, Texaco owns and operates four refineries having a total capacity of 689,000 barrels per day accounting for 10.9% of the total refining capacity in the area.

28. In 1971, Texaco's total domestic sales of No. 2 fuel oil amounted to 41.1 million barrels, which was 9.3% of total industry sales. Coastal's total domestic sales of No. 2 fuel oil during its 1971 fiscal year amounted to 15.9 million barrels, which accounted for 3.6% of total industry sales. During the same period, Coastal's sale of No. 2 fuel oil manufactured at its own refinery amounted to 12.8 million barrels, which was 2.9% of the total industry

sales. Texaco and Coastal are also substantial competitors in the sale of No. 2 fuel oil to customers located within District I. In 1971, Texaco's and Coastal's sales of No. 2 fuel oil accounted for 10.6% and 4.2%, respectively, of all No. 2 fuel oil sales in District I.

29. Texas is the third largest gasoline consuming state in the United States, ranking behind California and New York. Substantially all of the gasoline sold at retail in Texas is manufactured at refineries located in Texas. Texaco is the largest refiner in Texas, having four refineries with a total capacity of 490,500 barrels per day which represents 14% of the total refining capacity in the state. Coastal is the 9th largest refiner in Texas and accounts for 3.9% of the state's total refining capacity. Coastal accounts for 18.8% of the total independent refining capacity in Texas. Texaco is the second largest marketer of gasoline in Texas with 14.6% of the total market in 1971. Coastal is the largest supplier of gasoline to independent marketers in Texas. During 1971, Coastal supplied 2.6% of all gasoline sold at retail in Texas. This represented 8% of the gasoline sold by independents in the state; and more than 12% of all non-captive gasoline sales in Texas, that is to marketers which do not have integrated refining operations.

30. California is the largest gasoline consuming state in the United States. In 1971, Texaco was the 6th largest marketer of gasoline in California with 8.4% of the total state market. Until June 1972, Coastal had for several years

shipped and sold gasoline to independent distributors and marketers in California. During 1970 and 1971, Coastal's shipments to California amounted to 0.7% and 1.1%, respectively, of all gasoline sold in the state and 6% and 8% of non-captive sales to independent marketers in California. Since July 1972, independent marketers in California have experienced severe shortages of gasoline to sell through their retail outlets and retail prices have risen substantially, particularly in the Los Angeles area.

31. For many years, Coastal has depended upon purchases from majors for much of the crude oil it needed to operate its refinery. Beginning at least as early as 1971, Coastal experienced increasing difficulties in obtaining adequate supplies of crude oil. By 1972, Coastal was forced to operate its refinery at levels substantially below capacity because of its inability to obtain sufficient crude oil.

V

THE AGREEMENT

32. Following negotiations which began on or about March 1, 1971, Texaco and Coastal entered an agreement whereunder:

(a) Coastal agrees to sell refined petroleum products from its Corpus Christi refinery to Texaco in amounts increasing from 14,400 barrels per day in 1973 to 106,000 barrels per day in 1976, as set forth in a Products Purchase Agreement, dated February 1, 1972, attached hereto as Exhibit A;

(b) Coastal agrees to purchase crude oil from Texaco at Texaco's option in amounts increasing from 16,400 barrels per day in 1973 to 121,200 barrels per day in 1976, as set forth in a Crude Oil Purchase Agreement, dated September 1, 1971, attached hereto as Exhibit B;

(c) Texaco is granted an option to make "phantom exchanges" of foreign for domestic crude oil during the years 1973 through 1976, thereby giving Texaco the use and benefit of foreign crude oil imported by Coastal, as set forth in a Letter Agreement, dated March 1, 1972, attached hereto as Exhibit C;

(d) Texaco is granted an option to buy Coastal's Corpus Christi refinery through 1976, as set forth in an Option to Purchase Refinery, dated March 1, 1972, attached hereto as Exhibit D; and

(e) Texaco is further granted options to extend the provisions of the agreement set forth in subparagraphs (a) and (b) above through 1982, and in subparagraphs (c) and (d) above through 1977.

VI

VIOLATIONS ALLEGED

First Violation

33. The acquisition of Coastal's assets and operations pursuant to the agreement described in paragraph 32 of this complaint may substantially lessen competition or tend to create a monopoly in the above-described trade and commerce,

in violation of Section 7 of the Clayton Act in the following ways, among others:

(a) Actual and potential purchasers of gasoline from Coastal in the United States, Districts I-IV, District I, Texas, California and certain other submarkets will be foreclosed from a substantial source of supply;

(b) Independent marketers of gasoline in each market set forth in subparagraph (a) above will be foreclosed from a substantial source of supply, and price competition in the sale of gasoline to consumers will thereby be substantially lessened;

(c) Actual and potential competition between Texaco and Coastal in the manufacture and sale of No. 2 fuel oil in the United States, District I, and certain other submarkets will be eliminated;

(d) Coastal will be eliminated as a substantial independent factor in the manufacture and sale of gasoline in each market set forth in paragraph (a) above and of No. 2 fuel oil in each market set forth in paragraph (c) above;

(e) Barriers to entry into the business of refining crude oil and of marketing gasoline and No. 2 fuel oil will be increased; and

(f) Concentration in the refining of crude oil and in the marketing of gasoline and No. 2 fuel oil will be substantially increased.

Second Violation

34. The agreement described in paragraph 32 of this complaint is in unreasonable restraint of the above-described trade and commerce in violation of Section 1 of the Sherman Act in each of the ways set forth in paragraph 33, above, and in that:

(a) The sale of crude oil by Texaco to Coastal is conditioned upon Coastal's agreement to sell substantial amounts of refined products to Texaco;

(b) Coastal is deprived of the right to sell substantial amounts of refined products to others; and

(c) Competitors of Texaco are deprived of the opportunity to buy substantial amounts of refined products from Coastal.

PRAYER

WHEREFORE, plaintiff prays:

1. That pursuant to Section 15 of the Clayton Act and Section 5 of the Sherman Act, the Court order summons to be issued to Coastal commanding it to appear and answer the allegations contained in this complaint, and to abide

by and perform such orders and decrees as this Court may make in the premises;

2. That the agreement between Texaco and Coastal be adjudged a violation of Section 7 of the Clayton Act and of Section 1 of the Sherman Act;

3. That the agreement described in paragraph 32 of this complaint be declared null and void;

4. That Texaco be permanently enjoined from selling crude oil to any person, firm or corporation on a condition that such person, firm or corporation give preference to Texaco as a customer for refined petroleum products;

5. That the defendants herein be ordered to take all appropriate action, including making necessary supply arrangements, for the complete restoration of Coastal as a supply source for independent marketers of petroleum products;

6. That, for a period of ten years, except with the prior approval of the plaintiff or the Court, Texaco be enjoined from acquiring the stock or assets of any person, firm or corporation engaged in the refining of crude oil in the United States;

7. That the plaintiff have such other relief as the Court may deem just and proper; and

8. That the plaintiff recover its taxable costs.

ELLIOT L. RICHARDSON Attorney General	RODNEY O. THORSON
THOMAS E. KAUPER Assistant Attorney General	HAYS GOREY, JR.
BADDIA J. RASHID	JILL DEVITT
CHARLES D. MAHAFFIE, JR.	DAVID R. BICKEL
Attorneys, Department of Justice	Attorneys, Department of Justice