

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
JACKSONVILLE DIVISION

UNITED STATES OF AMERICA, )  
 )  
Plaintiff, ) Civil No. 79-846-CIV-J-B  
 )  
v. )  
CARGO GASOLINE CO.; ) Filed: June 24, 1983  
CARGO SERVICE STATIONS, INC.; )  
CARSE OIL COMPANY, INC.; )  
COLONIAL SERVICE STATIONS, INC.; )  
EASTERN OIL COMPANY; )  
GATE PETROLEUM COMPANY; )  
THE IMPERIAL FLORIDA OIL COMPANY; )  
KEY PETROLEUM, INC.; )  
STAR SERVICE & PETROLEUM COMPANY; )  
SUPER TEST OIL & GAS COMPANY; )  
TAMPA WHOLESALE COMPANY; )  
T. D. McRAE, INCORPORATED; and )  
UNITED PETROLEUM, INC., )  
 )  
Defendants. )

PROPOSED CONSENT DECREE  
COMPETITIVE IMPACT STATEMENT

Pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act (15 U.S.C. §§ 16(b)-(h)), the United States of America hereby submits this Competitive Impact Statement relating to the proposed consent judgment submitted for entry in this civil antitrust proceeding.

1. Nature of the Proceeding

On September 27, 1979, the Department of Justice filed a civil antitrust complaint under Section 4 of the Sherman Act (15 U.S.C. §4) alleging that the above-named defendants violated Section 1 of the Sherman Act (15 U.S.C. §1). The complaint alleges that the defendants and various

co-conspirators engaged in a combination and conspiracy in unreasonable restraint of interstate trade and commerce in the retailing of gasoline, the substantial terms of which were to fix, raise, maintain and stabilize retail prices of gasoline in the State of Florida. The complaint requests that each of the defendants be enjoined from continuing or renewing the alleged conspiracy and from engaging in any other conspiracy or agreement having a similar purpose or effect.

Entry by the Court of the proposed consent judgment will terminate the action as to all defendants, except that the Court will retain jurisdiction over the matter for possible further proceedings which may be required to interpret, modify or enforce the judgment, or to punish alleged violations of any of the provisions of the judgment.

All of the defendants were convicted in the companion criminal case which charged the same violation as this complaint.

## II. Description of the Practices Involved in the Alleged Violation

The defendants are, or were at the time of the complaint, engaged in the retail gasoline business. The complaint alleges that the defendants and co-conspirators engaged in a conspiracy from at least as early as January 1975 and continuing thereafter to at least December 1977, the substantial terms of which were to fix, raise, maintain and stabilize retail prices

of gasoline in the State of Florida. The complaint further alleges that the defendants and co-conspirators actually fixed retail gasoline prices as they agreed to do. The complaint also alleges that the conspiracy may recur unless enjoined by the Court. The market area alleged to have been affected by the conspiracy is the State of Florida.

The complaint alleges that the conspiracy had the following effects, among others: (a) prices of gasoline in Florida have been raised to and maintained and stabilized at artificial and non-competitive levels; (b) consumers have been deprived of the benefits of free and open competition in the sale of gasoline in Florida; and (c) competition among the defendants and co-conspirators in the sale of gasoline in Florida has been restrained.

If the defendants had gone to trial, the Government would have adduced evidence to show that the defendants and co-conspirators, in about January 1975, began their efforts to collusively coordinate retail prices. The defendants may all be characterized as independent, or private-brand, retailers as opposed to the major oil companies with nationally-known brand names. The independents generally priced their gasoline several cents a gallon below the majors. The conspiracy alleged in the complaint was directed at raising and fixing the retail prices of gasoline at the independent level of the market.

To initiate a price increase, a defendant or co-conspirator would inform the executive director of the now-defunct Florida Independent Gasoline Marketers Association ("FIGMA") that he wished to increase his prices in a particular market. The FIGMA director would, in turn, telephone other independents affected by the proposed increase or "move" and attempt to obtain their commitments to join the move. This would either be done by explicit request or by the use of such expressions as asking the retailer to "take a look" at the move. It was generally understood in the industry that if a company agreed to take a look at a move, it would increase its prices if others increased theirs as promised. Various defendants and co-conspirators made direct contacts with their competitors, similar to those made by the FIGMA director, to further ensure the success of coordinated moves. In addition, several meetings were held at which defendants and co-conspirators discussed methods of improving price-coordinating efforts.

The geographic area affected by such coordinated price moves varied. Although statewide moves occurred several times a year, most moves involved particular metropolitan or local areas in Florida. The Tampa, Jacksonville and Orlando markets were among those often affected. The Panhandle area was rarely, if ever, affected because most of the conspirators did not have retail outlets there. For the same reason, very few of the coordination efforts were directed at the Miami-Ft. Lauderdale area.

In addition to the collusive contacts regarding prospective price increases, there were numerous telephone calls among the defendants and co-conspirators to enforce compliance with agreed-upon price increases after moves had taken place and to settle pricing disputes involving individual competing stations.

### III. Explanation of the Proposed Consent Judgment

The United States and defendants have stipulated that the proposed consent judgment, in the form negotiated by and among the parties, may be entered by the Court at any time after compliance with the Antitrust Procedures and Penalties Act. The stipulation between the parties provides that there has been no admission by any party with respect to any issue of fact or law. Under the provisions of Section 2(e) of the Antitrust Procedures and Penalties Act, entry of the proposed judgment is conditioned upon a determination by the Court that the proposed judgment is in the public interest.

#### A. Prohibited Conduct

The provisions of the proposed judgment shall apply to the retail gasoline operations of the defendants in the State of Florida. The proposed judgment prohibits the defendants from adhering to, maintaining, furthering, enforcing or entering into, directly or indirectly, any agreement or understanding to fix retail gasoline prices in the State of Florida. The defendants are further prohibited from attempting to induce,

coerce, or influence any other person to adhere to any suggested retail price for gasoline in Florida and from communicating any such price to another retailer.

The proposed consent judgment requires that each defendant furnish a copy of the judgment to each of its officers and directors, and to each of its employees and agents who has authority over retail pricing in Florida and to advise each of them as to the availability of corporate counsel to answer questions regarding compliance. Each defendant is required to furnish to the Court and the plaintiff an affidavit as to the fact and manner of its notification of its officers, directors, employees and agents. Also, each defendant is required once each year for ten years to advise each such officer, employee and agent of its policy to abide by the antitrust laws and of the prohibitions contained in the proposed judgment and to file an affidavit as to the fact and manner of its compliance with the Court and the plaintiff.

The proposed consent judgment provides that each defendant shall require, as a condition of the sale of the assets of its retail gasoline business in Florida, that the acquiring party agree to be bound by the provisions of the judgment.

**B. Scope of the Proposed Judgment**

The proposed consent judgment will remain in effect for a period of ten years from its entry. By its terms the judgment applies to each defendant and to each of its officers,

directors, agents, employees, subsidiaries, successors and assigns, and to all other persons who act in concert with the defendant, provided that such persons have actual notice of the judgment, by personal service or otherwise.

Three of the defendants, Colonial Service Stations, Inc., The Imperial Florida Oil Company (in liquidation) and Tampa Wholesale Company, have discontinued all retail gasoline operations in Florida since the complaint was filed. The United States has entered into separate stipulations with each of these defendants providing that the affirmative notice and reporting requirements of the proposed judgment shall not apply to them so long as they are not engaged in the retail sale of gasoline in the State of Florida. The portions of the proposed judgment prohibiting collusive conduct and future price communications remain fully applicable to these defendants.

C. Effect of the Proposed Judgment on Competition

The relief encompassed in the proposed consent judgment is designed to prevent any recurrence of the activities alleged in the complaint. The prohibitive language of the judgment should ensure that the defendants will independently determine their retail prices in the future in response to normal competitive forces. It would prevent the use of an organization such as FIGMA as a central clearinghouse for exchanging information on pricing intentions and coordinating collusive price increases. The proposed judgment would further prohibit the practice,

engaged in by some defendants, of announcing in industry publications the date and amount of future retail price increases. Such announcements have been used in the past as a signalling device to competitors to aid in coordinating price moves.

The judgment provides two methods for determining the defendants' compliance with the terms of the judgment. First, the Government is given access, upon reasonable notice, to the records of the defendants to examine these records for possible violations of the judgment and is permitted to interview officers, agents or employees of the defendants. Second, the defendants may be required to submit written reports with respect to any matters contained in the proposed judgment.

It is the opinion of the Department of Justice that the proposed consent judgment contains fully adequate provisions to prevent future violations by these defendants of the type upon which this complaint is based and to ensure that the retail prices of the defendants are determined in a competitive atmosphere. In the Department's view, disposition of the lawsuit without further litigation against the defendants is appropriate in that the proposed judgment provides all the relief which the Government sought by filing its complaint; the additional expense of litigation would therefore not result in additional public benefit.



#### IV. Remedies Available to Potential Private Litigants

Section 4 of the Clayton Act (15 U.S.C. §15) provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages such person has suffered, as well as costs and reasonable attorney fees. Entry of the proposed consent judgment in this proceeding will neither impair nor assist the bringing of any such private antitrust actions. Under the provisions of Section 5(a) of the Clayton Act (15 U.S.C. §16(a)), this consent judgment has no prima facie effect in any subsequent lawsuits which may be brought against these defendants.

#### V. Procedures Available for Modification of the Proposed Judgment

As provided by the Antitrust Procedures and Penalties Act, any person believing that the proposed judgment should be modified may submit written comments to Donald A. Kinkaid, Antitrust Division, U.S. Department of Justice, 1776 Peachtree Street, N.W., Suite 420, Atlanta, Georgia 30309 within the 60-day period provided by the Act. These comments, and the Department's responses to them, will be filed with the Court and published in the Federal Register. All comments will be given due consideration by the Department of Justice, which remains free to withdraw its consent to the proposed judgment

at any time prior to its entry if it should determine that some modification of it is necessary. The proposed judgment provides that the Court retains jurisdiction over this action, and the parties may apply to the Court for such orders as may be necessary or appropriate for its modification, interpretation or enforcement.

VI. Alternatives to the Proposed Consent Judgment

This case does not involve any unusual or novel issues of fact or law which might make litigation a more desirable alternative than entry of this consent decree. The Department considers the substantive language of the judgment to be of sufficient scope and effectiveness to make litigation on relief unnecessary, as the judgment provides all relief which reasonably could have been expected after trial.

VII. Other Materials

No materials and documents of the type described in Section 2(b) of the Antitrust Procedures and Penalties Act (15 U.S.C. §16(b)) were considered in formulating this proposed judgment. Consequently, none are being filed herewith.

Dated: June 24, 1983

/s/ John T. Orr  
John T. Orr

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U.S. Department of Justice  
Antitrust Division  
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UNITED PETROLEUM, INC.,	)	
	)	
Defendants.	)	

STIPULATION CONCERNING FINAL JUDGMENT  
RELATING TO TAMPA WHOLESALE COMPANY

Plaintiff, United States of America, and defendant, Tampa Wholesale Company, hereby stipulate that Sections V and VI of the Final Judgment shall not apply to Tampa Wholesale Company, including its officers, directors, agents, representatives, employees, subsidiaries, successors and assigns, so long as Tampa Wholesale Company does not engage in the retail sale of gasoline in the State of Florida. It is additionally stipulated that Section VII of the Final Judgment shall not be construed to affirmatively require Tampa Wholesale Company, including its officers, directors, agents, representatives, employees, subsidiaries, successors and

assigns. to maintain an office or otherwise hold themselves ready to comply with any aspect of Section VII so long as Tampa Wholesale Company is not engaged in the retail sale of gasoline in the State of Florida.

/s/ John T. Orr  
Counsel for the United States

/s/ Sanford L. Bohrer  
Counsel for Tampa Wholesale Company

Dated: -

/s/ Judge Susan H. Black  
UNITED STATES DISTRICT JUDGE

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T. D. McRAE, INCORPORATED; and	)	
UNITED PETROLEUM, INC.,	)	
	)	
Defendants.	)	

STIPULATION CONCERNING FINAL JUDGMENT  
RELATING TO THE IMPERIAL FLORIDA OIL  
COMPANY (IN LIQUIDATION)

Plaintiff, United States of America, and defendant, The Imperial Florida Oil Company (in liquidation), hereby stipulate that Sections V and VI of the Final Judgment shall not apply to The Imperial Florida Oil Company (in liquidation), including its officers, directors, agents, representatives, employees, subsidiaries, successors and assigns, so long as The Imperial Florida Oil Company (in liquidation) does not engage in the retail sale of gasoline in the State of Florida. It is additionally stipulated that Section VII of the Final Judgment shall not be construed to affirmatively require The Imperial

Florida Oil Company (in liquidation), including its officers, directors, agents, representatives, employees, subsidiaries, successors and assigns, to maintain an office or otherwise hold themselves ready to comply with any aspect of Section VII so long as The Imperial Florida Oil Company (in liquidation) is not engaged in the retail sale of gasoline in the State of Florida.

/s/ John T. Orr  
Counsel for the United States

/s/ Thomas F. Ryan  
Counsel for The Imperial Florida  
Oil Company (in liquidation)

Dated: .

/s/ Judge Susan H. Black  
UNITED STATES DISTRICT JUDGE

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T. D. McRAE, INCORPORATED; and )  
UNITED PETROLEUM, INC., )  
 )  
Defendants. )

STIPULATION CONCERNING FINAL JUDGMENT  
RELATING TO COLONIAL SERVICE STATIONS, INC.

Plaintiff, United States of America, and defendant,  
Colonial Service Stations, Inc., hereby stipulate that Sections  
V and VI of the Final Judgment shall not apply to Colonial  
Service Stations, Inc., including its officers, directors,  
agents, representatives, employees, subsidiaries, successors  
and assigns, so long as Colonial Service Stations, Inc. does  
not engage in the retail sale of gasoline in the State of  
Florida. It is additionally stipulated that Section VII of the  
Final Judgment shall not be construed to affirmatively require  
Colonial Service Stations, Inc., including its officers,  
directors, agents, representatives, employees, subsidiaries,

successors and assigns, to maintain an office or otherwise hold themselves ready to comply with any aspect of Section VII so long as Colonial Service Stations, Inc. is not engaged in the retail sale of gasoline in the State of Florida.

/s/ John T. Orr  
Counsel for the United States

/s/ Samuel S. Jacobson  
Counsel for Colonial Service Stations, Inc.

Dated:

/s/ Judge Susan H. Black  
UNITED STATES DISTRICT JUDGE