

IN THE CIRCUIT COURT OF THE FIRST JUDICIAL CIRCUIT
IN AND FOR OKALOOSA COUNTY, FLORIDA

STATE OF FLORIDA,
OFFICE OF THE ATTORNEY GENERAL,
DEPARTMENT OF LEGAL AFFAIRS,

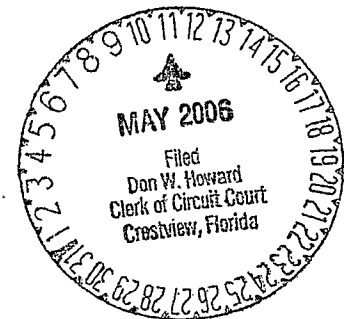
Plaintiff,

vs.

Case No. 06-CA-1986-C

RYAN E. PHILLIPS,
FILL-UPS FOOD STORES, INC.,
JOHN W. OSBURN,
ROBERT E. TATE, and
TATE ENTERPRISES, INC.,

Defendants.



COMPLAINT

Plaintiff, State of Florida, Office of the Attorney General, Department of Legal Affairs (the "Attorney General"), sues Ryan E. Phillips, Fill-Ups Food Stores, Inc., John W. Osburn, Robert E. Tate, and Tate Enterprises, Inc. and alleges as follows:

I.
INTRODUCTION

1. Defendants entered into and engaged in combinations and/or conspiracies in restraint of trade or commerce by fixing or raising retail gasoline prices in Florida through coordinated pricing by competitors, resulting in artificially inflated gasoline prices for Florida residents. There were also several attempts to secure agreements with competitors to fix retail gasoline prices.

II.
JURISDICTION AND VENUE

2. The Court has personal jurisdiction over each of the defendants. The Court has subject matter jurisdiction pursuant to § 542.30, Fla. Stat. Venue is proper pursuant to § 542.30, Fla. Stat., because the cause of action arose in Okaloosa County.

III.
PARTIES

3. The Attorney General is the chief legal officer of the State of Florida and is the enforcing authority for Chapters 542 and 501, Fla. Stat.

4. Defendant Ryan E. Phillips ("Phillips") is a resident of Okaloosa County. Mr. Phillips was the president of Phillips Oil, Inc. Mr. Phillips is the president of Fill-Ups Food Stores, Inc. and a director of Tate Enterprises, Inc.

5. Defendant Fill-Ups Food Stores, Inc. ("Fill-Ups Food Stores") is a Florida corporation with its principal place of business in Okaloosa County. Fill-Ups Food Stores is the successor-in-interest to Phillips Oil, Inc.

6. Defendant John W. Osburn ("Osburn") is a resident of Santa Rosa County.

7. Defendant Robert E. Tate ("Tate") is a resident of Okaloosa County. Mr. Tate was a director of Tate Enterprises, Inc. until approximately January 1, 2005.

8. Defendant Tate Enterprises, Inc. ("Tate Enterprises") is a Florida corporation with its principal place of business in Okaloosa County.

IV.
FACTUAL BACKGROUND

A. Florida Convenience Conspiracy

9. Tate Enterprises owned a retail gasoline outlet located at 698 North Ferdon, Crestview, Florida ("Florida Convenience"). In or about March 2003, Tate Enterprises commenced

negotiations with Prashant R. "Peter" Shah ("Shah") for the possible sale of Florida Convenience.

10. Tate, acting on his own behalf and on behalf of Tate Enterprises, demanded, as a condition of the sale, that the future retail prices of gasoline sold at Florida Convenience be set at the same level as at Tate Enterprises's retail gasoline outlets in Crestview, Florida. Shah agreed to this condition and Shri Goyam Inc. ("Shri Goyam") later ratified this agreement.

11. On May 1, 2003, Shah and others formed Shri Goyam for the purpose of purchasing Florida Convenience from Tate Enterprises. On September 18, 2003, after several months of renovations, Shri Goyam opened Florida Convenience for business.

12. When Florida Convenience opened in September 2003, it faced competition from a retail gasoline outlet located directly across the street at 695 North Ferdon. That competitor was one of Tate Enterprises's retail gasoline outlets referred to in paragraph 10 *supra*.

13. On or about November 7, 2003, Shah set the retail price of certain grades of gasoline at Florida Convenience below those at Tate Enterprises's Crestview locations, including the retail gasoline outlet located at 695 North Ferdon. Shah received a phone call from Tate reminding him of the agreement of noncompetitive pricing between Florida Convenience and Tate Enterprises's retail gasoline outlets in Crestview. After this conversation, and in accordance with the pricing agreement, Shah, acting on his own behalf and on behalf of Shri Goyam, directed that the retail prices of gasoline at Florida Convenience be raised to match those of Tate Enterprises's retail gasoline outlets in Crestview. Upon information and belief, the retail prices for gasoline at Florida Convenience remained the same as those at Tate Enterprises's retail gasoline outlets in Crestview until on or about May 27, 2005.

B. Ryan E. Phillips Conspiracy

14. In March, 2004, Phillips incorporated Phillips Oil, Inc. (now known as Fill-Ups Food

Stores). Phillips Oil, Inc. subsequently acquired Destin Gas Group I, L.L.C. and Destin Gas Group III, L.L.C. Upon information and belief, Destin Gas Group I, L.L.C. owns and operates a retail gasoline outlet in Panama City Beach, Florida and Destin Gas Group III, L.L.C. owns and operates a retail gasoline outlet located in Destin, Florida. In January 2005, Phillips Oil, Inc. expanded its presence in Florida through acquisitions of retail gasoline outlets owned by Herndon Oil, Inc., including retail gasoline outlets in Crestview, Freeport, Fort Walton Beach, Destin, and Panama City. At around the same time, Phillips purchased Tate's interest in Tate Enterprises, as well as Tate's interest in Tate Oil Co., Inc., a wholesaler of gasoline.

15. Fill-Ups Food Stores functions as both a retailer and wholesaler of gasoline in Florida. As a wholesaler, Fill-Ups Food Stores purchases gasoline directly from terminal facilities and then delivers the gasoline to certain retail outlets in Florida, including outlets that it owns or operates as well as outlets that are independently owned and operated, such as Florida Convenience.

16. Phillips sets the retail price for the gasoline sold at the retail gasoline outlets owned or controlled by Fill-Ups Food Stores. During the time period relevant hereto, Phillips, acting on his own behalf and on behalf of Fill-Ups Food Stores, engaged in various illegal actions in order to secure the agreement of competitors to price gasoline above otherwise competitive levels. Such unlawful acts included, but are not limited to, the following: After the retail gasoline prices at Florida Convenience were lowered on or about May 27, 2005, Phillips directed an employee of Fill-Ups Food Stores (Osburn) to make a telephone call to Shah to force a price increase. Osburn was unable to reach Shah, but left a message on Shah's cell phone. When Shri Goyam did not raise the retail gasoline prices at Florida Convenience in response to this overture, Phillips made a telephone call to, left a message for, and subsequently spoke with Shah, expressing his discontent with the level of pricing at Florida Convenience. Shah, acting on his own behalf and on behalf of Shri Goyam,

then agreed to raise the retail gasoline prices at Florida Convenience as demanded by Phillips, and subsequently raised Florida Convenience's retail gasoline prices by fifteen (15) cents per gallon. Upon information and belief, the retail gasoline prices at Florida Convenience remained the same as those at Fill-Ups Food Stores until September 2005, when there was a change in ownership at Shri Goyam.

C. John W. Osburn Conspiracy

17. On or about June 23, 2003, Osburn became a manager/member of I-10 Mobil, LLC, which leased the gasoline tanks and pumps located at 3200 South Ferdon, Crestview, Florida from June 2003 until July 2005. In his management capacity for I-10 Mobil, LLC, Osburn controlled the retail pricing of gasoline at 3200 South Ferdon. In October 2004, Osburn became an employee of Phillips Oil, Inc., but still maintained control of the retail gasoline prices at 3200 South Ferdon.

18. Phillips, acting on his own behalf and on behalf of Fill-Ups Food Stores, reached an agreement with Osburn that the retail gasoline prices at 3200 South Ferdon would be set at the same level as the Phillips Oil, Inc. retail gasoline outlet located directly across the street at 3301 South Ferdon. In furtherance of the agreement, Osburn sent numerous faxes, using Phillips Oil, Inc. letterhead, to I-10 Mobil, LLC's operation at 3200 South Ferdon, directing that the retail gasoline prices be set at the same level as at the Phillips Oil, Inc. retail gasoline outlet at 3301 South Ferdon. Upon information and belief, the retail gasoline prices at 3200 South Ferdon were the same as the prices at the Phillips Oil, Inc. location at 3301 South Ferdon between January 2005 and July 2005.

D. Additional Anticompetitive Conduct

19. Phillips, acting on his own behalf and on behalf of Fill-Ups Food Stores, engaged in the following additional unlawful conduct:

- (i) in or about December 2004, Phillips called and left a message for Mark Salisbury,

the President of Tom Thumb Food Stores, Inc., a retail gasoline competitor, with the specific intent to discuss noncompetitive pricing of retail gasoline. Mr. Salisbury returned the call and informed Phillips that Tom Thumb Food Stores, Inc. would not discuss this subject;

(ii) on or about January 31, 2005, Phillips attended a meeting in Panama City, Florida with Express Lane, Inc., a retail gasoline competitor, with the specific intent to discuss noncompetitive pricing of retail gasoline. Although Express Lane, Inc. refused to discuss the subject, Phillips placed fifteen cents (a dime and a nickle) in the palm of James Lewis, Jr. of Express Lane, Inc. at the end of the meeting in order to inform Mr. Lewis of his desired margins;

(iii) on or about June 17, 2005, Phillips called and left a message for Jimmy Lewis of Express Lane, Inc. threatening to begin a price war if Express Lane, Inc. did not change its advertised gasoline prices; and,

(iv) in or about June 2005, Phillips lowered the retail gasoline price at certain Phillips Oil, Inc. locations to a level that may have been below-cost in order to punish and drive business away from Express Lane, Inc. after it refused to raise retail gasoline prices.

COUNT I

Violation of Florida's Antitrust Act: The Florida Convenience Conspiracy

20. The Attorney General repeats and realleges each and every allegation contained in paragraphs 1-3 and 7-13.

21. This is an action pursuant to § 542.21(1), Fla. Stat., by the Attorney General seeking the imposition of a civil penalty for each violation of § 542.18, Fla. Stat., by defendants.

22. Defendants Tate and Tate Enterprises are each "persons" within the meaning of § 542.17(3), Fla. Stat.

23. The retail sale of gasoline involves "trade or commerce" within the meaning of § 542.17(4), Fla. Stat.

24. Defendants Tate and Tate Enterprises entered into and engaged in combinations and/or conspiracies to restrain trade or commerce in Florida in violation of the Florida Antitrust Act. § 542.18, Fla. Stat. The purpose and effect of these combinations and/or conspiracies was to eliminate competition through price-fixing, thereby inflating retail gasoline prices above competitive levels.

25. As a direct and proximate result of these combinations and/or conspiracies, natural persons in Florida suffered actual damages. Absent these combinations and/or conspiracies, natural persons in Florida would have obtained gasoline at a lower price.

COUNT II

Violation of Florida's Antitrust Act: The Ryan E. Phillips Conspiracy

26. The Attorney General repeats and realleges each and every allegation contained in paragraphs 1-16.

27. This is an action pursuant to § 542.21(1), Fla. Stat., by the Attorney General seeking the imposition of a civil penalty for each violation of § 542.18, Fla. Stat., by defendants.

28. Defendants Phillips and Fill-Ups Food Stores are each "persons" within the meaning of § 542.17(3), Fla. Stat.

29. The retail sale of gasoline involves "trade or commerce" within the meaning of § 542.17(4), Fla. Stat.

30. Defendants Phillips and Fill-Ups Food Stores (in its own capacity and as successor-in-interest to Phillips Oil, Inc.) entered into and engaged in combinations and/or conspiracies to restrain trade or commerce in Florida in violation of the Florida Antitrust Act. §542.18, Fla. Stat. The purpose and effect of these combinations and/or conspiracies was to eliminate competition through price-fixing, thereby inflating retail gasoline prices above competitive levels.

31. As a direct and proximate result of these combinations and/or conspiracies, natural

persons in Florida suffered actual damages. Absent these combinations and/or conspiracies, natural persons in Florida would have obtained gasoline at a lower price.

COUNT III

Violation of Florida's Antitrust Act: The John W. Osburn Conspiracy

32. The Attorney General repeats and realleges each and every allegation contained in paragraphs 1-6, the first sentence of 16, and 17-18.

33. This is an action pursuant to § 542.21(1), Fla. Stat., by the Attorney General seeking the imposition of a civil penalty for each violation of § 542.18, Fla. Stat., by defendants.

34. Defendants Phillips, Fill-Ups Food Stores, and Osburn are each "persons" within the meaning of § 542.17(3), Fla. Stat.

35. The retail sale of gasoline involves "trade or commerce" within the meaning of § 542.17(4), Fla. Stat.

36. Defendants Phillips, Fill-Ups Food Stores (in its own capacity and as successor-in-interest to Phillips Oil, Inc.), and Osburn combined and/or conspired to restrain trade or commerce in Florida in violation of the Florida Antitrust Act. § 542.18, Fla. Stat. The purpose and effect of these combinations and/or conspiracies was to eliminate competition through price-fixing, thereby inflating retail gasoline prices above competitive levels.

37. As a direct and proximate result of these combinations and/or conspiracies, natural persons in Florida suffered actual damages. Absent these combinations and/or conspiracies, natural persons in Florida would have obtained gasoline at a lower price.

COUNT IV

Violation of Florida Deceptive and Unfair Trade Practices Act: The Florida Convenience Conspiracy

38. The Attorney General repeats and realleges each and every allegation contained in paragraphs 1-3, 7-13, and 24-25.

39. This is an action pursuant to Chapter 501, Part II, Fla. Stat., the Florida Deceptive and Unfair Trade Practices Act. Section 501.204(1) of the Act provides that “[u]nfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of any trade or commerce are hereby declared unlawful.”

40. The retail sale of gasoline involves the conduct of “trade or commerce” within the meaning of § 501.203(8), Fla. Stat.

41. The Attorney General is an enforcing authority of the Act pursuant to § 501.203(2), Fla. Stat. The statutory violations alleged herein affected more than one judicial circuit in the State of Florida.

42. Pursuant to § 501.2075, Fla. Stat., the Attorney General is authorized to seek a civil penalty against any person or corporation who has willfully used a method, act or practice declared unlawful under § 501.204, Fla. Stat.

43. Defendants Tate and Tate Enterprises willfully engaged in unfair methods of competition or unconscionable acts or practices and/or willfully committed acts or practices that offend established public policy and are immoral, unethical, oppressive, unscrupulous or substantially injurious to consumers, in violation of § 501.204(1), Fla. Stat.

44. The aforesaid acts and practices of Defendants Tate and Tate Enterprises were to the injury and prejudice of the public.

45. Pursuant to § 501.2075, Defendants Tate and Tate Enterprises are liable for a civil penalty of \$10,000.00 for each violation of § 501.204(1), Fla. Stat., plus reasonable attorneys’ fees and costs.

COUNT V
Violation of Florida Deceptive and Unfair
Trade Practices Act: The Ryan E. Phillips Conspiracy

46. The Attorney General repeats and realleges each and every allegation contained in paragraphs 1-16 and 30-31.

47. This is an action pursuant to Chapter 501, Part II, Fla. Stat., the Florida Deceptive and Unfair Trade Practices Act. Section 501.204(1) of the Act provides that “[u]nfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of any trade or commerce are hereby declared unlawful.”

48. The retail sale of gasoline involves the conduct of “trade or commerce” within the meaning of § 501.203(8), Fla. Stat.

49. The Attorney General is an enforcing authority of the Act pursuant to § 501.203(2), Fla. Stat. The statutory violations alleged herein affected more than one judicial circuit in the State of Florida.

50. Pursuant to § 501.2075, Fla. Stat., the Attorney General is authorized to seek a civil penalty against any person or corporation who has willfully used a method, act or practice declared unlawful under § 501.204, Fla. Stat.

51. Defendants Phillips and Fill-Ups Food Stores (in its own capacity and as successor-in-interest to Phillips Oil, Inc.) willfully engaged in unfair methods of competition or unconscionable acts or practices and/or willfully committed acts or practices that offend established public policy and are immoral, unethical, oppressive, unscrupulous or substantially injurious to consumers, in violation of § 501.204(1), Fla. Stat.

52. The aforesaid acts and practices of Defendants Phillips and Fill-Ups Food Stores were to the injury and prejudice of the public.

53. Pursuant to § 501.2075, Defendants Phillips and Fill-Ups Food Stores are liable for a civil penalty of \$10,000.00 for each violation of § 501.204(1), Fla. Stat., plus reasonable attorneys' fees and costs.

COUNT VI
Violation of Florida Deceptive and Unfair
Trade Practices Act: The John W. Osburn Conspiracy

54. The Attorney General repeats and realleges each and every allegation contained in paragraphs 1-6, the first sentence of 16, 17-18, and 36-37.

55. This is an action pursuant to Chapter 501, Part II, Fla. Stat., the Florida Deceptive and Unfair Trade Practices Act. Section 501.204(1) of the Act provides that “[u]nfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of any trade or commerce are hereby declared unlawful.”

56. The retail sale of gasoline involves the conduct of “trade or commerce” within the meaning of § 501.203(8), Fla. Stat.

57. The Attorney General is an enforcing authority of the Act pursuant to § 501.203(2), Fla. Stat. The statutory violations alleged herein affected more than one judicial circuit in the State of Florida.

58. Pursuant to § 501.2075, Fla. Stat., the Attorney General is authorized to seek a civil penalty against any person or corporation who has willfully used a method, act or practice declared unlawful under § 501.204, Fla. Stat.

59. Defendants Phillips, Fill-Ups Food Stores (in its own capacity and as successor-in-interest to Phillips Oil, Inc.), and Osburn willfully engaged in unfair methods of competition or unconscionable acts or practices and/or willfully committed acts or practices that offend established public policy and are immoral, unethical, oppressive, unscrupulous or substantially injurious to

consumers, in violation of § 501.204(1), Fla. Stat.

60. The aforesaid acts and practices of Defendants Phillips, Fill-Ups Food Stores, and Osburn were to the injury and prejudice of the public.

61. Pursuant to § 501.2075, Defendants Phillips, Fill-Ups Food Stores, and Osburn are liable for a civil penalty of \$10,000.00 for each violation of § 501.204(1), Fla. Stat., plus reasonable attorneys' fees and costs.

COUNT VII
Violation of Florida Deceptive and Unfair
Trade Practices Act: Additional Acts of Phillips and Fill-Ups Food Stores

62. The Attorney General repeats and realleges each and every allegation contained in paragraphs 1-6, the first sentence of 16, and 19.

63. This is an action pursuant to Chapter 501, Part II, Fla. Stat., the Florida Deceptive and Unfair Trade Practices Act. Section 501.204(1) of the Act provides that “[u]nfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of any trade or commerce are hereby declared unlawful.”

64. The retail sale of gasoline involves the conduct of “trade or commerce” within the meaning of § 501.203(8), Fla. Stat.

65. The Attorney General is an enforcing authority of the Act pursuant to § 501.203(2), Fla. Stat. The statutory violations alleged herein affected more than one judicial circuit in the State of Florida.

66. Pursuant to § 501.2075, Fla. Stat., the Attorney General is authorized to seek a civil penalty against any person or corporation who has willfully used a method, act or practice declared unlawful under § 501.204, Fla. Stat.

67. Defendants Phillips and Fill-Ups Food Stores willfully engaged in unfair methods of

competition or unconscionable acts or practices and/or willfully committed acts or practices that offend established public policy and are immoral, unethical, oppressive, unscrupulous or substantially injurious to consumers, in violation of § 501.204(1), Fla. Stat.

68. The aforesaid acts and practices of Defendants Phillips and Fill-Ups Food Stores were to the injury and prejudice of the public.

69. Pursuant to § 501.2075, Defendants Phillips and Fill-Ups Food Stores are liable for a civil penalty of \$10,000.00 for each violation of § 501.204(1), Fla. Stat., plus reasonable attorneys' fees and costs.

Prayer for Relief

WHEREFORE, the Attorney General prays for judgment:

A. As to Count I: (1) imposing a civil penalty on Tate of \$100,000.00 for each violation of § 542.18, Fla. Stat., and (2) imposing a civil penalty on Tate Enterprises of \$1,000,000.00 for each violation of § 542.18, Fla. Stat.;

B. As to Count II: (1) imposing a civil penalty on Phillips of \$100,000.00 for each violation of § 542.18, Fla. Stat., and (2) imposing a civil penalty on Fill-Ups Food Stores of \$1,000,000.00 for each violation of § 542.18, Fla. Stat.;

C. As to Count III: (1) imposing a civil penalty on both Phillips and Osburn of \$100,000.00 for each violation of § 542.18, Fla. Stat., and (2) imposing a civil penalty on Fill-Ups Food Stores of \$1,000,000.00 for each violation of § 542.18, Fla. Stat.;

D. As to Count IV: (1) imposing a civil penalty on both Tate and Tate Enterprises of \$10,000.00 for each violation of § 501.204, Fla. Stat., and (2) awarding the Attorney General his reasonable attorneys' fees and costs;

E. As to Count V: (1) imposing a civil penalty on both Phillips and Fill-Ups Food Stores

of \$10,000.00 for each violation of § 501.204, Fla. Stat., and (2) awarding the Attorney General his reasonable attorneys' fees and costs;

F. As to Count VI: (1) imposing a civil penalty on Phillips, Fill-Ups Food Stores, and Osburn of \$10,000.00 for each violation of § 501.204, Fla. Stat., and (2) awarding the Attorney General his reasonable attorneys' fees and costs;

G. As to Count VII: (1) imposing a civil penalty on both Phillips and Fill-Ups Food Stores of \$10,000.00 for each violation of § 501.204, Fla. Stat., and (2) awarding the Attorney General his reasonable attorneys' fees and costs; and

H. Awarding such other and further relief as the Court deems just and proper, including equitable relief.

Demand for Jury Trial

The Attorney General demands a trial by jury on all issues so triable.

Respectfully submitted, this 11th day of May, 2006.

CHARLES J. CRIST, JR.
Attorney General



L. CLAYTON ROBERTS
Deputy Attorney General
Fla. Bar No. 44709
PATRICIA A. CONNERS
Director, Antitrust Division
Fla. Bar No. 361275
LIZABETH A. LEEDS
Senior Assistant Attorney General
Fla. Bar No. 457991
RUSSELL S. KENT
Assistant Attorney General
Fla. Bar No. 20257
ASHLEY C. ALTENBURGER
Assistant Attorney General
Fla. Bar No. 20505
Office of the Attorney General
Antitrust Division
PL-01, The Capitol
Tallahassee, FL 32399-1050
Telephone: (850) 414-3300
Facsimile: (850) 488-9134