

SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is made and entered into this ___ day of October 2006, by and between the State of Florida, Office of the Attorney General, Department of Legal Affairs (“OAG”) and Robert E. Tate (“Tate”) (collectively, the “parties”).

WHEREAS, OAG filed suit on May 11, 2006 in Okaloosa County Circuit Court, State of Florida vs. Ryan E. Phillips *et al.*, Case Number 2006-CA-1986-C (the “Litigation”);

WHEREAS, Count I of the Complaint alleges a retail gasoline price-fixing conspiracy in and around Crestview, Florida, between Tate, Tate Enterprises, Inc., Prashant R. “Peter” Shah, and Shri Goyam, Inc., in violation of § 542.18, Florida Statutes, involving, among other things: (i) agreeing to fix retail gasoline prices at a gasoline station located at 698 North Ferdon, Crestview, as a condition of the purchase of the station; (ii) raising retail gasoline prices at the 698 North Ferdon station to ensure that the pricing remained the same as a competitor’s gasoline prices in Crestview, in accordance with the pricing agreement; and, (iii) communicating with a competitor, in person and via telephone, to discuss the coordination of retail gasoline pricing;

WHEREAS, Count IV of the Complaint alleges that Tate and Tate Enterprises, Inc. also violated Florida Statute § 501.204(1) through the conduct described above;

WHEREAS, Tate specifically denies any and all wrongdoing or liability;

WHEREAS, the parties have determined that it is in their mutual interest to resolve the known claims that were raised or could have been raised in the Litigation against Tate, Tate Enterprises, Inc., and Tate Oil Co., Inc. in order to avoid further expense, delay, and uncertainty;

NOW THEREFORE, the parties agree as follows:

I. PROHIBITED CONDUCT

Tate agrees to refrain, either directly or indirectly, from engaging in any or all of the following conduct for a period of five (5) years from the date of this Agreement: (i) seeking, entering into or performing any agreement or understanding with any competitor involving retail gasoline prices; (ii) communicating with a competitor for purposes of coordinating retail gasoline prices; or (iii) taking any action that would result in the non-competitive pricing of retail gasoline anywhere in Florida.

II. MONETARY PAYMENT

Tate shall pay OAG the sum of \$140,000.00. Of this amount, \$100,000.00 shall be paid as civil penalties pursuant to Chapters 542 and/or 501, Part II, Fla. Stat., and the remaining \$40,000.00 shall be paid for OAG's fees and costs incurred in this investigation and Litigation. Such settlement amounts shall be paid within forty-five (45) days of the date of this Agreement by certified check or cashier's check made payable to the Department of Legal Affairs and delivered to Patricia A. Conners, Director, Antitrust Division, Office of the Attorney General, 107 W. Gaines Street, Tallahassee, Florida 32399.

III. CONTINUED COOPERATION

As an express condition of this Agreement, Tate agrees to provide continuing cooperation, whenever requested by OAG, regarding any matter related to the Litigation. Such cooperation includes, but is not limited to, producing any and all documents requested by OAG, participating in interviews and/or meetings with OAG, and testifying in a deposition or at trial, without the need for a subpoena.

IV. RELEASE AND COVENANT NOT TO SUE

For the consideration set forth herein, OAG releases, relinquishes, and discharges all known claims against Tate, Tate Enterprises, Inc., and Tate Oil Co., Inc. that were raised or could have been raised in the Litigation. OAG hereby covenants and agrees that it will file a Notice of Voluntary Dismissal as to Tate and Tate Enterprises, Inc. within ten (10) business days after its receipt of the \$140,000.00 payment from Tate.

The parties agree that this release shall not be construed to apply to any officer, director or employee of Tate Enterprises, Inc. or Tate Oil Co., Inc., other than Tate. The parties further agree that this release shall not be construed to apply to any conduct of Tate Enterprises, Inc. or Tate Oil Co., Inc. on or after January 2, 2005. Finally, the parties agree that this release shall not be construed to apply to any affiliated or successor company of Tate Enterprises, Inc. or Tate Oil Co., Inc., on or after January 2, 2005, including but not limited to any of the remaining defendants in the Litigation and Phillips Oil, Inc.

Notwithstanding this release and covenant not to sue, OAG shall have the option, at its discretion, to declare this Agreement null and void and pursue any appropriate legal action against Tate if any of his material obligations under this Agreement are breached.

V. MISCELLANEOUS

A. The parties agree that this Agreement contains the entire agreement between them with regard to the matters set forth herein. There are no other understandings or agreements between the parties, verbal or otherwise, except as expressly set forth in this Agreement. Any modifications to this Agreement must be in writing and signed by the parties.

B. The parties agree that the terms of the Agreement were negotiated in good faith and

reflect a settlement that was reached voluntarily after consultation with experienced legal counsel.

C. This Agreement shall be binding on, and inure to the benefit of, the parties. The parties expressly disclaim any intention to create rights under this Agreement that may be enforced by any other person under any circumstances.

D. Tate warrants that, as of the date of this Agreement, he is not insolvent and that the payment of the settlement amounts will not render him insolvent within the meaning of and/or for the purposes of the United States Bankruptcy Code.

E. This Agreement shall be governed by, construed, and enforced in accordance with the laws of the State of Florida, without regard to its conflict of law principles.

F. The parties agree that the sole and exclusive venue for any action arising out of or in any way relating to this Agreement shall be the Circuit Court for Okaloosa County, Florida.

IN WITNESS WHEREOF, the parties have entered this Agreement.

CHARLES J. CRIST, JR.
Attorney General

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