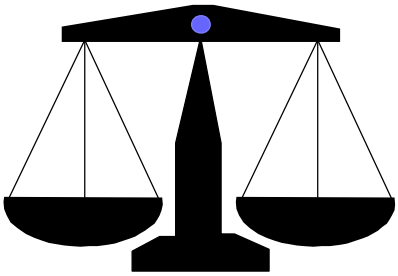

General Counsel Corner

By Peter H. Gunst, Esquire

Of Guam and Akparew

At the invitation of the Guam Petroleum Dealers Association, I had an opportunity to testify on behalf of SSDA-AT before the island-territory's Senate in mid-May concerning proposed Senate Bill 77, which would prohibit either refiners or jobbers from operating service stations on Guam. Also testifying on behalf of the Bill, which is patterned on Maryland's divorcement legislation, were a number of Guam dealers and Maryland official Robert Crawford, who flew to Guam at the Senate's invitation in order to describe Maryland's twenty-plus year experience under divorcement.

From discussions with the Bill's sponsors and other senators, as well as with Guam's remaining dealers, it was clear that the Bill enjoyed considerable support for two reasons. First, there exists a real concern that, without divorcement, Guam's independent dealers — local entrepreneurs — will be driven out of business. Second, there is rising concern that the increasing domination of the retail market by two multi-national oil companies — Mobil and Shell — will, in the end, cause substantial harm to the consumers of Guam.

The public hearing on Bill 77, which was ably presided over by Senator and former Governor Joseph F. Ada who obviously had dedicated much time and effort to master this complex issue, confirmed the significance of both concerns.

Former and present Shell dealers, including Anthony J. Ada and Renato C. Silvestre, who have been successful in obtaining preliminary injunctions in their Petroleum Marketing Practices Act suits against Shell, testified how Shell appears to have targeted its independent dealers for extinction. Indeed, during the past twenty years the independent dealer population in Guam has been reduced to the point that over half of Gaum's service stations are now directly operated by two refiners and a single jobber. Revenues that previously helped to fuel Gaum's economy are now being diverted to the coffers of the major oil companies.

With respect to consumer protection, the senators asked probing questions about the wholesale and retail pricing practices of Mobil and Shell. The wholesale price of gasoline in Gaum appears to well exceed the United States average, even though Guam's tax burden averages forty-five cents less than that imposed in the states; and, according to information previously supplied by a former oil company executive, the cost of transporting fuel to Guam averages only between two and three cents per gallon. Retail prices in Guam are also virtually if not entirely identical in a market that is dominated by company-operated stations.

Dealer association president Robert A. Perron emphasized that he could not guarantee that passage of the Bill would result in lower retail prices because the major oil companies would still control the dealer tankwagon price. But former association president John Lee asked the senators the pertinent question: would Guam be better served if retail pricing decisions were made by three entities — two multi-national

refiners and one jobber — or by over forty independent dealers?

One issue that stirred considerable discussion was the provision in the Bill barring jobber — as well as refiner — direct-operation. Guam's only significant "jobber" complained vociferously that it would suffer from the Bill, but its principal in fact characterized the company as an "independent dealer," and testified that his company only supplied a single independent retail account. It would appear to have little difficulty, therefore, in qualifying as a dealer under the proposed statute.

By contrast, the dealers stressed that they needed the jobber provision to prevent the oil companies from merely assigning all their franchises to puppet jobber entities, which could then complete the task of driving independent dealers out of business to be replaced by controlled jobber-operations.

Significantly, no major oil company representative testified with regard to the Bill or the majors' pricing practices in Guam. Instead, they submitted only generalized written statements, presumably prepared by their legal departments, and worked behind the scenes in opposition to the Bill. Their absence was forcefully noted by Senator Ada and some of his colleagues.

Senate Bill 77 will not finally be voted upon until June at the earliest. Its prospects appear good; but, in any event, Guam's independent dealers should be complimented for the considerable effort they have devoted to this important issue.

On a completely different front, the April 30 decision of Maryland's intermediate appellate court, the Court of Special Appeals, in *Akparewa v. Amoco Oil Co.* is worthy of note. There, the dealer's trial franchise was terminated after a short but stormy relationship with Amoco.

Significantly, the dealer did not directly challenge his termination under the federal Petroleum Marketing Practices Act, a battle he would most probably have lost given the almost non-existent statutory protection provided to trial franchisees under the Act. Instead, he sued in state court contending, among other things, that Amoco had failed to provide disclosures to him prior to his commencement of operation of his station that were mandated by the Maryland Gasohol and Gasoline Products Marketing Act, §§11-301 *et seq.* of the Commercial Law Article of the Maryland Code.

Under the Maryland statute, a supplier is required to provide a prospective dealer with a three-year gallonage history of the station, and to advise the dealer prior to the execution of the dealer franchise agreement of any "obligation" that will be required of him or her. The dealer claimed that he never would have taken over the station, the operation of which resulted in a significant loss, if he had been informed of its full gallonage history and of Amoco's intent to require him to use an expensive c-store supplier.

Initially, the dealer's litigation decision appeared futile because the trial court entered summary judgment, finding that he had not relied to his detriment or suffered injury as a result of Amoco's non-disclosures. The Court of Special Appeals, however, reversed and

remanded, finding that the trial court had wrongfully usurped the jury's function in making critical factual determinations with regard to the dealer's reliance on Amoco's representations.

This prompts an old and familiar refrain. Often times, state law may provide a remedy where PMPA hurdles are significant and probably impassable. Often times, state courts are less likely to grant summary judgment, thus providing a dealer to present his case to the jury.

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