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SHELL GAMES

by Thomas P. Bleau, Esq.

This is the first of a two-part piece written by Tom Bleau, counsel representing Shell dealers in the Valu Gas, et al. v Equilon Enterprises LLC fraud case. The article's conclusion will appear in the next AuTO-Fax!:

The *Valu Gas, et al. v Equilon Enterprises LLC* fraud case arose out of the revelation of the Interim Rent Challenge at the *Coast Village, et al. v Equilon Enterprises LLC* case challenging Equilon's new leases. The plaintiffs in the Coast Village case, and a number of other observers at the trial, were shocked to hear that there was a program that could have allowed them to reduce their Shell contract when they had complained so much to their rep's during the time period that VRP was eliminated, but before the new FMV leases were rolled out. Once the dealers found out that they had been lied to about the IRC, we filed the fraud case on their behalf.

Recently, the Alliance announced its new "MSO" (Multiple Site Operation) platform and is recruiting contract operators, subject to termination without cause on 30 days notice, to manage 10 to 20 stations for the company. The company believes that its MSO model is a more efficient way of running its ever-growing network of COROs or SOROs. So where are these stations coming from?

While major oil companies, like Shell and Texaco, have made record profits, the last few years have been extraordinarily difficult for lessee-dealer franchises. Historically, oil company personnel were unable to master running the day-to-day operations of a neighborhood service station profitably. Branded lessee-dealers filled the void allowing oil companies to focus on their much more profitable core business, drilling for oil and refining it into gasoline and many other petroleum based products. Lessee-dealers have helped build Big Oil's vast financial empire by running a large network of stations 24/7 for many years and have built up a core base of regular customers, insuring a consistent and ever-growing demand for product. So what reward did Shell and Texaco's "Alliance" (Equilon and Motiva) cook up for its fiercely loyal and dedicated lessee-dealer franchisees when the company decided that it was time for a change?

Like all new businesses, the Alliance had to first come up with a business plan. Only, the Alliance's revolutionary business plan expressly called for focusing on converting a large part of its network from lessee-dealer run stations to company operated stations. The economic principles were plain and simple. By contradicting the traditional view that a major oil company could not operate a large network of stations efficiently and that operating service stations should be delegated to franchised dealers, dealer profit margins would belong to the company. Of course, the Alliance's management prefers to call this concept "incremental income" to be politically correct and ignore the harsh reality of franchisees losing their investments in their stations and everything they had built up over the years.

Moreover, terminating or non-renewing a franchisee for the purpose of converting a franchised station to a company operated station is expressly prohibited by the Act. The Alliance could have bought the dealers' PMPA rights to operate the station and pay them fair value for their goodwill. However, that would mean that the dealer would have to agree or, even worse for the Alliance, the dealers might want to actually get paid fair market value or what the dealers previously paid for them, in many cases as much as $300,000 or more. Again, the economics were as plain and simple as they are eye opening.

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