

**IN THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT
IN AND FOR LEON COUNTY, FLORIDA**

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

Plaintiff,

vs.

Case No.

ISLAND FOOD STORES, LTD.,

Defendant.

_____ /

**COMPLAINT FOR INJUNCTION, DAMAGES,
CIVIL PENALTIES AND OTHER STATUTORY RELIEF**

Plaintiff, THE STATE OF FLORIDA, DEPARTMENT OF LEGAL AFFAIRS, OFFICE OF THE ATTORNEY GENERAL (hereinafter referred to as “OAG”), brings this action against Defendant, ISLAND FOOD STORES, LTD. (hereinafter referred to as “Defendant IFS”), for injunctive relief, civil penalties, and other statutory relief brought pursuant to Florida's Deceptive and Unfair Trade Practices Act, Chapter 501, Part II, Florida Statutes (2004) and § 501.160, Florida Statutes (2004), prohibiting unconscionable prices in the rental or sale of essential commodities during a declared state of emergency, and states:

THE PARTIES

1. The OAG is an enforcing authority for Florida’s Deceptive and Unfair Trade Practices Act. § 501.203(2), Fla. Stat. (2004)

2. Section 501.160(8), Fla. Stat. (2004) specifically empowers the Department of Legal Affairs to enforce the prohibition against unconscionable pricing of commodities during a state

of emergency declared by the Governor.

3. Defendant IFS is an active Florida corporation and is headquartered at 4315 Pablo Oaks Court, #2, Jacksonville, Duval County, Florida.

JURISDICTION

4. This Court has jurisdiction pursuant to §§ 501.207 and 26.012, Fla. Stat. (2004).

5. Having conducted an investigation of Defendant IFS, the Attorney General, Charles J. Crist, Jr., has determined that an enforcement action serves the public interest. (A copy of the determination of public interest is attached hereto as Exhibit "A.")

6. Defendant IFS, at all times material hereto has engaged in "trade or commerce" as that term is defined in Section 501.203(8), Florida Statutes (2004).

7. IFS, at all times material hereto, has offered BP/Amoco motor fuels for sale to consumers at its retail location, I-10 Island Food Store #321, located at 3436 Thomasville Road, Tallahassee, in Leon County, Florida (hereinafter referred to as "IFS Retail Location #321"). At all times material hereto, IFS has owned, managed, directed and controlled or had the authority to direct and control, the BP fuel pump operations and fuel pricing policies of IFS Retail Location #321.

BACKGROUND

8. On August 24, 2005, the Governor of the State of Florida, Jeb Bush, signed Executive Order 05-176 (Exhibit "B"), establishing a sixty-day State of Emergency throughout the State of Florida, declaring that then Tropical Storm Katrina, alone and in combination with the destruction caused by Hurricane Dennis, threatened the State of Florida with a major disaster.

9. On the evening of August 25, 2005, Hurricane Katrina struck south Florida as a

Category 1 (on the Saffir-Simpson scale) hurricane. According to the National Hurricane Center for the U.S. National Weather Service, the storm then moved southwestward across Florida dumping over a foot of rain, toppling trees and power lines, and damaging homes and businesses in Miami-Dade and Broward counties before exiting the state into the Gulf of Mexico. The storm eventually turned to the northwest and greatly intensified in its track across the Gulf of Mexico.

10. Hurricane Katrina made landfall in Plaquemines Parish, Louisiana as a Category 4 hurricane with sustained winds of 140 m.p.h. on the morning of August 29, 2005. The counties in the western panhandle of the State of Florida suffered extensive damage and destruction from high winds and flooding, and hundreds of thousands of western panhandle Florida residents were without electric power as a result of Hurricane Katrina. At the peak of power outages, approximately 1.3 million customers in south Florida and in the western panhandle were without electric power.

11. On August 30, 2005, Governor Bush signed Executive Order 05-177 (Exhibit "C"), amending Executive Order 05-176 to, among other things, recognize the damage and destruction caused in neighboring states and authorize the State Coordinating Officer to also provide assistance to neighboring states pursuant to the Emergency Management Assistance Compact.

12. Persons evacuating portions of Louisiana, Mississippi, Alabama, and the western Florida panhandle have traveled to and through Leon County, Florida seeking refuge from the effects of Hurricane Katrina. In the course of that evacuation, those persons have purchased lodging, goods, and services, including, but not limited to motor fuels.

13. During the State of Emergency essential commodities like lodging, food, water, ice,

chemicals, petroleum products, and lumber are necessary for use and consumption by Florida citizens and others.

PRICE GOUGING

14. Section 501.204(1), Fla. Stat. (2004), declares that unconscionable acts in the conduct of any trade or commerce are unlawful.

15. "Trade or commerce" means the advertising, soliciting, providing, offering, or distributing, whether by sale, rental, or otherwise, of any good or service, or any property, whether tangible or intangible, or any other article, commodity, or thing of value, wherever situated." § 501.203(8), Fla. Stat. (2004).

16. Florida's Price Gouging law (§ 501.160(2), Fla. Stat. (2004)) makes it unlawful, and a violation of § 501.204, Fla. Stat. (2004), for:

a person or her or his agent or employee to rent or sell or offer to rent or sell at an unconscionable price within the area for which the state of emergency is declared, any essential commodity including, but not limited to, supplies, services, provisions, or equipment that is necessary for consumption or use as a direct result of the emergency. This prohibition remains in effect until the declaration expires or is terminated.

17. "Commodity" means any goods, services, materials, merchandise, supplies, equipment, resources, or other article of commerce, and includes, without limitation, food, water, ice, chemicals, petroleum products, and lumber necessary for consumption or use as a direct result of the emergency." § 501.160(1)(a), Fla. Stat. (2004) (Emphasis added.)

18. The price for a "commodity" is *prima facie* unconscionable if the amount charged grossly exceeds the average price at which the same or similar "commodity" was readily obtainable in the trade area during the 30 days immediately prior to a declaration of a State of

Emergency, and the increase in the amount charged is not attributable to additional costs incurred in connection with the sale of the commodity or national or international market trends.

§ 501.160(1)(b), Fla. Stat. (2004).

19. Documents, invoices and information from Defendant IFS pertaining to the pricing of BP/Amoco regular unleaded gasoline at IFS's Retail Location #321 during a period just prior and after the state of emergency declaration on August 24, 2005, reflect the following:

BP/AMOCO REGULAR UNLEADED GASOLINE

<u>Date</u>	<u>Total Delivered Cost Per Gallon</u>	<u>Retail Price Per Gallon</u>	<u>Differential Per Gallon</u>
08/17/05	\$2.54	\$2.68	\$.14
08/18/05	\$2.45	\$2.69	\$.15
08/19/05	\$2.45	\$2.69	\$.24
08/20/05	\$2.39	\$2.69	\$.30
08/21/05	\$2.39	\$2.69	\$.30
08/22/05	\$2.39	\$2.69	\$.30
08/23/05	\$2.39	\$2.69	\$.30
08/24/05	\$2.34	\$2.69	\$.35
08/25/05	\$2.38	\$2.69	\$.31
08/26/05	\$2.38	\$2.69	\$.31
08/27/05	\$2.38	\$2.69	\$.31
08/28/05	\$2.38	\$2.69	\$.31
08/29/05	\$2.38	\$2.69	\$.31

08/30/05	\$2.38	\$2.69	\$.31
08/31/05	\$2.38	\$3.09	\$.71
09/01/05	\$2.38	\$3.31	\$.93
09/02/05	\$2.77	\$3.41	\$.64
09/03/05	\$2.95	\$3.41	\$.46
09/04/05	\$2.95	\$3.41	\$.46
09/05/05	\$2.95	\$3.41	\$.46
09/06/05	\$2.95	\$3.41	\$.46
09/07/05	\$2.95	\$3.19	\$.24
09/08/05	\$2.67	\$3.15	\$.48

20. During the period August 30, 2005 through September 2, 2005, the price of BP/Amoco regular unleaded gasoline at IFS's Retail Location #321 rose 72 cents, while IFS's total delivered cost of regular unleaded rose only 39 cents during the same period of time.

21. Moreover, between August 31, 2005 and September 1, 2005, the price of BP regular unleaded gasoline at IFS's Retail Location #321 was increased a total of 62 cents on two occasions with no delivery of regular unleaded gasoline and no increase in total costs.

22. Documents, invoices and information from Defendant IFS pertaining to the pricing of BP/Amoco midgrade gasoline at IFS's Retail Location #321 during a period just prior and after the state of emergency declaration on August 24, 2005, reflect the following:

BP/AMOCO MIDGRADE GASOLINE

<u>Date</u>	<u>Total Delivered Cost Per Gallon</u>	<u>Retail Price Per Gallon</u>	<u>Differential Per Gallon</u>
08/17/05	\$2.59	\$2.78	\$.19
08/18/05	\$2.49	\$2.79	\$.30
08/19/05	\$2.49	\$2.79	\$.30
08/20/05	\$2.49	\$2.79	\$.30
08/21/05	\$2.49	\$2.79	\$.30
08/22/05	\$2.43	\$2.79	\$.36
08/23/05	\$2.43	\$2.79	\$.36
08/24/05	\$2.38	\$2.79	\$.41
08/25/05	\$2.43	\$2.79	\$.36
08/26/05	\$2.43	\$2.79	\$.36
08/27/05	\$2.43	\$2.79	\$.36
08/28/05	\$2.43	\$2.79	\$.36
08/29/05	\$2.43	\$2.79	\$.36
08/30/05	\$2.43	\$2.79	\$.36
08/31/05	\$2.43	\$3.19	\$.76
09/01/05	\$2.43	\$3.41	\$.98
09/02/05	\$2.43	\$3.51	\$1.08
09/03/05	\$2.75	\$3.51	\$.76

09/04/05	\$2.75	\$3.51	\$.76
09/05/05	\$2.99	\$3.51	\$.52
09/06/05	\$2.99	\$3.51	\$.52
09/07/05	\$2.99	\$3.29	\$.30
09/08/05	\$2.99	\$3.25	\$.26

23. Between August 30, 2005 and September 2, 2005, the price of BP/Amoco midgrade gasoline at IFS's Retail Location #321 was increased a total of 72 cents with no delivery of Plus gasoline and no increase in total costs.

24. Documents, invoices and information from Defendant IFS pertaining to the pricing of BP/Amoco premium gasoline at IFS's Retail Location #321 during a period just prior and after the state of emergency declaration on August 24, 2005, reflect the following:

BP/AMOCO PREMIUM GASOLINE

<u>Date</u>	<u>Total Delivered Cost Per Gallon</u>	<u>Retail Price Per Gallon</u>	<u>Differential Per Gallon</u>
08/17/05	\$2.67	\$2.88	\$.21
08/18/05	\$2.57	\$2.89	\$.32
08/19/05	\$2.57	\$2.89	\$.32
08/20/05	\$2.52	\$2.89	\$.37
08/21/05	\$2.52	\$2.89	\$.37
08/22/05	\$2.52	\$2.89	\$.37
08/23/05	\$2.52	\$2.89	\$.37
08/24/05	\$2.47	\$2.89	\$.42

08/25/05	\$2.47	\$2.89	\$.42
08/26/05	\$2.51	\$2.89	\$.38
08/27/05	\$2.51	\$2.89	\$.38
08/28/05	\$2.51	\$2.89	\$.38
08/29/05	\$2.51	\$2.89	\$.38
08/30/05	\$2.51	\$2.89	\$.38
08/31/05	\$2.51	\$3.29	\$.78
09/01/05	\$2.68	\$3.51	\$.83
09/02/05	\$2.68	\$3.61	\$.93
09/03/05	\$2.83	\$3.61	\$.78
09/04/05	\$2.83	\$3.61	\$.78
09/05/05	\$2.83	\$3.61	\$.78
09/06/05	\$2.83	\$3.61	\$.78
09/07/05	\$2.83	\$3.39	\$.56
09/08/05	\$2.80	\$3.35	\$.55

25. During the period August 30, 2005 through September 2, 2005, the price of BP/Amoco premium gasoline at IFS's Retail Location #321 rose 72 cents, while IFS's total delivered cost of regular unleaded rose only 17 cents during the same period of time.

26. On September 7, 2005, the price of BP/Amoco premium gasoline at IFS's Retail Location #321 was lowered 22 cents even though there was no concomitant decrease in costs.

27. Documents, invoices and information from Defendant IFS pertaining to the pricing of BP/Amoco diesel fuel at IFS's Retail Location #321 during a period just prior and after the state

of emergency declaration on August 24, 2005, reflect the following:

BP/AMOCO DIESEL FUEL

<u>Date</u>	<u>Total Delivered Cost Per Gallon</u>	<u>Retail Price Per Gallon</u>	<u>Differential Per Gallon</u>
08/17/05	\$2.53	\$2.68	\$.15
08/18/05	\$2.53	\$2.68	\$.15
08/19/05	\$2.53	\$2.68	\$.15
08/20/05	\$2.46	\$2.68	\$.22
08/21/05	\$2.46	\$2.68	\$.22
08/22/05	\$2.46	\$2.68	\$.22
08/23/05	\$2.46	\$2.68	\$.22
08/24/05	\$2.45	\$2.68	\$.23
08/25/05	\$2.45	\$2.68	\$.23
08/26/05	\$2.45	\$2.68	\$.23
08/27/05	\$2.45	\$2.68	\$.23
08/28/05	\$2.45	\$2.68	\$.23
08/29/05	\$2.45	\$2.69	\$.24
08/30/05	\$2.45	\$2.69	\$.24
08/31/05	\$2.45	\$2.86	\$.41
09/01/05	\$2.45	\$2.91	\$.46
09/02/05	\$2.45	\$2.99	\$.54
09/03/05	\$2.45	\$2.99	\$.54

09/04/05	\$2.76	\$2.99	\$.23
09/05/05	\$2.76	\$2.99	\$.23
09/06/05	\$2.76	\$2.91	\$.15
09/07/05	\$2.76	\$2.95	\$.19
09/08/05	\$2.76	\$2.89	\$.13

28. Defendant IFS's precipitant and significant increases in its gasoline prices and corresponding profits from August 24, 2005 through at least September 8, 2005 were not proportionally attributable to higher costs.

29. Defendant IFS's conduct in charging unconscionable gasoline prices violates § 501.160, Fla. Stat. (2004) and Florida's Deceptive and Unfair Trade Practices Act, Chapter 501, Part II, Florida Statutes (2004).

WHEREFORE, the Plaintiff, THE STATE OF FLORIDA, DEPARTMENT OF LEGAL AFFAIRS, OFFICE OF THE ATTORNEY GENERAL, prays for judgment:

A. Temporarily and permanently enjoining Defendant IFS from charging or attempting to charge unconscionable prices for commodities during the State of Emergency.

B. Awarding actual damages and interest on behalf of consumers injured by the deceptive or unfair acts or practices of Defendant IFS in accordance with § 501.207(1)(c), Fla. Stat. (2004);

C. Assessing civil penalties against Defendant IFS in the amount of one thousand dollars (\$1,000) for each violation of § 501.160, Fla. Stat. (2004), in accordance with § 501.164, Fla. Stat. (2004);

D. Assessing civil penalties against Defendant IFS in the amount of ten thousand

dollars (\$10,000) for each violation of Chapter 501, Part II in accordance with § 501.2075, Fla. Stat. (2004); and civil penalties in the amount of fifteen thousand dollars (\$15,000) for each violation of Chapter 501, Part II, that victimized a senior citizen or handicapped person, in accordance with § 501.2077, Fla. Stat. (2004).

- E. Awarding reasonable attorney's fees and costs to the OAG pursuant to §§ 501.2105 and 501.2075, Fla. Stat. (2004);
- F. Awarding restitution for consumers injured by Defendant IFS's unlawful actions;
- G. Requiring that Defendant IFS disgorge all ill-gotten revenue generated as a result of the unconscionable, unfair and deceptive practices set forth in this complaint;
- H. Declaring the practices described in this complaint unlawful; and
- I. Granting such other relief as this Court deems just and proper.

Respectfully submitted,

CHARLES J. CRIST, JR.
ATTORNEY GENERAL

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