Arkansas Petroleum Marketing Facility Leases: Key Issues for the Lessor/Lessee

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My law firm colleague, Melissa Bandy, and I authored an article for the Arkansas Oil Marketers Association's quarterly publication *The Canopy, titled:*

Arkansas Petroleum Marketing Facility Leases: Key Issues for the Lessor/Lessee ("Article")

The *Article* addresses a variety of leasing issues associated with facilities utilized by Arkansas petroleum marketing and related operations. Depending on the type of petroleum marketing operation, such facilities might include:

- Bulk oil plants
- Retail convenience stores
- Fixed Base Operations ("FBOs")
- Service stations
- Lube oil facilities
- Card/Key lock operations
- Terminals
- Carwashes

Many of the issues addressed in the *Article* are equally applicable to various types of commercial, industrial, energy and agricultural facilities.

The *Article* addresses petroleum marketing facility leases from both the lessor's and lessee's perspective.

The *Article* states:

The significant value of a typical retail motor fuel or other petroleum marketing facility magnifies the importance of the lease. No prudent jobber fails to clearly document important provisions in a lease such as the term of the occupancy and amount of rental (including how it is calculated). The failure to do so risks a misunderstanding of the projected costs (in the case of the lessee) or revenues (in the case of the lessor) associated with a particular facility. However, these are only two of many lease terms that can have a material effect on the economics or liabilities associated with a particular lease arrangement. Failure to address any one of a number of other issues can pose financial risk for the lessee or lessor.

Examples might include:

- Lessee did not recognize the lease requires it to maintain all property improvements (refrigerators, pumps, tanks, signage, canopy, HVAC, etc.) resulting in major unexpected costs.

- The lessor failed to include in a retail motor fuel outlet lease a provision that "incentivizes" the lessee to purchase petroleum products from the jobber/lessor.
- A lessee of a retail motor fuel outlet is prevented from undertaking certain new or additional revenue generating activities (i.e., sale of lottery tickets, sale of alcoholic beverages, food service, etc.) because of restrictive lease language.
- The lessor allocated the responsibility for Arkansas Petroleum Storage Tank Trust Fund fees for the leasehold's underground storage tanks to the lessee but failed to ensure payments were timely made negating eligibility for coverage of a significant leak.

The *Article* identifies various lease terms and conditions that may be relevant when negotiating a lease of various petroleum marketing facilities. A number of terms, conditions or issues that are relevant to some or all leases are listed with some commentary and suggestions. However, the *Article* notes that the list is not exhaustive.

The elements of a lease and/or topics include:

1. Parties
2. Property/Facility (Property description; Facility/Equipment/Fixtures; etc.)
3. Term of the Lease (Length; Right of renewal; Extensions; Holding over lessee; Option to purchase, etc.)
4. Rental (Term; Tied to motor fuel sales?; Adjustments; Late charges; Security deposit; etc.)
5. Use of Premises
6. Assignment/Sublet
7. Memorandum of Lease
8. Financing Considerations
9. Environmental/Storage Tanks (Role of the State Trust Fund; Indemnity; Inspections; Due Diligence; etc.
10. Integration Clause
11. Allocation of Costs/Expenses (Taxes; Utilities; Repairs/Maintenance; Insurance; etc.)
12. Right of Entry/Inspection
13. Warranties/Representations
14. Surrender of Premises
15. Credit Arrangements
16. Termination/Non-renewal Provisions (Petroleum Marketing Practices Act, etc.)
17. Insurance (Types; Amounts; Documentation; Waiver of subrogation; etc.)

A copy of the *Article* can be downloaded here.