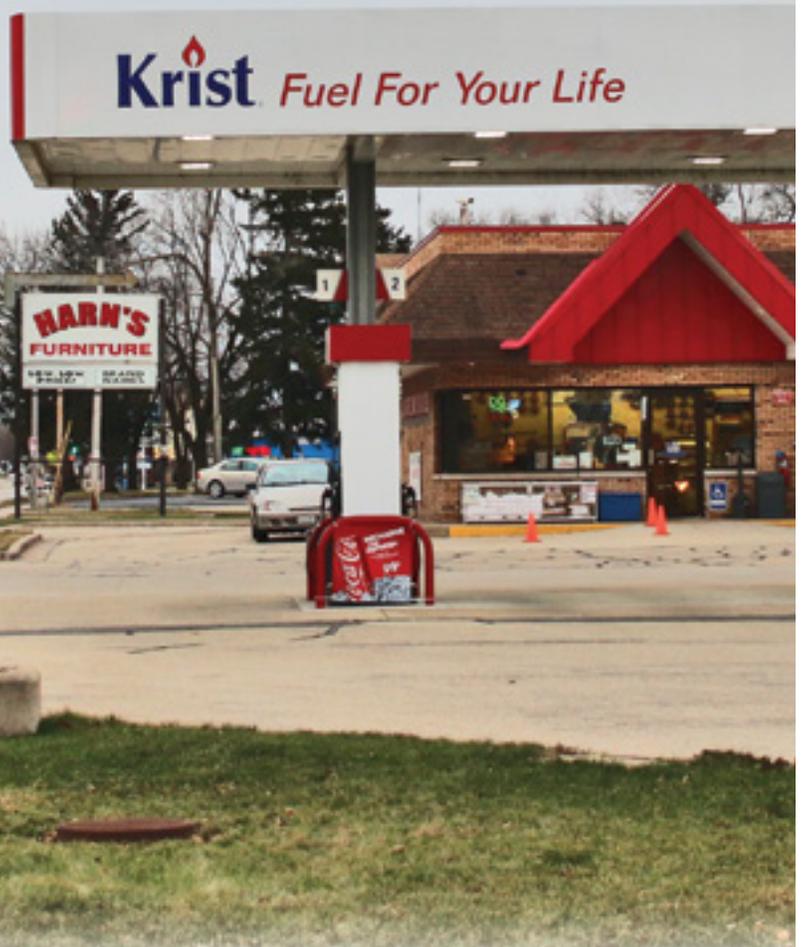




Filing complaints a daily routine



Robert Helf photo

MINIMUM MARKUP LAW

Krist Oil owner says markup law hampers his ability to compete in Wisconsin

By Ken Wysocky

In 2014, the state Department of Agriculture, Trade and Consumer Protection received 2,373 complaints alleging violations of Wisconsin's minimum markup law, which prohibits businesses from selling products at prices below their wholesale cost. The majority of those complaints — 1,670, or slightly more than 70% — were filed by just one business: Michigan-based Krist Oil Co.

In fact, an analysis of DATCP data from 2014 — the latest year for which statistics were made available — shows that gasoline retailers are virtually the only businesses that proactively use the law; they filed 2,361 complaints, or a whopping 99.5% of all 2014 filings.

And among them, no one comes close to protagonist-in-chief Krist Atanasoff, the owner of Krist Oil. Krist operates 33 independent convenience-store gas stations in northcentral and northeastern Wisconsin and more than 70 overall in Wisconsin, Michigan and Minnesota.

A self-described brawler who says he relishes a good fight, Atanasoff wields the law like a legal cudgel as he attempts to expand further into Wisconsin.

What's his motivation? The answer is two-fold: Filing a complaint against a competitor and a Notice of Meeting Competition form not only allows him to match that retailer's price, it also protects him against any retaliatory legal action.

"At the advice of my attorney, I protect myself from my competitors by filing a complaint and a meeting-competition form, which allows me to match competitors' prices" even if they're below the minimum markup, he explains. "If I drop my price to

match a competitor and don't file those forms, competitors can say I'm cutting prices (below the minimum markup level), and they can sue me. I'm very, very careful about conforming to the law."

As an example, Atanasoff cites an instance in which a big-box retailer was selling gas in Wausau for \$3.22 per gallon,

while surrounding competitors were selling at \$3.28 — even though the minimum markup price that day was \$3.30. So he electronically filed a complaint and a meeting-competition form with DATCP, which allowed him to match the \$3.22 price while providing immunity against competitors' claims of violating the law.



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— Krist Atanasoff,
owner of Krist Oil

Love-hate relationship

Yet ironically enough, as willing as he is to use it, Atanasoff vehemently opposes the minimum markup law, which treats retail sale of gasoline separately from other goods; it mandates that gas stations price fuel at 9.18% above the “average posted terminal price,” or APTP.

An independent oil-price-survey company calculates that terminal price each day, according to DATCP. The average posted terminal price is based on the average price at a regional distribution facility (also called a “terminal”) that sells fuel to at least three refiners or wholesalers.

The bottom line: No matter how cheaply retailers can purchase gasoline on the wholesale market, they must mark up their fuel by a mandated rate. That's why the minimum legal price of gas in the same geographic markets tends to be the same, regardless of the wholesale price, industry observers say.

That's one of the things that rankles Atanasoff most about the law. He points out

that his company, founded decades ago by his grandfather, Krist Atanasoff, in Caspian, Mich., is built on a business model that allows him to compete effectively — except in Wisconsin. “I run a very, very efficient business,” he says. “We’re a fully independent, integrated oil company.

“I’ve got our costs down because I own my own trucks — 31 of them, going 24/7. I also own my own ground and my own gas stations and don’t pay any distributors or franchise fees,” he continues. “My son is in the construction business, so he builds my gas stations. I can come in and put up new stations for less and bring in fuel for less; my costs of doing business are lower. I can probably buy gas 8 to 10 cents per gallon cheaper than my competitors, but the law prevents me from selling it cheaper than my competitors do. Is that really the American way?”

Moreover, Atanasoff contends that the law forces consumers to pay artificially high prices, something that would not occur in a free market. As evidence, he notes that gasoline prices on the Michigan side of Menominee, which straddles the state line, are routinely lower than on the Wisconsin side of the city.

“If I want to give gas away on the Michigan side, I can do that,” he says. “Abolishing the law would be good for consumers ... government should not be involved in setting prices. This law was originally designed to protect the little guy from the big predators, but now they’re putting a spin on it ... using it to keep little old me out of the market.”

Interestingly enough, Atanasoff’s competitors don’t respond in kind to his complaints; competitors filed only 49 complaints against Krist Oil in 2014.

Widespread complaints

Certain retailers have borne the brunt of Krist Oil’s aggressive approach. In 2014, Krist filed 177 complaints against nearly a dozen Holiday Companies gas stations throughout northern Wisconsin, from Superior to Eagle River to Marinette. Krist filed another 60 complaints

against a Phillips 66 station owned by the Ho-Chunk Nation in Wittenberg. It filed 43 more complaints against Stiles Junction Food & Fuel LLC in Lena. In Green Bay, a Shell station owned by Titledown Oil Corp., headquartered in Green Bay, was the subject of 42 complaints — and 24 more were filed against Shell stations owned by Rhinelander-based Trig’s T.A. Solberg Co. The list goes on and on.

Most of those companies declined to comment for this story about the minimum markup law as well as Atanasoff’s tactics. But Karen Thompson, who owns just one gas station — the aforementioned Stiles Junction Food & Fuel in Lena

— spoke in favor of the minimum markup law. She says it protects small gas station owners from getting undercut on price by larger companies with far more purchasing power.

“Without the law, the big guys would take everything (prices) down to nothing and make it very hard to compete,” Thompson says. “It’s already hard to compete. If there’s free rein like that, your Wal-Marts and Kwik Trips will undercut the little guys. Don’t get me wrong — it’s great that they can do that; they’ve done well for themselves. But by the same token, there are a lot of mom-and-pop operations out there that are struggling.”

As for Atanasoff lodging so many complaints against her station, Thompson says a few of them were valid but that those violations occurred on days when she was not at work and no one at the station changed the prices to reflect the minimum markup.

“He’s very aggressive,” she says of Atanasoff. “One of his trucks drives through my parking lot every morning (to check her gas prices). What did I ever do to him? He has 60-some gas stations, and I have one. I don’t pick on anybody; I’m just trying to run a business.”

On the other hand, Thompson acknowledges that generally speaking, most gas station owners don’t follow the law. At one point, she says, DATCP officials told her to check

“Every time I change my prices, I fax a note to the state, telling them what (price) I’m moving to, just to cover my butt. It might change two or three times a week ... The state says we need to follow the prices of the stations closest to us ... it’s a silly game.”

— Karen Thompson,
owner of Stiles Junction
Food & Fuel in Lena

Michigan-based Krist Oil filed 70% of the total number of gas-sale complaints in Wisconsin in 2014. A Krist Oil station in Neenah is shown here.



Robert Helf photo

competitors' prices every day to be sure she's not violating the law.

"I watch the Kwik Trip to the east of me and another guy down the road, and my husband drives through Oconto Falls every day, so I know the prices there, too," she notes. "Now every time I change my prices, I fax a note to the state, telling them what (price) I'm moving to, just to cover my butt. It might change two or three times a week, depending on how volatile the market is.

"The state says we need to follow the prices of the stations closest to us ... it's a silly game," she adds.

In response, DATCP spokesman Bill Cosh says the agency does not tell retailers how to price their fuel. "DATCP does offer guidance to retailers that choose to exercise the meeting-competition exception regarding filing Notices of Meeting Competition and maintaining documentation, such as price surveys," he said in an email.

Complaints consume time and effort

Serving as a one-man, minimum-markup enforcer in northern Wisconsin comes at a cost. Atanasoff says every store manager is responsible for checking competitors' prices daily. "That's life," he says. "It's what we do. We file complaints seven days a week — it's a real pain."

He estimates that filing so many complaints costs him about \$100,000 a year in salaries, benefits and sundry administrative costs.

"In my office, I have four people that take care of Wisconsin and less than one full-time person that handles things in Michigan — and most of our business is based in Michigan," Atanasoff says. "I've even got people working weekends to watch the prices and file complaints. It's very expensive to do business in Wisconsin because of all these crazy rules."

When asked why he just doesn't file fewer complaints, he explains that without them, it would be difficult to stay in business. "I'm an independent — I don't have a big oil company behind me," he says.

Adding insult to injury, the minimum markup law is rarely enforced, Atanasoff and other detractors say.

The law says that violators can be fined \$50 to \$500 for a first violation and \$200 to \$2,500 for each subsequent violation. But according to DATCP data, the department took enforcement action in the form of warning letters to gas station owners just 60 times in 2014, compared to 2,361 complaints. "The state enforces the minimum markup law as they see fit," Atanasoff says. (*See story on enforcement on Page 24.*)

But despite all the business headaches the minimum markup law causes, Atanasoff says he has no intention of leaving Wisconsin or changing his tactics. "Krist is here to stay," he says. "I'm not going away ... I'll fight to the death. That's the kind of guy I am."

Ken Wysocky of Whitefish Bay is a veteran freelance journalist and editor.