



California Corporate & Securities Law

“These are the Glengarry leads. And to you, they’re gold.”

September 2, 2011 by [Keith Paul Bishop](#)

A Friday Miscellany

“How did you even find out about me?”

This article by Ronald Campbell in yesterday’s *The Orange County Register*: [“Irvine music festival raises money boiler-room style,”](#) tells an interesting story about the use of lead brokers in soliciting investors. According to this story, when one investor asked why he was called, he received this answer: “Looks like you – you know, we buy all of our leads from a lead broker. Looks like you had showed some interest in an oil project in the past, for energy, and so we were calling to get you on board here, show you how you could get 2 to 1 on your capital in a quick turnaround.” I’m confident that the promoters of this investment won’t have the same question if they should happen to get a call from either the DOC or the SEC.

“Fill ‘er up with high test”

I like to say that before practicing law, I worked as a petroleum transfer engineer. In reality, I was a service station attendant in a full-service gas station. Back then, we pumped gas, washed the windows and offered to check your oil. We had three pumps – one for premium, one for regular and one for Ethyl. (If you’ve never heard of Ethyl, here’s a 1950’s [video](#) that explains what it is.) Now in California, full service has almost disappeared and there is only one pump with a single nozzle to dispense all three grades. The reason for single nozzle in California is that service stations must now meet the requirements of the [California Environmental Protection Agency Air Resources Board](#) (ARB) and the ARB requires a single nozzle design.

While the ARB likely believes that it has good reasons for imposing this requirement, some consumers (and their lawyers) thought otherwise. In a putative class action, these consumers argued that this design was “fundamentally flawed due to a residual fuel occurrence: when Plaintiffs purchased premium grade fuel, they received between two and three-tenths of a gallon of residual fuel from the previous transaction, and therefore were overcharged when the previous purchaser had selected mid-range or regular grade fuel.” The District Court dismissed the plaintiffs’ complaint

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without leave to amend. Yesterday, in [Alvarez v. Chevron Corp.](#), the Ninth Circuit Court of Appeals upheld the trial court's dismissal concluding:

Defendants' current conduct—using dispenser designs that cause the residual fuel problem—is lawful in California. There may well be a better dispenser design, and California regulators may consider implementing that design in the future to remedy the residual fuel situation. However, under the current statutes and regulations, Defendants' conduct does not support a claim for which we may grant relief.

“Nunc lento sonitu dicunt, morieris.”

Yesterday, I alluded to the famous Meditation XVII which John Donne wrote in 1624. Usually, only a portion of this piece is presented as a poem. It is actually part of a larger meditation that you can read [here](#).

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