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Two lawsuits against 'hot fuel' practice in Kansas get class-action status

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The legal battle against "hot fuel" is warming up with two lawsuits against the practice in Kansas becoming the first in the nation to receive class-action status.

U.S. District Judge Kathryn Vratil in Kansas City, Kan., has ruled the two suits meet the standards to represent not just the few individuals named in the suits, but other, unnamed consumers allegedly affected by the hot-fuel practice.

Hot fuel refers to selling gasoline above the industry standard of 60 degrees without adjusting the volume of a gallon of fuel. This practice reduces the amount of energy the fuel contains. In a series of stories in 2006, The Kansas City Star estimated that hot fuel cost consumers \$2.3 billion annually.

The certification of class-action status does not deal with the merits of the cases, but allows them to proceed. The judge's ruling, which also could trigger discussions to settle the case, was hailed by attorneys representing consumers in the hot-fuel suits.

"It's a great order, frankly" said Bob Horn, attorney at Horn, Aylward & Bandy in Kansas City.

George Zelcs, attorney at Korein Tillery in Chicago, said the Kansas cases were considered a "bellwether" signaling how other hot-fuel suits also seeking class-action status could be decided.

Attorneys for the defendants, which include oil companies and fuel retailers, said that while they were disappointed with parts of the ruling, they had not decided whether to file an appeal. They were pleased that the certification in Vratil's ruling was limited to liability and injunctive relief (such as a fix for hot fuel) and not for damages that defendants have argued are difficult to peg.

"It also recognizes that it is an open question as to whether consumers receive a net benefit at all from the use of ATC," said Martin Loring, attorney at Husch Blackwell Sanders in Kansas City, referring to the automatic adjustment to the volume of a gallon of gas to account for temperature differences.

But Vratil said that if plaintiffs prevail in the liability and injunctive portions of their claims, she would consider whether to certify a class for damages.

The defendants include BP, Casey's General Stores, Chevron, Circle K, Citgo, ConocoPhillips, 7-Eleven, Shell Oil, Valero, Kum & Go, QuikTrip and Wal-Mart.

What is hot fuel?

At the longtime industry standard of 60 degrees, the 231-cubic-inch U.S. gallon of gasoline puts out a certain amount of energy.

But fuel is often sold at higher temperatures, causing it to expand and the amount of energy to decline for each gallon dispensed.

At other stages in the fuel-delivery chain, the industry routinely adjusts volume for temperature, using the 60-degree industry standard.

But retail pumps in America give consumers 231 cubic inches per gallon, regardless of temperature.

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