

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

IN RE: MOTOR FUEL TEMPERATURE)	
SALES PRACTICES LITIGATION)	
)	MDL No. 1840
(This Document Relates to All Cases))	
)	Case No. 07-MD-1840-KHV
_____)	

ORDER

On April 2, 2010, the undersigned U.S. Magistrate Judge, James P. O'Hara, convened a status conference to discuss remaining discovery in this MDL proceeding. At the conference, the undersigned considered the parties' requests made in the March 31, 2010 joint status report on discovery (doc. 1618) and heard oral arguments from plaintiffs' liaison counsel, defendants' liaison counsel, and counsel representing twelve defendants who have stated their intention to appeal U.S. District Judge Kathryn H. Vratil's March 4, 2010 memorandum and order regarding a purported First Amendment associational privilege (doc. 1583). This order memorializes the undersigned's rulings made on the record during the conference.

1. Any notice of appeal challenging rulings in Judge Vratil's March 4, 2010 memorandum and order shall be filed by **April 5, 2010**, as suggested by defense counsel at the conference.

2. Subpoenas that the parties have served on non-party trade associations, to the

extent they are not withdrawn,¹ must be responded to by **April 9, 2010**.² In the hopefully unlikely event that disputes arise from those subpoenas that cannot be resolved during the meet-and-confer process, any motions for a protective order by the trade associations or motions to compel by the party serving the subpoena shall be filed by **April 16, 2010**.

3. Discovery that defendants have withheld based on an asserted First Amendment privilege shall be produced, in accordance with Judge Vratil's March 4, 2010 memorandum and order, and the unappealed rulings in the undersigned's May 28, 2009 memorandum and order (doc. 1080), no later than **May 3, 2010**. Revised, non-categorical, privilege logs for documents over which defendants continue to assert a privilege shall also be produced by **May 3, 2010**.

This order applies to all defendants who have outstanding written discovery requests, including defendants who intend to file an appeal.³ It is the undersigned's hope that the Tenth Circuit will act before the May 3, 2010 deadline and thereby eliminate the need for the appealing defendants to ask for a discovery stay. If, however, the appeal remains

¹There was some discussion at the conference that subpoenas served by defendants may be withdrawn without prejudice to their re-service following resolution of the First Amendment privilege issue.

²The parties that served the subpoenas shall be responsible for immediately notifying the trade associations of this deadline.

³At this time, however, given the lack of any persuasive authority having been cited, the court declines to restrict any non-appealing defendant from electing *before* May 3, 2010, to produce documents in its possession that another defendant or trade association asserts is protected by First Amendment privilege.

pending as the deadline is approached, the appealing defendants may seek a stay in the appropriate court.

The undersigned also notes that he remains open to expediting the May 3, 2010, deadline should Judge Vratil indicate that additional First Amendment documents might influence her decision on the class-certification motion that she is currently considering.

4. All other discovery not addressed herein shall remain subject to the discovery stay set out in Scheduling Order No. 3 (Doc. 1429). As anticipated by Scheduling Order No. 3, once Judge Vratil has made a ruling on the pending class-certification motion, the parties and the court will be in a better position to structure remaining discovery, be that in the Kansas case alone or in the MDL proceeding as a whole.

IT IS SO ORDERED.

Dated this 2nd day of April, 2010, at Kansas City, Kansas.

s/ James P. O'Hara
James P. O'Hara
U.S. Magistrate Judge