

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS**

**IN RE: MOTOR FUEL TEMPERATURE)
SALES PRACTICES LITIGATION)
(This Document Relates to All Cases))
_____)**

MDL No: 1840

Case No: 07-md-1840-KHV

**PRELIMINARY ORDER ON PRACTICE AND PROCEDURE ORDER UPON TRANSFER
PURSUANT TO 28 U.S.C. § 1407(a)**

It appearing that civil actions transferred to this Court and listed on Schedule A merit special attention as complex litigation., it is hereby ORDERED that:

1. Prior to the initial scheduling conference and entry of a comprehensive order governing all further proceedings in this case, the provisions of this Order shall govern the practice and procedure in those actions that are transferred to this Court by the Judicial Panel on Multidistrict Litigation pursuant to its order dated June 18, 2007 and filed in this court on June 22, 2007. Those cases are listed on Schedule A attached to this Order. This Order will also apply to any tag-a-long actions filed in or removed to or transferred to this Court.

2. The civil actions listed on Schedule A are consolidated for pretrial purposes. This consolidation does not constitute a determination that the actions should be consolidated for trial, nor does it have the effect of making any entity a party to any action in which he, she or it has not been named, served or added in accordance with the Federal Rules of Civil Procedure.

3. No later than August 10, 2007, each party shall update corporate disclosure statements pursuant to Fed. R. Civ. P. 7.1.

4. All matters relating to pretrial and discovery proceedings in this case will be addressed at an initial scheduling conference on **Tuesday, August 28, 2007 at 2:30 p.m.** in the Special

Proceedings Courtroom, Room #655, Robert J. Dole United States Courthouse, 500 State Avenue, Kansas City, Kansas. Counsel are expected to familiarize themselves with the *Manual for Complex Litigation Fourth (Fed. Judicial Center 2004)* (“MCL 4th”) and be prepared to suggest procedures which will facilitate the expeditious, economical and just resolution of this litigation. To the extent applicable, the items listed in MCL 4th Sections 11.21, 11.211, 11.212, 11.213 and 11.214 shall constitute a tentative agenda for the conference. Counsel shall confer and seek consensus with respect to items on the agenda, including a proposed discovery plan, amendment of pleadings and consideration of any class action allegations and motions. Any proposals as to agenda items or proposed case management orders, shall be submitted by **August 17, 2007**.

5. Prior to August 17, 2007, counsel for each group of parties whose interests are similarly aligned shall confer and seek consensus on the selection of liaison counsel who will be charged with essentially administrative matters. For example, liaison counsel shall be authorized to receive orders and notices from the Court on behalf of all parties within their liaison groups. To the extent such orders and notices are not available electronically to all parties, liaison counsel shall prepare and transmit copies of such orders and notices to the parties in their liaison groups. Liaison counsel shall maintain complete files with copies of all documents served upon them and make such files available to parties within their liaison groups upon request. Liaison counsel are authorized to receive orders and notices from the Judicial Panel on Multidistrict Litigation pursuant to Rule 5.2 of the Panel’s *Rules of Procedure* on behalf of all parties within their liaison groups and shall prepare and transmit copies of such orders and notices to the parties in their liaison groups. Expenses incurred in performing the services of liaison counsel shall be shared equally by all members of the liaison group in a manner agreeable to the parties or as determined by the Court failing such agreement. Appointment of liaison counsel shall be subject to approval of the Court. At the initial scheduling conference the parties shall

be prepared to discuss any additional needs for an organizational structure consistent with the efficient handling of this matter, including those suggestions contained in Section 10.22 of MCL 4th.

6. Plaintiffs and defendants shall submit to the chambers of Judge Kathryn H. Vratil and the chambers of Magistrate Judge James P. O'Hara, by mail or email at ksd_vratil_chambers@ksd.uscourts.gov and at ksd_ohara_chambers@ksd.uscourts.gov, no later than **August 17, 2007** a brief written statement which indicates their preliminary understanding of the facts involved in the litigation and the critical factual and legal issues. These statements will not be filed with the Clerk, will not be binding, will not waive claims or defenses and may not be offered in evidence against a party at later proceedings. To the extent known, the statements shall list all pending motions and all related cases pending in state or federal court, together with their current status, including any discovery taken to date. The parties shall be limited to one such submission for all plaintiffs and one such submission for all defendants.

7. Each party represented by counsel shall appear at the initial scheduling conference through an attorney who will have primary responsibility for the party's interest in this litigation. Attendance at the conference will not waive objections to jurisdiction, venue or service.

8. Prior to the initial scheduling conference, service of all documents shall be made on each of the attorneys on the panel attorney service list attached hereto and designated as Schedule B. Any attorney who wishes to have his or her name added to or deleted from such Panel Attorney Service List may do so upon request to the Clerk and notice to all other persons on such service list. At the initial scheduling conference, the parties shall submit a list of attorneys and their addresses, email addresses, telephone numbers and facsimile numbers. Only one attorney for each party separately represented shall be included on such list.

9. Each defendant is granted an extension of time for responding by motion or answer to

the complaint(s) until a date to be set by the Court. Pending the initial scheduling conference and further orders of this court, all outstanding discovery proceedings are stayed, no further discovery shall be initiated, and the time requirements to perform any acts or file any papers pursuant to Rules 26 through 37 of the Federal Rules of Civil Procedure are tolled.

10. The Clerk of the Court will maintain a master docket case file under the style “**In Re: Motor Fuel Temperature Sales Practices Litigation**” District of Kansas case number **07-md-1840** and the Multidistrict Litigation case number **MDL 1840**. When a pleading is intended to apply to all actions, this shall be indicated in caption by the words: “**This Document Relates to All Cases.**” When a pleading is intended to apply to fewer than all cases, this Court’s docket number for each individual case to which the document is related shall appear immediately after the words “**This Document Relates to...**”.

11. Any document which is to be filed in any of these actions shall be filed with the Clerk of this Court and not with the transferor district. The District Court of Kansas is an electronic court and all filings shall be submitted electronically unless otherwise ordered by the court. Counsel are required to register for electronic filing on the Form A attached hereto. The Court directs counsel to its website (www.ksd.uscourts.gov) for further information and instructions for electronic filing. For any questions with regard to electronic filing and CM/ECF, please contact Carol Kuhl at 913-551-6518 or carol_kuhl@ksd.uscourts.gov.

12. The parties are directed to make all entries on the master docket sheet (07-md-1840) with a notation listing the cases to which the document applies; except that a document closing a case will also be entered on the individual docket sheet for the case to which it applies. All documents shall be filed in the master file. Unless specifically ordered otherwise, no chambers copies shall be provided.

13. Any document filed in any of these actions which is substantially identical to any other

document filed in another of these actions shall be sufficient if it incorporates by reference the document to which it is substantially identical. Where counsel for more than one party plan to file substantially identical documents they shall join in the submission of such documents and shall file only one document on behalf of all so joined.

14. Any order including protective orders previously entered by this Court or any transferor district court shall remain in full force and effect unless modified by this Court upon application.

15. When an action that properly belongs as a part of In Re: Motor Fuel Temperature Sales Practices Litigation is hereinafter filed in the District of Kansas or removed or transferred here from another court, the Clerk of this Court shall:

- a. File a copy of this Order in the separate file for such action;
- b. Make an appropriate entry on the master docket sheet;
- c. Mail to the attorneys for the plaintiff in the newly filed or transferred case a copy of this Order; and
- d. Upon the first appearance of any new defendant, mail to the attorneys for the defendant in such newly filed or transferred cases a copy of this Order.

16. Counsel who appeared in a transferor court prior to transfer need not enter an additional appearance before this Court.

17. In the event that a case is remanded from this court, the parties shall furnish to the Clerk of the Court a stipulation or designation of the contents of the record and furnish all necessary copies of any pleadings filed so as to enable the Clerk of the Court to which it is remanded to comply with the order of remand.

18. Each party shall take reasonable steps to preserve documents and other records containing information potentially relevant to the subject matter of this litigation.

19. In accordance with Rule 5(d), Fed. R. Civ. P., discovery requests and responses shall not be filed with the Clerk or sent to chambers except when specifically ordered by the Court to the extent needed in connection with a motion.

20. Unless otherwise ordered by this Court, all substantive communications with the Court shall be in writing, with copies to opposing counsel. Inquiries to the Court concerning scheduling and related matters shall be directed to Linda South, courtroom deputy for Judge Kathryn H. Vratil, at **(913) 551-6539**, or to the chambers email account, which is ksd_vratil_chambers@ksd.uscourts.gov. Inquiries concerning matters assigned to the magistrate judge shall be directed to Kathy Grant, courtroom deputy for Magistrate Judge James P. O'Hara, at **(913) 551-6710**, or to the chambers email account, which is ksd_ohara_chambers@ksd.uscourts.gov.

21. The court recognizes that cooperation among counsel is essential for the orderly and expeditious resolution of this litigation. The communication of information among and between plaintiffs' counsel and among and between defendants' counsel shall not be deemed a waiver of attorney-client privilege or the protection afforded attorney work product, and cooperative efforts contemplated above shall not in any way be used against any plaintiff by any defendant or against any defendant by any plaintiff. Nothing contained in this provision shall be construed to limit the rights of any party or counsel to assert the attorney-client privilege or attorney work product doctrine.

Dated in Kansas City, Kansas this 24th day of July, 2007.

s/ Kathryn H. Vratil
Kathryn H. Vratil
United States District Judge

SCHEDULE A

Wilson, et al. v. Ampride, Inc., et al. D. Kan. No. 06-2582

American Fiber & Cabling, LLC, et al. v. BP Corporation North America, Inc., et al., D. Kan. No. 07-2053

Donaldson, et al. v. BP Corporation North America, Inc., et al., D. Kan. No. 07-2280

Vanderbilt v. Ampride, Inc., et al., D. Kan. No. 07-2281

Ditzfeld Transfer, Inc. v. Pilot Travel Centers, LLC, et al., D. Kan. No. 07-2283

VanDyne, et al. v. Murphy Oil Company, Inc., et al., D. Kan. No. 07-2284

Massey, et al. v. BP Corporation North America, Inc., et al., D. Kan. No. 07-2289

Galauski, et al. v. Becker, et al., D. Kan. No. 07-2293

Keen Exploration, LLC, et al. v. Amoco Oil Company., et al., D. Kan. No. 07-2294

Foster, et al. v. BP Corporation North America Petroleum, Inc., et al., D. Kan. No. 07-2296

Rushing, et al. v. Ambest, Inc., et al., D. Kan. No. 07-2300

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