



News from NATSO

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“Hot Fuel” Settlement Leaves Consumers Out in the Cold *Agreement Likely to Achieve Little More Than Pay Day for Trial Lawyers*

ALEXANDRIA, VA. – A proposed settlement agreement with Costco over “hot fuel” is the latest attempt by trial lawyers to mislead the public, according to Lisa Mullings, CEO of NATSO, a national association representing travel plazas and truckstops.

Despite claims that the warehouse club will “fix hot fuel,” the only likely results from the 19-page settlement agreement are a payout for plaintiffs’ lawyers and an end to the litigation for defendant Costco.

The proposed class action lawsuit claims that when consumers buy gasoline in warm-weather states, they get less than they pay for because warmer fuel expands. According to comments made by trial lawyers and lawyer-funded groups such as Consumer Watchdog, Costco has agreed to “fix hot fuel” in at least 14 states within five years. By that time, they insist, devices installed on Costco fuel pumps will dispense more or less gasoline depending on the temperature.

Mullings says news of the settlement came as a surprise because a California government body, the California Energy Commission, concluded just weeks ago that automatic fuel temperature compensation devices would actually *increase* the retail cost of gas and diesel.

In 2007, California’s legislature directed the CEC to study the effects of mandating automatic fuel temperature compensation, or ATC. The report, released in March, concluded that “under all the options examined,” ATC presented a “net cost to society.”

In fact, transcripts reveal that one commissioner remarked during the release of the study that “hot fuel” was “a lot of hot air and big dollars.”

Yet another commissioner remarked, “I say this as a public interest lawyer. [R]econsider what are the most important public interests here. Rome is burning, the Titanic is sinking...this just does not seem like the highest and best use of the state of California...”

Mullings said, “The trial lawyers can continue their charade, but the cat’s out of the bag on ATC—it would cost consumers more.”

She continued, “Despite all the hype, the mere existence of this agreement does not require Costco to install these devices. We believe this is simply a ploy by trial attorneys to induce other defendants into settling frivolous litigation.” She noted:

- Automatic temperature compensation is not permitted by law. The settlement agreement puts the burden of obtaining legal approval for ATC squarely on the plaintiff’s lawyers, not on Costco.

- The agreement states that as long as Costco believes that the devices cannot be installed under any state's law, they do not have to install them in that state.
- If the settlement agreement directly or indirectly results in higher fuel costs for Costco in any state (“determined *solely* in the good faith *subjective judgment* of *Costco*” in provision 4.8) (emphasis added), Costco is able to unilaterally rescind or cancel the agreement for that state.
- If any other defendant secures “a more favorable settlement,” Costco (“in its sole discretion”) can modify its agreement to take advantage of the more favorable terms, according to provision 4.7.

“The fact that these trial attorneys are willing to enter into this agreement tells me that they are desperate to secure a financial windfall while they still can. It is unconscionable that they will go this far to score a big settlement award,” said Mullings. “Costco will not pay one penny in damages to the proposed class of consumers. On the other hand, the agreement clearly requires Costco to pay the plaintiffs’ lawyer fees awarded by the court.”

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NATSO is the trade association of America’s travel plaza and truckstop industry. Founded in 1960, NATSO represents the industry on legislative and regulatory matters; serves as the official source of information on the diverse travel plaza and truckstop industry; provides education to its members; conducts an annual convention and trade show; and supports efforts to generally improve the business climate in which its members operate.