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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
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IN RE: METHYL TERTIARY BUTYL 00 MDL 1358
ETHER ("MTBE") PRODUCTS Master File C.A.
LIABILITY LITIGATION No. 1:00-1898(SAS)

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July 15, 2009
11:11 a.m.

Before:

HON. SHIRA A. SCHEINDLIN
District Judge

APPEARANCES

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(In open court)
THE COURT: Mr. Sher. Ms. Amron, Mr. Chapman, are you
Mr. Plache. Is that how you say it?
MR. PLACHE: Yes, your Honor.
THE COURT: Mr. Sacripanti, Mr. Pardo,
Mr. Riccardulli, Ms. Kalnins Temple.
A new face. Are you Mr. McGill?
MR. MCGILL: Yes, your Honor.
THE COURT: where are you from?
MR. MCGILL: I'm from McDermott, Will & Emery.
THE COURT: You're with them?

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1 certification somehow equal approval is unsupported. The EPA
2 specifically rejected the suggestion that registration should
3 only be required if it has reason to believe that a product
4 "impairs the effectiveness of emission control devices or
5 endangers public health and welfare."

6 The EPA explained that the "principal purpose of
7 requiring registration is to provide the EPA with information
8 on fuel or additive composition before the emission products of
9 such materials develop into a problem."

10 This passage makes clear that registration of a fuel
11 additive by the EPA is not the equivalent to a determination by
12 the agency as to its efficacy or health effects. Instead,
13 registration is required for the purpose of aiding the EPA in
14 its monitoring of such products. In addition, as this court
15 has held, certification of MTBE by the EPA means only that the
16 EPA determined that MTBE satisfied the requirements of the
17 Clean Air Act. The EPA made no formal assessment as to its
18 danger with respect to its effects on air quality or its
19 unsuitability in groundwater or any other issues there as
20 stated in this case. Exxon is, therefore, precluded from
21 arguing that the EPA approved the use of MTBE because it is
22 simply untrue.

23 Nevertheless, Exxon is allowed to present evidence
24 that the EPA required the registration and certification of
25 MTBE as one of several oxygenates. And then the city, in turn,
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1 is permitted to argue that when the EPA was certifying the use
2 of MTBE in gasoline, it was misled by defendants about the
3 harmful properties of MTBE and its potential danger to
4 groundwater and drinking water. In any event, such evidence
5 may be relevant to whether Exxon was reasonable in using MTBE
6 and whether MTBE was the only feasible alternative. I'm sorry.
7 And that's back to the sentence that said Exxon is allowed to
8 present evidence that the EPA required the registration and
9 certification of MTBE as one of several oxygenates. It is that
10 evidence that I may be relevant to whether Exxon was reasonable
11 in using MTBE and whether MTBE was the only feasible
12 alternative.

13 However, should Exxon advance such argument at trial,
14 an appropriate instruction will be given to the jury that the
15 EPA's registration and certification of MTBE does not
16 constitute its endorsement or approval.

17 For the reasons just stated, the city's motion in
18 limine No. 1 to exclude evidence or argument that federal or
19 state law required the use of MTBE is granted in part and
20 denied in part. And the city's motion in limine No. 2 to
21 exclude evidence or argument that federal agencies endorsed or
22 approved the use of MTBE is granted.

23 Okay. So that's two more. The rest are coming your
24 way. We're going to set a scheduled meeting hopefully a week
25 from now and then hopefully a week after that. And by the

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1 second of those two weeks from today you'll have all MIL
2 rulings in advance of trial.