

Wholesale Motor Fuel Sales/ Unmanned Fuel Station: Washington Appellate Court Addresses Applicability of Truth in Lending Act



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The Washington Court of Appeals (“Court”) addressed in an October 25th opinion whether cards used to access unmanned fuel pumps are “credit cards” so that cardholder liability is limited for an unauthorized fuel purchase. See *Connell Oil Inc. v Johnson*, No. 35372-9-III, 2018 WL 5289383 (Wash. Ct. App. 2018).

A key question was the potential applicability of the Truth in Lending Act (“TILA”).

Connell Oil (“Plaintiff”) is in the business of selling and distributing wholesale motor fuel for commercial purposes. Such facilities typically provide customers access to unmanned fueling stations commonly used by police, fire, transit and school districts. The unmanned fuel stations are inoperable unless a customer uses an appropriate access device.

The access system involved a card lock system. This system included a plastic card that looks like a credit card. Once a customer completes fueling, an invoice is sent twice per month.

Eric Johnson (“Defendant”) had been a customer of Connell Oil since 2009. On July 27, 2014, the Defendant’s wallet was stolen.

In September of 2014, the Plaintiff called the Defendant and notified the Defendant that the Plaintiff was terminating his account. The reason for termination was suspicious activity.

A thief had stolen both the petroleum card and the PIN number. Losses totaled approximately \$34,649.68 worth of fuel.

The Plaintiff had invoiced the Defendant three times since the wallet was stolen. However, the Defendant did not detect the fuel theft.

15 U.S.C. § 1643 of the TILA limits a cardholder’s liability for the unauthorized use of a credit card. The Federal Reserve Board (“FRB”) issues commentaries to TILA.

One official commentary states, “A credit card does not include a card required to be used to obtain petroleum products for business purposes from a wholesale distribution facility, regardless of payment.”

Official commentary is binding on a court unless it is arbitrary, capricious, or manifestly contrary to the statute.

15 U.S.C. § 1643 limits a person's and business's liability for the unauthorized use of their credit card. Additionally, any card that allows a debtor to defer payment of a debt, even for a short time, is a credit card.

The Court analyzed the card lock's functions. It first indicated that it unlocks an unmanned fuel pump to facilitate a wholesale purchase of gasoline. This was stated to indicate a short-term credit purchase.

The Court also found that the commentary is not arbitrary, capricious, or manifestly contrary to the statute.

The stolen card lock was held to not constitute a credit card for the purposes of the TILA. Consequently, the Court affirmed the trial court. It stated that the commentary is binding, the Defendant's stolen petroleum card is a type of card described by the commentary, and his liability for its unauthorized use is not limited by TILA.

A copy of the opinion can be found [here](#).