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## 2020 Petroleum Marketing Year in Review & Look Ahead to 2021 Other Petroleum Marketing Updates

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### **Motor Fuel Pricing**

***Bautista v. Valero*** (N.D. Cal. Nov. 5, 2020)

- A court granted preliminary approval of settlement of a case against Valero alleging that Valero violated California's consumer protection laws by permitting Valero-branded stations to advertise "cash" and "credit" prices for fuel without requiring disclosure of how debit card purchases would be charged. The settlement involved injunctive relief in lieu of damages, a payment to the class representative, and payment of Class Counsel's fees and costs. Specifically, Valero must have signs and policies that do not approve two-tiered pricing that omits debit prices and other station signage disclosing debit card pricing related to any discounted pricing. The case was previously on appeal in the Ninth Circuit and the class had been decertified. The final approval hearing on the settlement is set for March 2021.

### **Deed Restrictions**

***Salkhi v. BP West Coast Products, LLC*** (9th Cir. Oct. 22, 2020)

- A franchisee sought to invalidate the deed restrictions on two parcels of land the franchisee purchased from BP. The franchisee argued that the deed restrictions were invalid under California Business and Professions Code § 16600 because they were unlawful restraints of trade. The Ninth Circuit affirmed the district court's grant of summary judgment for BP because § 16600 does not apply to restrictions upon land and finding that the deed restrictions were valid.

### **Antitrust**

***Kentucky v. Marathon Petroleum Company LP*** (W.D. Ky. June 1, 2020)

- Kentucky brought antitrust claims against Marathon related to allegedly overcharging consumers for motor fuel based on Kentucky's claim that Marathon's market share allowed it to illegally manipulate the RFG market in Louisville and northern Kentucky (through exchange agreements), which Kentucky alleged caused the wholesale and retail prices of RFG in Kentucky to be higher. Marathon moved for summary judgment. The court agreed with Marathon that Kentucky's opinion from its only expert was not admissible because it was unreliable. The court dismissed the federal antitrust claims because it found that there was no evidence of a relevant market or antitrust injury (and thus harm to consumers), which prevented Kentucky from being able to show a violation of the federal antitrust laws. The court refused to exercise jurisdiction over the remaining state law claims and they were dismissed.

**Franchise/Joint Employer**

***Patel v. 7-11, Inc. (D. Mass. Sept. 10, 2020)***

- Convenience store franchisees asserted a putative class action against the franchisor (7-11) alleging that the franchisees were misclassified as independent contractors under Massachusetts law. In considering a motion for class certification and competing motions for summary judgment, the court found that the FTC franchise rule, rather than Massachusetts law, applied to determining whether the c-store franchisees were independent contractors or employees, and granted summary judgment for the franchisor and denying class certification.