

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

**PEOPLE OF THE STATE OF
CALIFORNIA, ex rel. EDMUND G.
BROWN JR., ATTORNEY GENERAL,**

Appellant,

v.

**GENERAL MOTORS CORPORATION,
et al.,**

Defendants and Appellees.

Case No. 07-16908

On Appeal From the United States District Court
for the District of California

No. 06-cv-05755 MJJ
Martin J. Jenkins, Judge

UNOPPOSED MOTION TO DISMISS APPEAL

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UNOPPOSED MOTION TO DISMISS APPEAL

Pursuant to Federal Rule of Appellate Procedure 42(b), Plaintiff-Appellant People of the State of California (California) moves for an order dismissing this appeal on terms agreed to by the parties or fixed by the Court. Counsel for the defendants-appellees has informed us that defendants-appellees do not oppose this motion and agree to dismissal under which each party bears its own costs.

Case on Appeal

In this case, California alleges that greenhouse gas emissions from trucks and autos sold in the United States by the six automaker defendants-appellees are a public nuisance under the federal common law because they contribute to global warming and to injuries within the State of California. The district court dismissed the action, holding that the case raises non-justiciable political questions. The district court did not reach the issue of whether the federal common law is “displaced” by the Clean Air Act, but the parties briefed the issue on appeal.

Status of Appeal

The case is briefed and was scheduled for oral argument in May 2009. On April 6, 2009, the Court granted California’s request to continue oral

argument for six months.

Reasons to Dismiss the Appeal

When California asked the Court to continue the appeal for six months, it cited three reasons for the request. First, the likelihood of federal action to regulate greenhouse gas emissions from motor vehicles could, as a practical matter, serve California's public welfare and environmental interests to such an extent that California would choose voluntarily to dismiss this action.

Second, federal action at least arguably would be relevant to the legal issues presented on appeal and would require additional briefing. Third, if one or more of the auto company defendants-appellees filed for bankruptcy, which seemed likely, California would seriously consider whether to pursue the appeal against those companies. *See* California's Motion to Continue Oral Argument (Apr. 1, 2009).

As anticipated, California now has decided to dismiss the appeal based on recent events. For instance, the Environmental Protection Agency finally has acknowledged that carbon dioxide and other greenhouse gases are a public health danger and must be regulated. (Declaration of Harrison M. Pollak ("Pollak Decl.") ¶ 2.) Shortly afterward, the President directed the Department of Transportation to establish higher national fuel efficiency

standards in line with the standards California has sought to implement for the last several years. (*Id.* ¶ 3) And defendants-appellees Chrysler and General Motors both have sought protection from creditors under Chapter 11 of the Bankruptcy Code. (*Id.* ¶ 4.)

In light of these events, California has decided to dismiss the appeal and to leave for another day resolution of the issues the appeal raises. California continues to believe the district court erred in dismissing the complaint, but is hopeful that recent progress toward reducing greenhouse gas emissions by defendants-appellees will afford California some relief against the effects of global warming to which the auto companies' emissions contribute.

Counsel for defendants-appellees has indicated that defendants-appellees do not oppose this motion. (Pollak Decl. ¶ 5.) The parties have agreed to terms of dismissal by which each party bears its own costs. (*Id.*)

Thank you for your consideration.

Dated: June 19, 2009

EDMUND G. BROWN JR.
Attorney General of California

/s/ _____
HARRISON POLLAK
Deputy Attorney General

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**DECLARATION OF HARRISON M. POLLAK
IN SUPPORT OF MOTION TO DISMISS
APPEAL**

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I, Harrison M. Pollak, declare as follows:

1. I am employed by the California Department of Justice as a Deputy Attorney General. In that capacity, I am one of the attorneys assigned to the case entitled *California v. General Motors, et al.*
2. On April 24, 2009, the United States Environmental Protection Agency caused to be published in the Federal Register a proposed “endangerment finding” for greenhouse gases under Section 202 of the Clean Air Act, which is an initial step to regulating greenhouse gases from mobile sources under the Act. 74 Fed. Reg. 18886 (Apr. 24, 2009).)
3. On May 19, 2009, President Obama announced an agreement to implement a new national fuel efficiency standard in line with the standards California has sought to implement over the last several years. Press Release, White House, President Obama Announces National Fuel Efficiency Policy (May 19, 2009), available at http://www.whitehouse.gov/the_press_office/President-Obama-Announces-National-Fuel-Efficiency-Policy/ (last visited June 19, 2009).
4. On April 30, Chrysler filed for Chapter 11 bankruptcy protection in the Southern District of New York. *In re Old Carco LLC (f/k/a/ Chrysler LLC)*, No. 09-50002 (S.D.N.Y. filed Apr. 30, 2009). On June 1, 2009, General Motors filed

for Chapter 11 bankruptcy protection in the Southern District of New York. *In re General Motors Corp.*, No. 09-50026 (S.D.N.Y. filed June 1, 2009).

5. On June 16, 2009, Marjorie Lewis, counsel for defendants-appellees, informed me by e-mail that her clients do not oppose this motion and that they agree that each party is to bear its own costs.

I declare under penalty of perjury that the foregoing is true and correct and to the best of my knowledge and belief. Executed on June 19, 2009, in Oakland, California.

/s/
Harrison M. Pollak

CERTIFICATE OF SERVICE
When Not All Case Participants are Registered for the
Appellate CM/ECF System

U.S. Court of Appeals Docket Number(s): 07-16908

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I hereby certify that I electronically filed the foregoing **UNOPPOSED MOTION TO DISMISS APPEAL and DECLARATION OF HARRISON M. POLLAK IN SUPPORT OF UNOPPOSED MOTION TO DISMISS APPEAL** with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system on June 19, 2009.

Participants in the case who are registered CM/ECF users will be served by the appellate CM/ECF system.

I further certify that some of the participants in the case are not registered CM/ECF users. I have mailed the foregoing document by First-Class Mail, postage prepaid, or have dispatched it to a third party commercial carrier for delivery within 3 calendar days to the following non-CM/ECF participants:

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Signature

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