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### **Green Mountain Chrysler Plymouth Dodge Jeep v. Crombie**

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# LITIGATION UPDATE

## GREEN MOUNTAIN CHRYSLER PLYMOUTH DODGE JEEP V. CROMBIE

by Addie Haughey\*

### INTRODUCTION

On September 12, 2007 the U.S. District Court for the District of Vermont upheld a Vermont plan to adopt greenhouse gas (“GHG”) emission regulations for new motor vehicles sold in the state. Several motor vehicle industry parties filed the suit against George Crombie, Secretary of the Vermont Agency of Natural Resources, to challenge the validity of Vermont’s regulations, which are based on the California’s GHG emission standards.<sup>1</sup>

### LEGAL BACKGROUND AND ARGUMENTS

At the trial in April and May of 2007, plaintiffs argued that Vermont could not adopt California’s GHG standards because the federal government’s right to regulate GHG emission preempted Vermont regulations. Plaintiffs alleged three types of preemption: (1) preemption under the Clean Air Act (“CAA”); (2) preemption under the Environmental Protection and Conservation Act (“EPCA”); and (3) foreign policy preemption.<sup>2</sup>

Section 209(a) of the CAA prevents states from preemptively establishing their own motor vehicle emission standards, delegating that responsibility to the Environmental Protection Agency (“EPA”).<sup>3</sup> Section 209(b), however, does give California the opportunity to develop its own standards so long as it is given a waiver by EPA. California was given this exception so the state could better manage their unique severe air pollution problems.<sup>4</sup> The CAA further allows for another state to adopt Californian, instead of federal, standards as long as an EPA waiver has been issued to California and that state notifies the administrator.<sup>5</sup>

California passed its own set of GHG emission standards in 2004. Vermont, in the action that prompted this litigation, adopted those standards in 2005.<sup>6</sup> EPA has yet to give California the necessary waiver and California Governor Arnold Schwarzenegger has threatened to file suit if they do not answer the waiver request before October 2007.<sup>7</sup>

Section 509(a) of EPCA prevents states from making laws related to fuel economy standards for new vehicles and delegates that responsibility to the Department of Transportation (“DOT”). The corporate average fuel economy (“CAFE”) standards are determined by considering technological feasibility,

economic practicability, the need to conserve energy, and other federal motor vehicle standards.<sup>8</sup>

In *Massachusetts v. EPA*, earlier this year, the Supreme Court held that the EPA is responsible for regulating GHG emissions because the broad definition of “air pollutant” in the CAA includes GHGs—an idea EPA previously rejected.<sup>9</sup> The court also reasoned that though fuel economy regulations are the responsibility of DOT and such regulations are a key part of GHG emission control, the overlap of fuel economy and pollution prevention does not diminish EPA’s duty to control pollution.<sup>10</sup>

While the *Massachusetts* case dealt with whether the EPA must regulate GHGs, the Vermont case dealt with a state’s right to adopt its own GHG standards under the California exemption of the CAA. The *Massachusetts* case was vital in the *Green Mountain Chrysler* decision because factual findings regarding the reality of global warming and the legitimacy of deeming GHGs as pollutants under the CAA—the same act under which Vermont’s new regulations were developed—bolstered Vermont’s defense in this case.<sup>11</sup>

Plaintiffs also alleged that Vermont’s GHG regulation “intrude[d] upon the foreign policy of the United States and the foreign affairs prerogatives of the President and Congress of the United States.”<sup>12</sup> Specifically, the authority to pursue multilateral GHG agreements. The regulations would also, according to the Plaintiffs, “interfere[ ] with the ability of the United States to speak with one voice upon matters of global climate change.”<sup>13</sup>

### HOLDINGS

Assuming that EPA will grant California’s waiver request and providing that, if EPA does not grant the waiver, its decision would become moot,<sup>14</sup> the Court dismissed all three arguments of preemption. The California exemption and the ability for other states to qualify for that exemption extinguished any violation of the CAA preemption clause.

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Separation of EPCA responsibilities for fuel economy from the CAA pollution regulation under the *Massachusetts* decision made the EPCA preemption clause irrelevant in this case. California CAA standards, as soon as they are sanctioned by EPA, are to be considered “other Federal motor vehicle standards” under EPCA criteria for fuel economy.<sup>15</sup>

The argument of foreign policy preemption was denied because Vermont’s GHG regulations do not “impair the effective exercise of the Nations foreign policy,” the necessary threshold for preemption when federal policy does not expressly prohibit a state’s actions.<sup>16</sup> Though GHG emissions represent a wide body of foreign policy initiatives, those initiatives actually encourage action to curb GHG emissions, even on the state level, making Vermont’s regulations complementary, not conflicting, to foreign policy.<sup>17</sup>


The court found the auto industries’ scientific expert testimony unconvincing, calling their baseline assumptions “unsupported by the evidence.”<sup>18</sup> Because that testimony served as the basis for many of the industries’ arguments, those arguments were equally unconvincing. Multiple motions throughout the trial attempted to discredit Vermont’s expert witnesses, but the court accepted their testimony as “simply more credible” regarding climate change and its impacts on the state of Vermont, the ability of Vermont’s regulations to curb impacts, and the feasibility for the auto industry to meet regulatory requirements.<sup>19</sup>

## CONCLUSION

The court was “unconvinced [that] automakers [could] not meet the challenges of Vermont and California’s GHG regulations.”<sup>20</sup> While time will prove the accuracy of this statement, this case may serve as a powerful legal tool in the growing body of case law on global warming. California’s waiver from EPA depends on the feasibility of the regulations—something this case clearly supports. David Doniger of the Natural Resources Defense Council said the ruling in this case will “put a lot more pressure on EPA to grant the waiver.”<sup>21</sup>

The eleven other states that joined Vermont in adopting the California standards now have a strongly persuasive precedent that legitimizes their regulations and protects them from similar suits by automakers. Richard J. Lazarus of Georgetown University proclaimed that “[t]he district court’s opinion is a sweeping rejection of the auto industry’s claim that California and other states” lack authority to regulate GHGs.<sup>22</sup>

On October 6, 2007, automakers appealed the *Green Mountain Chrysler* decision to the United States Court of Appeals for the Second Circuit.<sup>23</sup> “I would have been shocked if they had not appealed,” said Vermont Attorney General William H. Sorrell, “I’d rather be arguing our side than theirs.”<sup>24</sup>

Certainly, other states will face similar aggressive challenges to their GHG regulations. In fact, a case like *Green Mountain Chrysler* is pending in Rhode Island. Another suit in California began on October 22nd of this year.<sup>25</sup> Nonetheless, Sorrell called this “a big win” and a cause for celebration “for those concerned about a healthier environment and . . . global warming.”<sup>26</sup> 

<sup>1</sup> See *Green Mountain Chrysler Plymouth Dodge Jeep v. Crombie*, No. 2:05-cv-302, 2007 WL 2669444 (D.Vt. Sept. 12, 2007), available at <http://www.atg.state.vt.us/display.php?pubsec=4&curdoc=1358> (last visited Oct. 31, 2007) [hereinafter *Green Mountain Chrysler*].

<sup>2</sup> *Green Mountain Chrysler*, *id.* at 1.

<sup>3</sup> *Green Mountain Chrysler*, *id.* at 12.

<sup>4</sup> *Green Mountain Chrysler*, *supra* note 1, at 4.

<sup>5</sup> *Green Mountain Chrysler*, *supra* note 1, at 12 (citing 42 U.S.C. § 7543(a), 7521(a), 7501).

<sup>6</sup> *Green Mountain Chrysler*, *supra* note 1, at 4.

<sup>7</sup> Bob Egelko, *Federal Judge Gives Boost to States on Limiting Vehicle Emissions*, S.F. CHRON., Sept. 13, 2007, available at <http://www.sfgate.com/cgi-bin/article.cgi?file=/c/a/2007/09/13/MNK2S4PLM.DTL> (last visited Oct. 12, 2007).

<sup>8</sup> *Green Mountain Chrysler*, *supra* note 1, at 14.

<sup>9</sup> *Green Mountain Chrysler*, *supra* note 1, at 21-22.

<sup>10</sup> *Green Mountain Chrysler*, *supra* note 1, at 22.

<sup>11</sup> *Green Mountain Chrysler*, *supra* note 1, at 17-18.

<sup>12</sup> *Green Mountain Chrysler*, *supra* note 1, at 226.

<sup>13</sup> *Green Mountain Chrysler*, *supra* note 1, at 222.

<sup>14</sup> *Green Mountain Chrysler*, *supra* note 1, at 235.

<sup>15</sup> *Green Mountain Chrysler*, *supra* note 1, at 237.

<sup>16</sup> *Green Mountain Chrysler*, *supra* note 1, at 223.

<sup>17</sup> *Green Mountain Chrysler*, *supra* note 1, at 226.

<sup>18</sup> *Green Mountain Chrysler*, *supra* note 1, at 155.

<sup>19</sup> *Green Mountain Chrysler*, *supra* note 1, at 192.

<sup>20</sup> *Green Mountain Chrysler*, *supra* note 1, at 239.

<sup>21</sup> Felicity Barringer, *Automakers Lose Bid to Stop State Emission Curbs*, N.Y. TIMES, Sept. 13, 2007, available at <http://www.nytimes.com/2007/09/13/us/13end-emissions.html?hp> (last visited Oct. 12, 2007).

<sup>22</sup> Barringer, *id.*

<sup>23</sup> Candance Page, *Automakers Appeal Vermont Emissions Decision*, BURLINGTON FREE PRESS, Oct. 6, 2007, available at <http://www.burlingtonfreepress.com/apps/pbcs.dll/article?AID=/20071006/NEWS01/710060304/1009/NEWS05> (last visited Oct. 12, 2007).

<sup>24</sup> Page, *id.*

<sup>25</sup> Dave Gram, *Judge Rejects Carmakers’ Emission Suit*, AP, Sept. 12, 2007, available at <http://www.washingtonpost.com/wp-dyn/content/article/2007/09/12/AR2007091201377.html> (last visited Oct. 12, 2007).

<sup>26</sup> Press Release, Office of the Attorney General, *Court Upholds Vermont’s Greenhouse Gas Emissions Standards For New Motor Vehicles* (Sept. 12, 2007), available at <http://www.atg.state.vt.us/display.php?pubsec=4&curdoc=1358> (last visited Oct. 31, 2007).