

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
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