

## Court dismisses claims by car makers that R.I. limit on greenhouse gases is pre-empted

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The U.S. Court for the District of Rhode Island dismissed claims brought by car makers and their industry associations that a Rhode Island regulation limiting greenhouse gases from new cars and trucks is pre-empted by federal laws.

The carmakers, which were joined by at least 10 Rhode Island dealerships in the case, claim that the Energy Policy and Conservation Act of 1975 (EPCA) and the Federal Clean Air Act (FCAA) pre-empt Rhode Island's regulations. *Lincoln Dodge Inc. v. Sullivan*, No. 1:06-cv-00070 (D.R.I.)

The Rhode Island court cited similar California and Vermont cases that rejected the carmakers' pre-emption arguments. *Green Mountain Chrysler Plymouth Dodge Jeep v. Crombie*, 508 F. Supp. 2d 295 (D. Vt. 2007); *Central Valley Chrysler-Jeep Inc. v. Goldstene*, 529 F. Supp. 2d 1151 (E.D. Calif. 2007).

"The plaintiff manufacturers and associations clearly are precluded from relitigating the EPCA and FCAA preemption issues," wrote Senior District Court Judge Ernest Torres.

California's battle about its regulations continues at the U.S. Circuit Court of Appeals for the District of Columbia. The FCAA pre-empts state standards, but allows California to adopt more stringent requirements if it gets a waiver from the U.S. Environmental Protection Agency (EPA).

The EPA denied California's waiver and that state is appealing the decision. *State of California v. EPA*, No. 08-1178 (D.C. Cir.).

The dealers' claims continue in the Rhode Island case. Torres wrote that their claims were not precluded by the Vermont and California decisions that barred the automakers' case.

"The mere fact that the dealers and manufactures may have shared a common interest in the outcome of the previous cases, by itself, is insufficient to establish that the manufacturers and associations were acting as the dealers' representatives in those cases," Torres wrote.

Patricia Rocha, a Providence, R.I., shareholder at Adler, Pollock & Sheehan who represents the dealerships, could not be immediately reached for comment.

In a statement, Rhode Island Attorney General Patrick C. Lynch said the state is very pleased with the decision.

"The automobile industry has wasted enormous resources in challenging automobile standards that are designed to make cars more environmentally sound and energy efficient," stated Lynch. "Maybe now they will finally realize that they need to focus their time and resources on designing cleaner and greener cars that challenge the standards."

Carmakers are "committed to enhancing energy security and reducing carbon dioxide emissions" but they believe a single federal standard is the best way to accomplish those goals, said Charles Territo, spokesman for the Alliance of Automobile Manufacturers.

Territo also said the alliance is pleased that the dealers' litigation will continue.

"We share their concerns about the confusion and chaos that could be created from a state by state patchwork of fuel economy regulations," Territo said.

The Association of International Automobile Manufacturers Inc. spokesman Kim Custer declined to comment because the organization hasn't had a chance to review the decision yet.

Matthew F. Pawa of the Law Offices of Matthew F. Pawa in Newton, Mass., represented three environmental groups that intervened in the Rhode Island Vermont and California cases. Pawa, whose clients are the Sierra Club, the Natural Resource Defense Council and the Environmental Defense Fund, said the automakers have now lost three cases in their "nefarious campaign to destroy progress on the fight against global warming."

Pawa is also representing environmental groups in a case brought by auto dealers against the state of New Mexico. *Zangara Dodge Inc. v. Curry*, No. 1:07-cv-01305 (D.N.M.)

"Congress and the Obama administration should take note and send a clear message to these companies that any financial rescue will only go to good corporate citizens and not to any company that files lawsuits against state global warming laws," said Pawa in a statement.

