

United States District Court, D. Vermont.
GREEN MOUNTAIN CHRYSLER-PLYMOUTH-DODGE-JEEP, et al., Plaintiffs;
Association of International Automobile Manufacturers, Plaintiff,

v.

Thomas W. Torti, Secretary of the Vermont Agency of Natural Resources, et al.,
Defendants.

Case Nos. 2:05-CV-302, 2:05-CV-304.

March 13, 2006.

Defendants' Reply to Plaintiffs' Memorandum in Opposition to Motion to Stay
Cases

Defendants Thomas W. Torti, Jeffrey Wennberg, and Richard A. Valentinetti (collectively, "Defendants" or the "State"), who are being sued in their official capacities as the state officers respectively in charge of the Agency of Natural Resources, Department of Environmental Conservation, and Air Pollution Control Division, hereby reply to the memorandums in opposition filed by both sets of Plaintiffs.

INTRODUCTION

Defendants have asked for a stay of the cases in the interests of judicial economy and to avoid the duplication of this Court's and the parties' resources to litigate identical claims that are already being addressed in *Central Valley Chrysler-Jeep, Inc., et al. v. Catherine Witherspoon*, No. CIV-F-04-6663 (E.D. California) ("*Central Valley Chrysler*"). The parties and issues need not be identical for this Court to issue a stay, and the mere prospect of litigating a suit is sufficient to support a stay. Both of these issues were touched on by the Supreme Court in *Landis v. North American Co.*, 299 U.S. 248, 254 (1936), which was cited (at p. 5) in the Legal Standard section of Defendants' Memorandum in Support of Motion to Stay Cases.

Furthermore, even if these cases are not exact duplicates of the California litigation, the underlying principle, as articulated in both *Landis v. North American Co.*, 299 U.S. 248, 254, and *Colorado River Water Conservation District v. United States*, 424 U.S. 800, 817 (1976), is directly applicable. Finally, the Plaintiffs exaggerate any alleged harm the regulations have on them--both now and in the future.

I. THE PARTIES AND ISSUES DO NOT HAVE TO BE IDENTICAL FOR THIS COURT TO GRANT A STAY.

The parties and issues do not have to be identical for a court to invoke its inherent authority to regulate its docket under *Landis v. North American Co.*, 299 U.S. 248. In *Landis*, several plaintiffs filed suit in the U.S. District

Court for the District of Columbia challenging on constitutional grounds the validity of the Public Utility Holding Act of 1935. *Id.* at 249. Other suits followed thereafter, including related litigation in the U.S. District Court for the Southern District of New York. *Id.* The Attorney General of the United States asked the presiding judge in the District of Columbia to stay the proceedings in his court pending resolution of the related litigation in New York because:

[T]he trial of a multitude of suits would have a tendency to clog the court, overtax the facilities of the Government, and make against that orderly and economical disposition of the controversy that is the Government's aim.

Id. at 251.

The District Court for the District of Columbia granted the stay. *Id.* at 253. In reviewing whether the district court had the power to issue the stay, the Supreme Court first held:

[W]e find ourselves unable to assent to the suggestion that before proceedings in one suit may be stayed to abide the proceedings in another, the parties to the two causes must be shown to be the same and the issues identical.

Id. at 254. Next, the Court recognized that "a decision in the cause then pending in New York may not settle every question of fact and law in suits by other companies, but in all likelihood it will settle many and simplify them all." *Id.* at 256. Thus, *Landis* demonstrates that the cases need not have identical parties and issues for a district court to grant a stay, and that the related litigation does not have to completely resolve the stayed case. In addition, the implicit approval of the rationale given by the Attorney General that litigating the case would "overtax the facilities of the Government" further suggests that burden on the State is an appropriate reason for granting a stay in certain cases.

Finally, as argued in the State's Memorandum, the Supreme Court in *Colorado River Water Conservation District v. United States*, 424 U.S. 800, 817 (1976), noted that "as between federal district courts, [], though no precise rule has evolved, the general principle is to avoid duplicate litigation." The Colorado River Court cited *Landis*, 299 U.S. 248, 254, and *Kerotest Mfg. Co. v. C-O-Two Fire Equipment Co.*, 342 U.S. 180, 183 (1952) to support this proposition. The parties were not identical in either of these cases. Thus, the term "duplicative litigation" is not as narrow as Plaintiffs suggest, and the principle that lays the foundation for the "first filed" rule is present in these cases.

II. BECAUSE THESE CASES AND CENTRAL VALLEY CHRYSLER-JEEP INVOLVE THE SAME ISSUES, JUDICIAL ECONOMY IS SERVED BY GRANTING THE STAY.

Even though identical issues are not required for this Court to issue a stay in a different case, these cases present this scenario. Plaintiffs are asking a different federal court to hold a lengthy trial on the merits for claims that they have already characterized as being "purely or predominantly a legal question that is fit for adjudication now, and the fitness of adjudication will not be assisted by future factual development outside this litigation." See AAM Complaint in Central Valley Chrysler-Jeep, (Exhibit 1 in Defendants' Memorandum in Support of Motion to Stay Cases), <paragraph>117 (Count I- Preemption under the Fuel Economy Laws); <paragraph>124 (Count II- Preemption under the Federal Clean Air Act); <paragraph>131 (same) (Count III- Preemption Under The Foreign Policy Of The United States And The Foreign Affairs Powers Of The Federal Government); <paragraph>137 (same) (Count IV- Dormant Commerce Clause); <paragraph>143 (same) (Count V- Sherman Act).

Based on these representations, this Court and the parties would be expending resources, including engaging in extensive discovery, to address the same issues, of which the Plaintiffs have conceded might be fit for adjudication through dispositive motions. Judicial economy and adherence to the principles laid out by the U.S. Supreme Court to avoid duplicating litigation thus militate in favor of staying these cases pending resolution in California-- especially when success for Plaintiffs in California would moot these cases. [FN1]

FN1. If this Court does not grant the stay, the State respectfully requests that the Court ensure that the State can "piggyback" on the discovery efforts in the California litigation to avoid undue hardship. The State agrees with the AIAM Plaintiffs that it is reasonable for the Court to require that "[a]ll pre-trial deadlines in this action [] be set after the comparable deadline in the Central Valley Chrysler Jeep litigation." AIAM Opp. at 4. See also AAM Opp. at 8 (conceding that judicial economy is served "in light of the trial sequencing vis a vis the California litigation established by this Court at last week's Rule 16 conference").

Finally, it is worth noting that the Supreme Court has recognized that since "its inception, the Declaratory Judgment Act has been understood to confer on federal courts unique and substantial discretion in deciding whether to declare the rights of litigants" and that "[o]n its face, the statute provides that a court 'may declare the rights and other legal relations of any interested party seeking such declaration.'" *Wilton v. Seven Falls Co.*, 515 U.S. 277, 286 (1995) (emphasis in original). The Wilton Court further explained that "there is nothing automatic or obligatory about the assumption of 'jurisdiction' by a federal court to hear a declaratory judgment action."

Id. (internal citations and quotations omitted). Therefore, "[c]onsistent with the non-obligatory nature of the remedy, a district court is authorized, in the sound exercise of its discretion, to stay or dismiss an action seeking a declaratory judgment before trial or after all arguments have drawn to a close." Id. at 288.

III. PLAINTIFFS OVERSTATE ANY HARM THAT WILL RESULT FROM A STAY OF THESE CASES.

Both sets of Plaintiffs allege that harm is resulting now from the enactment of California's greenhouse gas ("GHG") emissions standards, and also that these regulations will cause additional harm "in less than two years' time." AAM Opp. at 1. All these allegations, however, are exaggerated and, at this point, purely speculative.

Although the AAM Plaintiffs offer one affidavit from an economist to support their argument that they are being "harmed," his conclusions rest on a premise that itself is speculative. Plaintiffs concede that Dr. Bower's conclusion that some automobile businesses in Vermont would lose "business value" entirely depends on the assumption that the enforcement of the GHG regulations will "force the elimination of many currently offered vehicles from some manufacturers' product lines." AAM Opp. at 4, n.5. The only support that AAM offers for this proposition, however, is the bare allegations in their Complaint.

In addition, this Circuit has already suggested that choices such as these are merely marketing decisions that are not compelled by the regulations, and that these types of regulations may "affect" the sales of certain vehicles, but do not "limit" the types of vehicles they can sell. *Motor Vehicle Mfrs. Ass'n v. New York State Dept. of Env'tl. Conservation*, 17 F.3d 521, 531 (2d Cir. 1994); *Motor Vehicle Mfrs. Ass'n of the United States, Inc. v. New York Dep't of Env'tl. Conservation*, 79 F.3d 1298, 1307 (2d Cir. 1996). Moreover, in enacting section 177 of the Clean Air Act, Congress concluded that the type of "harm" that the Plaintiffs allege is occurring now in Vermont does not constitute "an undue burden" because vehicle manufacturers "will be required, in any event, to produce vehicles meeting the California standards for sale in California." H.R. Rep. 95-294, 310, 95th Cong., 1st Sess. 1977, 1977 U.S.C.C.A.N. 1077, 1389; 49 U.S.C. <section> 7543; see also Defendants' Memorandum in Support, p. 12 ("the automobile manufacturers produce 50 times more automobiles and light trucks for California dealers than they do for Vermont"). Thus, Plaintiffs would not be harmed in any meaningful way by a stay pending resolution of the California litigation because Congress has already decided to impose this obligation on the automobile industry.

CONCLUSION

This Court should grant Defendants' Motion to Stay Cases pending resolution of Central Valley Chrysler-Jeep.

Motions, Pleadings and Filings (Back to top)

. 2006 WL 1521865 (Trial Motion, Memorandum and Affidavit) Reply of Intervenor to Plaintiffs' Conditional Opposition (Apr. 4, 2006)Original Image of this Document (PDF)

. 2006 WL 812029 (Trial Pleading) Defendants' Answer to Complaint Filed by Green Mountain Chrysler-Plymouth- Dodge-Jeep, et al. (Feb. 24, 2006)Original Image of this Document (PDF)

. 2006 WL 812016 (Trial Motion, Memorandum and Affidavit) Memorandum in Opposition to Motion to Stay Cases (Feb. 23, 2006)Original Image of this Document (PDF)

. 2006 WL 812015 (Trial Motion, Memorandum and Affidavit) Memorandum in Support of Motion of Conservation Law Foundation, Sierra Club, Natural Resources Defense Council, Environmental Defense and Vermont Public Interest Research Group to Intervene as Party Defendants (Feb. 21, 2006)Original Image of this Document with Appendix (PDF)

. 2006 WL 812014 (Trial Motion, Memorandum and Affidavit) Defendants' Memorandum in Support of Motion to Stay Cases (Feb. 9, 2006)Original Image of this Document (PDF)

. 2:05cv00302 (Docket) (Nov. 18, 2005)

. 2:05cv00304 (Docket) (Nov. 18, 2005)

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