



Attorney General of New Mexico

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Attorney General

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July 28, 2009

Mr. Stuart Drake
Kirkland & Ellis
655 Fifteenth Street NW
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Dear Mr. Drake:

I write to follow up on the recent extension of the briefing schedule. While the Defendants are pleased that the briefing schedule has again been extended, we are concerned by the apparent resistance of your client, the National Automobile Dealers Association (NADA), to agreeing to stay this case for a longer, more reasonable, period of time. As you know, we anticipate the eventual dismissal of this action in accordance with the May 19, 2009, agreement announced by President Obama, your automobile industry clients, and other interested parties. Even though NADA has refused to execute a letter of cooperation (making it one of the only significant parties unwilling to do so), it is my hope that NADA will reconsider its position on that issue.

As you are probably aware, even though the Association of International Automobile Manufacturers (AIAM) was not an original party to the May 19, 2009, nationwide agreement, it executed a letter of cooperation and agreed to stay the cases challenging greenhouse gas emissions standards in Rhode Island. NADA's refusal to follow suit in the New Mexico case is perplexing given that NADA's chief complaint about the greenhouse gas regulations (that such regulations create a "patchwork" of requirements across several states) has been addressed by the nationwide agreement.

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I request that you consider abandoning your client's piecemeal approach to extensions and agree to enter into a more permanent abeyance agreement, consistent with the approach followed in the identical cases filed in California, Vermont, and Rhode Island. Given that you also represent almost all of the plaintiffs in all of those cases (in particular, General Motors, the Alliance of Automobile Manufacturers, and here, the National Automobile Dealers Association), you are undoubtedly well aware of the terms of those abeyance agreements and recognize that this case is just like the other cases and should be held in abeyance for all the same reasons. We do not believe that the absence of manufacturer plaintiffs in this case presents any meaningful difference since the other cases all include numerous dealer plaintiffs with the same interests and concerns as the dealer plaintiffs here in New Mexico.

We reluctantly agreed to the recent extension until August 21, 2009, only because that is all you would agree to and we were facing a July 21, 2009 briefing deadline. However, we believe that the reasons provided to the Court as the basis for the extension, including the regulatory amendments being undertaken by the California Air Resources Board (CARB) and the need for plaintiffs to consult with CARB and the automobile manufacturers, will almost certainly take more than one month to accomplish. Thus the parties will need to return to the Court for a further extension. This situation presents an unnecessary and not insignificant resource drain on New Mexico due to both the process of preparing repeated extension requests and the need for Defendants to prepare for filing in the event an extension is not granted. This approach also runs the risk of the Court tiring of repeated requests and ordering briefing to proceed despite the parties' joint request. And it runs counter to the spirit if not the letter of the May agreement by continuing to engage in court action the parties agreed to stay and ultimately dismiss.

In closing, we are hopeful that NADA will agree to sign on to an abeyance agreement here in New Mexico that mirrors the agreement that has been entered into in all of the greenhouse gas emission cases. Given that virtually every other significant interested party has agreed to abandon litigation and to put its energies toward pursuing a coordinated nationwide solution to the control of automobile greenhouse gas emissions, such litigation presents a needless waste of resources. We will consider moving for such an abeyance ourselves in the absence of any progress in working with you. Thank you for your consideration and we look forward to discussing this with you.

Sincerely,



Eric Miller
Assistant Attorney General
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