

APPENDIX B: DESCRIPTION OF LITIGATION INVOLVING THE ZERO EMISSION VEHICLE REGULATION

1. *Central Valley Chrysler-Plymouth, Inc., DaimlerChrysler Corp., Frontier Dodge, Inc., General Motors Corp., Hallowell Chevrolet Company, Inc., Keller Motors, Inc., Kitahara Pontiac-GMC-Buick, Inc., Surroz Motors, Inc., and Tom Fields Motors, Inc. v. Michael P. Kenny*. U.S. District Court for the Eastern District of California – Fresno, Case No. F-02-05017. Original complaint filed January 3, 2002.

The plaintiffs assert that the provisions in the ZEV regulation pertaining to AT PZEVs that are gasoline hybrids are related to fuel economy standards and accordingly are preempted by the Energy Policy and Conservation Act of 1975 – the law that directed the National Highway Traffic Safety Administration to establish corporate average fuel economy (CAFE) standards. On June 11, 2002, a federal district judge issued a preliminary injunction that prohibits the ARB's Executive Officer from enforcing the 2001 ZEV Amendments with respect to the sale of new motor vehicles in the 2003 or 2004 model years, pending final resolution of the case. The judge issuing the preliminary injunction found that the plaintiffs were likely to succeed in their preemption claim. He rejected arguments that the optional nature of the AT PZEV provisions eliminated preemption concerns, because he found that disparities in costs among the various compliance options in effect required manufacturers to produce gasoline hybrids. He enjoined enforcement of all of the 2001 ZEV Amendments based on the conclusion that the challenged AT PZEV provisions likely were not severable from the rest of the ZEV program. The ARB has appealed issuance of the preliminary injunction to the U.S. Court of Appeals for the Ninth Circuit, which has scheduled oral argument for the appeal on February 13, 2003. In the interim, the preliminary injunction remains in effect.

Amendments to the complaint claim that the ARB is federally preempted from enforcing the ZEV regulation as it existed prior to the 2001 amendments because the previous set of amendments have not yet received a waiver of preemption under section 209(a) of the federal Clean Air Act.

2. *Liberty Motors, Inc., Lovegren Motor Co., Michael Cadillac, Inc., Sequoia Chevrolet Corp., Sun Bop, Inc., DaimlerChrysler Corp., General Motors Corporation, and Isuzu Motors, Limited v. California Air Resources Board and Michael P. Kenny*, Fresno County Superior Court, Case No. 02 CE CG00039. Original complaint filed January 4, 2002.

As most recently amended, the complaint identifies seven theories under which the 2001 ZEV amendments are claimed to be partially or wholly invalid. One allegation is that the amendments adding LDT2s to the base for the percentage ZEV requirements was beyond the scope of the original hearing notice and could not be adopted without a new notice. There are also claims that the ARB did not comply with the California Environmental Quality Act (CEQA), that the ZEV regulation is inconsistent with the ARB's authorizing statutes, and that the Board failed to make a rational cost-effectiveness determination. There are additional claims challenging the Executive Officer's denial of the petition for amendments to the ZEV regulation filed by General Motors on January 23, 2001, the lawfulness of the ZEV regulation prior to the 2001 amendments, and the ARB's authority to enforce the preexisting regulation. In July 2002, a preliminary injunction was issued barring the Executive Officer from enforcing the ZEV regulation as it existed before the 2001 Amendments. On December 19, 2002 the trial court denied the automakers' motion for summary adjudication on claims pertaining to the 2001 Amendments and a trial court hearing on the merits is expected after January 2003.

3. *DaimlerChrysler Corporation and General Motors Corporation v. California Air Resources Board and Michael P. Kenny*, Fresno County Superior Court, Case No. 02 CECG 04456. Filed December 11, 2002.

The plaintiffs challenge a November 21, 2002 guidance letter transmitted by the ARB's Executive Officer to vehicle manufacturers. The letter responded to inquiries on when 2002 MY NEVs would need to be placed in service in order to qualify for the 2002 MY early introduction multiplier – in case the federal preliminary injunction was lifted or the issue became relevant in the context of subsequent amendments to the ZEV regulation. The Executive Officer interpreted the regulation as allowing a MY 2002 ZEV to receive the 4.0 multiplier only if it is placed in service by the end of March 2003. At a December 17 hearing, a Fresno County Superior Court judge announced he would issue a temporary restraining order (TRO) temporarily prohibiting enforcement of the March 31, 2003 deadline as established in the guidance letter. A preliminary injunction hearing is scheduled for January 29, 2003.