

Newspaper challenges secrecy request

By Adam Silverman
Free Press Staff Writer

March 16, 2007

Court proceedings in a landmark environmental case should remain open to the public and the media despite the inclusion of trade secrets in the proceedings, The Burlington Free Press is arguing in a challenge to a request for secrecy during portions of the trial.

Newspaper attorney Bob Cain filed motions Thursday in federal court to fight a request for confidentiality by the automobile industry in an upcoming lawsuit against the state. The industry is trying to prevent Vermont officials from enforcing a law that seeks to regulate carbon-dioxide emissions from vehicles.

Lawyers will discuss trade secrets and "highly confidential" business practices during the trial, and that information ought to be shielded from public view to protect automobile companies, industry attorneys argued in court papers filed last week. The manufacturers asked to close U.S. District Court in Burlington whenever witnesses discuss material they deem confidential, and to redact portions of exhibits and trial transcripts that include sensitive information.

A suggestion of sealing traditionally open courtrooms is unacceptable to Free Press Executive Editor Mike Townsend, he said Thursday.

"The state created a law, and it's being challenged on the merits of its law, so we ought to know why it's being challenged," Townsend said in an interview. "The courts are the one bastion of our society that's completely open, for the most part, in all circumstances. That's why it's a good system, because everyone can see. It's all transparent."

Industry attorneys argue they are asking to close a relatively small portion of the proceedings, and to do so in a way that maximizes public access while preserving manufacturers' rights to secrecy. Fight over access

The industry proposes to shield broad categories of material, according to court papers: "competitively sensitive" emissions and fuel-economy designs, product plans, compliance strategies, pricing information and details of future products.

Testimony from 10 of 40 witnesses would rely at least in part on information the industry wishes to protect, according to court papers signed by industry lawyer Andrew Clubok of Burlington. The industry also is seeking protection for about 19 percent -- 150 of 776 -- of its planned trial exhibits, he wrote. Redacted exhibits and transcripts of testimony could be released to observers.

The industry's plan would allow greater access to proceedings than required, Clubok wrote.

"It is important for the public fully to understand the impact that implementation of the regulation challenged in this action will have on Vermont consumers, the safety of the motoring public, and workers in the Vermont and U.S. automobile industry," he wrote.

Townsend countered that restricting access to a quarter of the witnesses and nearly as much of the exhibits would make that goal unachievable.

"I can't imagine withholding 20 or 25 percent of any information in a court proceeding and coming away believing that you can ever know the full story," he said. "If you don't have the information, it's impossible to make up your mind."

Cain, the Free Press' attorney, wrote in his motion Thursday that open courts should be considered paramount.

"Trade secrets are not a 'higher value' than public access," Cain wrote.
Can a state regulate?

At issue is a lawsuit filed by three Vermont auto dealerships -- Green Mountain Chrysler Plymouth Dodge Jeep and Green Mountain Ford Mercury, both of East Dorset, and Joe Tornabene's GMC of Pownal -- and industry powers including DaimlerChrysler Corp., General Motors Corp. and the Alliance of Automobile Manufacturers, a trade group.

The auto industry is seeking to prohibit officials in the state Agency of Natural Resources from instituting new, tighter emissions regulations starting in 2008. Vermont's proposed criteria -- developed by California officials and under consideration in other states -- would mandate that new vehicles reduce their carbon-dioxide emissions progressively through 2015 and, accordingly, become increasingly fuel-efficient.

The industry says in court papers the case will settle "issues of national importance."

The case is likely to hinge on whether the new regulations are emissions limits, which states have a right to establish, or fuel-efficiency requirements, which fall under the exclusive purview of the federal government. The auto industry says Vermont is overstepping its authority by attempting to dictate fuel efficiency. State lawyers, backed by environmental groups including the Sierra Club and the Conservation Law Foundation, counter that the regulations are acceptable emissions limits.

Similar legal challenges to the standards are pending in California and Rhode Island, but the Vermont proceedings are scheduled to be the first to go before a judge. The trial is scheduled to begin next Thursday and last up to three weeks.

District Judge William Sessions III -- who will decide the case in a jury's stead -- scheduled a hearing for Monday afternoon on the request to seal proceedings. Cain said the trial itself is unlikely to begin on time.

"There's a significant chance that the trial will be delayed in part because of the plaintiff's decision to file their motion at the time they did, just nine business days before the scheduled start of the trial," Cain said.

Industry attorneys have declined to explain the timing of their request.

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Emission trial might face delays

By Tim Johnson
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March 10, 2007

Less than two weeks before a trial was scheduled to begin in federal court on a vehicle-emissions lawsuit with national implications, legal discussions began Friday on a motion to close some testimony from the public -- an issue whose resolution could ultimately delay the proceedings.

In a case that already has enlisted dozens of lawyers, one more entered the picture Friday: Robert G. Cain, representing The Burlington Free Press, told the court the newspaper was intervening in response to a motion to close the courtroom for anticipated testimony containing "trade secrets."

That motion was filed Thursday by lawyers for three Vermont car dealers and their auto-industry allies. The auto industry is suing three of Vermont's top environmental officials in an effort to eliminate a relatively stringent set of auto-emissions standards that those officials would be charged with enforcing beginning next year. The standards, formulated in California, would effectively require new vehicles to be more fuel-efficient, thus reducing their emissions of carbon dioxide -- the principal greenhouse gas linked to global warming.

The plaintiffs -- the auto industry -- contend that some of the testimony they plan to introduce will contain "highly confidential information" pertaining to fuel economy and vehicle design, and that such testimony should be closed to the public.

Judge William Sessions III asked Cain and the other lawyers to try to reach an accommodation on this question by Wednesday. Barring a pre-trial agreement, he said he expected to take up the question March 22, the first day of the trial. Then, he suggested, any ruling he makes would likely be subject to appeal, and that appeal would have to play out before the trial could begin in earnest.

Cain said he would study the matter over the weekend. Customarily, newspapers have insisted that what takes place in a federal courtroom is the public's business and the public has the unrestricted right to know what happens there.

Sessions spoke of the request to close the courtroom as a matter of some gravity, involving the First Amendment. He said one of his principal concerns was how "sealing" the courtroom might affect the litigation at hand.

Matthew Byrne, representing the auto dealers, argued that there is ample precedent for protecting trade secrets in courtrooms. "Otherwise," he said, "we would never be able to litigate a trade-secrets case."

Scot L. Kline, chief of the Environmental Protection Division in the Vermont Attorney General's Office, said, "The state generally supports open court proceedings." He said there might be some circumstances where confidentiality is legitimate, and "We are willing to talk to the plaintiffs to see whether we can agree on a mechanism for the court to use."

Simon Wynn, an assistant attorney general in New York, a legal ally of Vermont in the case, said New

York would argue in favor of complete openness, "transparency."

The question of public disclosure was the latest complication in a case that is fraught with legal and technological complexity -- and perhaps, too, with national significance for public policy, as efforts mount around the country to restrict greenhouse gas emissions as a means of ameliorating climate change.

The Vermont case is one of three parallel lawsuits over the emission standards -- others are pending in California and Rhode Island -- and the first to go to trial.

The dispute revolves around whether California -- and by extension, Vermont -- has the authority to impose emission standards for new cars that will effectively mandate increased fuel efficiency.

Under the federal Clean Air Act, California is permitted to set emission standards, and other states are allowed to adopt those standards, as Vermont and most other Northeastern states have opted to do. Vermont contends that the new standards, which would go into effect in 2008 and then become stricter through 2015, would ultimately reduce carbon dioxide emissions from transportation by about 30 percent.

The auto industry argues that because the only way to limit carbon dioxide emissions is to improve vehicles' fuel efficiency, the California standards are really fuel-efficiency standards in disguise. And because the establishment of fuel-efficiency standards is exclusively a federal prerogative, that argument goes, the states don't have the power to impose the new regime, which should be voided. The plaintiffs have also argued that the standards would raise the cost of new vehicles, reduce consumer choice and impose financial hardship on the auto industry.

The three auto dealers who filed the complaint are Green Mountain Chrysler Plymouth Dodge Jeep and Green Mountain Ford Mercury, both of East Dorset; and Joe Tournabene's GMC of Pownal. Joining them are the Alliance of Automobile Manufacturers, DaimlerChrysler Corp., and General Motors Corp.

The defendants are George Crombie, secretary of Vermont's Agency of Natural Resources; Jeffrey Wennberg, commissioner of the Department of Environmental Conservation; and Richard Valentinetti, director of the Air Pollution Control Division. Besides New York state, various environmental advocacy groups, including the Sierra Club and Conservation Law Foundation, have intervened in support of Vermont's legal defense. The case is known as Green Mountain Chrysler vs. Crombie.

Since the complaint was filed, in November 2005, the docket at federal court has swelled to more than 280 entries -- motions, affidavits, and extensive legal arguments and counter-arguments.

Asked Friday morning why they waited 16 months -- until shortly before the trial -- to file the motion to close some of the proceedings, Stuart Drake, one of the lawyers on the plaintiff's side, replied: "We can't answer that."

Auto industry wants to keep secret details of emissions case

March 10, 2007

Associated Press

BURLINGTON — The auto industry is asking a federal judge to restrict public and media access to portions of a trial on vehicle emissions standards that is due to begin later this month.

Industry attorneys challenging a state law that would regulate carbon dioxide emissions from automobiles said they would be discussing trade secrets and confidential business practices.

"The testimony in this case will involve some of the most confidential information of various vehicle manufacturers, including highly confidential information about the costs and fuel economy effects of a variety of vehicle designs and hardware systems, future product plans, and profit and loss information," said a court document signed by Burlington lawyer Matt Byrne.

Assistant Attorney General Scot Kline said his team had received the industry's request earlier Thursday and was preparing an answer.

"We're still looking at it," said Kline. "We'll file a response with the court."

Three Vermont auto dealerships — Green Mountain Chrysler Plymouth Dodge Jeep and Green Mountain Ford Mercury, both of East Dorset, and Joe Tornabene's GMC of Pownal — as well as DaimlerChrysler Corp. and General Motors Corp., are suing three Vermont officials in the Agency of Natural Resources who are responsible for instituting new emissions regulations.

Vermont is planning to impose auto emissions standards in 2008 that would mandate that new vehicles reduce their carbon-dioxide emissions through 2015. The auto industry argues the standards are fuel-efficiency requirements, which are regulated by the federal government.

The state of Vermont is being backed in the case by environmental groups, including the Conservation Law Foundation and the Sierra Club. The state argues the California standards fundamentally are emissions limits, which individual states have a right to establish.