



News Release

For Immediate Release

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DRI Seeks High Court Review of Clean Air Act Case

CHICAGO – (March 28, 2014)—DRI – The Voice of the Defense Bar has filed an amicus brief with the U.S. Supreme Court seeking review in the case of *GenOn Power Midwest, L.P. v. Kristie Bell and Joan Luppe*. The case revolves around the question of whether the provisions of the Clean Air Act pre-empt local nuisance laws.

The two named plaintiffs, nearby property owners, allege that emissions from a power plant in Pennsylvania, owned and operated by GenOn Power, are polluting the air and causing property damage. They demand damages and injunctive relief under the state common law of nuisance, even though the plant is operating in full compliance with all requirements under the federal Clean Air Act. They are seeking to represent a putative class of at least 1,500 similarly situated people in the area.

The district court originally dismissed the claims as pre-empted by the Clean Air Act, but a panel of the Third Circuit reversed. Despite conceding that the Clean Air Act provides a “comprehensive” system for the regulation of pollutants, and acknowledging that the Supreme Court recently held in *American Electric Power v. Connecticut* that the Act displaces such claims under *federal* common law, the panel concluded that claims under state law are preserved by the savings clause of the Act. In *AEP*, the Court declared that the Clean Air Act “is sufficiently comprehensive to make reasonable the inference that Congress ‘left no room’ for supplementary state regulation.”

“The question,” said Mary Massaron Ross, immediate past president of DRI and one of the authors of the DRI brief, “is whether the Clean Air Act, pre-empts state common law nuisance claims that would impose emissions restrictions different from those adopted pursuant to the act and expose companies operating in compliance with all applicable emissions standards under the Act to liability for their emissions.”

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Allowed to stand, the Third Circuit opinion would expose companies in full compliance with the Clean Air Act to numerous class action suits designed solely to extract costly settlements.

Ms. Massaron Ross and Josephine DeLorenzo, both of Plunkett Cooney, P.C. (Bloomfield Hills, MI), co-authored the DRI amicus brief and are available for expert comment through the DRI communications department.

A full version of the brief is available [here](#).

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About DRI – The Voice of the Defense Bar

For more than fifty years, DRI has been the voice of the defense bar, advocating for 22,000 defense attorneys, commercial trial attorneys, and corporate counsel and defending the integrity of the civil judiciary. A thought leader, DRI provides world-class legal education, deep expertise for policy-makers, legal resources, and networking opportunities to facilitate career and law firm growth. For more information, log on to www.dri.org