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DENVER (April 2, 2007) - Earlier today the U.S. Supreme Court reversed and remanded a federal appeals court decision upholding EPA's refusal to regulate greenhouse gases under the U.S. Clean Air Act in *Massachusetts v. EPA*.

"This case carries enormous ramifications for climate change litigation and policy in the United States," said James Holtkamp, chair of Holland & Hart LLP's Global Climate Change practice.

In its 5-4 decision, the Court focused particularly on Massachusetts' status as a sovereign entity, declaring that it is entitled to "special solicitude." The Court explicitly found that the harms from climate change "are serious and well recognized," and rejected arguments the relief requested by Massachusetts and the other petitioners would not realistically mitigate those changes. Citing the "enormity of the potential consequences" of climate change, the Court observed that even delayed incremental steps to address the issue are within the purview of federal courts.

The Court held that the Clean Air Act authorizes EPA to regulate greenhouse gas emissions from automobiles, and that EPA's refusal to decide whether greenhouse gas emissions cause or contribute to climate change was arbitrary and capricious and a violation of the Clean Air Act. The Court remanded the petition to EPA, and directed EPA to "ground its reasons for action or inaction" in the Clean Air Act.

The Court has reinforced the arguments of plaintiffs and petitioners alleging damages from climate change in a number of pending cases. In addition, by explicitly holding that the Clean Air Act authorizes regulation of greenhouse gases and that the harm from climate change is real, the Court may make it difficult for EPA to make findings justifying a refusal to find that greenhouse gas emissions endanger public health or welfare. Once such a finding is made, the Act requires EPA to regulate the emissions.

Although the opinion deals with EPA's authority to regulate greenhouse gas emissions from vehicles, the holding has significant implications for the regulation of carbon dioxide and other greenhouse gas emissions from stationary sources, such as power plants, refineries and manufacturing facilities. If carbon dioxide becomes a criteria pollutant for stationary sources under the Clean Air Act, EPA and the states will be faced with the

daunting task of establishing ambient air quality standards for carbon dioxide and requiring Best Available Control Technology for greenhouse gas emissions.

According to Mr. Holtkamp, "The Court's decision will significantly increase the pressure on Congress to craft a comprehensive, mandatory climate change program."

Mr. Holtkamp, a partner with Holland & Hart, is actively involved in climate change issues and has years of experience counseling clients on related issues locally, nationally, and internationally. He currently teaches the Law of Climate Change at the University of Utah College of Law.

Holland & Hart launched its Global Climate Change practice earlier this year. The group consists of attorneys who counsel clients on the climate change aspects of energy and natural resources development, industrial energy use, regulatory compliance, renewable energy and energy infrastructure projects, corporate disclosure and governance, carbon markets, litigation, and government relations. The practice also maintains a blog that is dedicated to the fast-emerging legal and strategic corporate challenges posed by climate change. Visit the blog at hollandandhart.typepad.com/climate_change_news/.

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