

IN THE SUPREME COURT OF OHIO

MIKE LALLY and TIM LALLY :  
CHEVROLET, INC., d/b/a LALLY ISUZU, :  
: Case No. 2006-1520  
Appellants, :  
: On Appeal from the Franklin County  
v. : Court Of Appeals, Tenth District  
:  
AMERICAN ISUZU MOTORS INC., : Court of Appeals Case No.  
: 05APE-10-1137  
Appellee, :  
:

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APPELLEE AMERICAN ISUZU MOTORS INC.'S MEMORANDUM  
IN OPPOSITION TO APPELLANTS' MOTION FOR RECONSIDERATION

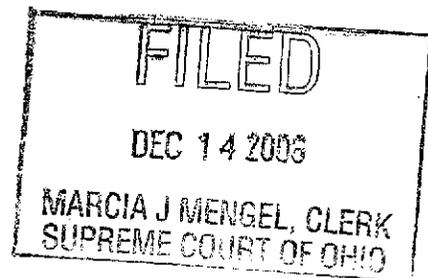
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**MEMORANDUM IN OPPOSITION TO APPELLANTS' MOTION FOR  
RECONSIDERATION**

This case involves a protest by appellants of a proposed dealership relocation. That protest was moot within two months of the short-lived proposal after the transaction contemplated between two third-parties fell through. Thus, within two months in 1999, there was nothing left for appellants to protest--not because appellants "prevailed," but because the independent actions of the third parties made the proposed relocation a non-issue. American Isuzu Motors Inc., which had been statutorily required to issue notice to appellants of the third parties' proposal in the first instance, quickly informed appellants that the third parties' transaction was not going forward. That should have been the end of this matter.

Instead, appellants have pursued successive rounds of administrative appeals for the next seven (now nearly eight) years, in an attempt to gain ever-increasing attorneys fees through a stubborn misreading of the applicable statute. Attorneys' fees have been the sole topic of appellants' appellate efforts.

This case went from the Hearing Examiner, to the Dealer Board, to the Franklin County Common Pleas Court, to the Franklin County Court of Appeals, and back again, culminating in this Court's November 29, 2006 decision to deny discretionary jurisdiction. At every step of the way, American Isuzu Motors Inc. has been the appellee, forced by appellants to point out at multiple successive junctures that there has never been a finding in appellants' favor, at any time, by any body, any where, as required for attorneys' fees to be awarded under the plain language of the applicable statute, R.C. § 4517.65(C). Now, just when it appeared this appellate odyssey was finally concluded, appellants have filed a motion for reconsideration that is completely unjustified and without merit.

What is the cited basis for appellants' motion? That appellants' counsel has three other administrative appeals pending in which his other clients would like to receive attorneys' fees, but in which his other clients have not been awarded fees by the Dealer Board. None of these other matters involve American Isuzu Motors Inc., or the now seven year-old facts underlying this case. All three of those brand-new appeals are currently pending in the Common Pleas Court, having just been filed in September and October of this year.

As this Court is well aware, Ohio's administrative procedure is such that if appellants' counsel's other clients are aggrieved with a decision of the Dealer Board, they may appeal to the Court of Common Pleas, the Court of Appeals, and ultimately, to this Court. There is absolutely no reason this Court, and this case--involving entirely different parties and facts--should be used as an improper springboard to give appellants' counsel's other three clients an immediate appeal from the Dealer Board to this Court, the highest Court in this state, thereby bypassing the Common Pleas Court, the Court of Appeals, and the rest of the mandatory appellate procedure of Revised Code Chapter 112. That, however, is what appellants urge. It is not a proper basis for reconsideration of the Court's November 29, 2006 decision to decline jurisdiction in this case. Discretionary jurisdiction over this case should not be decided on the supposed merits of other cases in their appellate infancy.

Furthermore, according to appellants, the three other parties represented by its counsel in other matters all had received "decisions in [their] favor" in their administrative actions before the Dealer Board. Mtn. at 1. If this is true, then all three of the other cases are instantly distinguishable from this case. In this case, there has never been a "finding in favor" of appellants. That fact is reflected in the Franklin County Court of Appeals well-reasoned, 22-page decision of June 29, 2006 that is the subject of appellants' appeal. The Court of Appeals

properly held that “the record contains no finding by OMVDB in favor of Lally.” App. Opinion at 10.<sup>1</sup>

Appellants, however, want to re-write the express “finds in favor” requirement of R.C. § 4517.65(C) to create a “prevailing party” standard that appears nowhere in the text of the statute. The change that appellants seek is only available, if at all, through legislative amendment—not through judicial reformation. Appellants’ desire to judicially rewrite R.C. § 4517.65(C) to an attorney fee standard more to their liking does not create an issue of public or great general interest.

Thus, if what appellants state is true, and the other three parties represented by appellants’ counsel have been denied attorneys’ fees under R.C. § 4517.65(C) after findings in their favor by the Dealer Board, they are left to their appellate remedies. This case, in which there has been no finding in favor of appellants at any time as required under the plain language of the statute as written, does not present the same issue, and should not be used to achieve a premature appeal to the Ohio Supreme Court of the other three cases. There is no public or great general interest in granting appellants’ counsel’s other clients their own private, direct Ohio Supreme Court appeals process.

In appellants’ original memorandum in support of jurisdiction, appellants argued this Court should accept jurisdiction in this case because appellants’ counsel had several other cases

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<sup>1</sup> While it is somewhat unclear from appellants’ motion, it also appears that in the other three cases, the parties’ represented by appellants’ counsel are the appellees. See Mtn. at n. 3 (manufacturers’ names appear as appellants, and dealership appears as appellee, in Court of Appeals case captions). The fact that the manufacturers in the other three cases are appealing decisions by the Dealer Board suggests that there were indeed “findings in favor” of the dealership parties in the other cases. Here, in contrast, the manufacturer, American Isuzu Motors Inc. has been the appellee every step of the way, because there has been no “finding in favor” of appellants, the dealership, at any juncture. This is another significant distinction that shows “the same” issue is not raised by the other cases, and that there is no issue of public or great general interest at stake here.

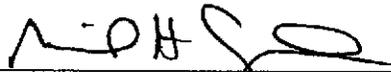
rejected for discretionary jurisdiction in recent years. Now, appellants in essence argue that the Court should accept jurisdiction over this case because their counsel's other clients may eventually be denied access to this Court's jurisdiction in coming years. Appellants' argument as to the three other cases is premature, and should have no bearing here.

Finally, appellants in their motion repeatedly suggest that they and other dealerships are or have been "forced through expensive and protracted layers of appeal by economically superior...manufacturers." Mtn. at 2. See also id. at 3 (suggesting public policy will be violated "if manufacturers can drag dealers through layers of expensive court appeals despite a victory at the Board."). Nothing could be further from the truth under the facts of this case. It is American Isuzu Motors Inc. that has been dragged through layers of expensive court appeals, as appellee at every turn. Appellants have no "victory at the Board" to which they can cite, for "the record contains no finding by OMVDB in favor of Lally." App. Opinion at 10. In reality, the specter raised by appellants--a party being dragged through layers of spurious appeals--is one American Isuzu Motors Inc. has faced over the last seven years, not appellants. American Isuzu Motors Inc. has been the victim of unfair, abusive, and protracted litigation practices, as appellants turned a mooted two-month proposed relocation in 1999 into a seven-year quest for ever-growing attorneys' fees. It was thought this matter finally was over. Now, it is time for this matter again to be terminated once and for all.

For these reasons, American Isuzu Motors Inc. respectfully requests denial of the instant motion for reconsideration of the Court's November 29, 2006 decision to decline discretionary jurisdiction. American Isuzu Motors Inc. also respectfully requests it be reimbursed for its own attorneys' fees and costs associated with responding to appellants' frivolous motion for reconsideration. See Roo v. Sain, 2005-Ohio-2436, ¶8 (Franklin) (reciting procedural history in

which “Appellant then took an appeal to the Supreme Court of Ohio, which declined jurisdiction in the matter,...denied reconsideration,...granted a motion for sanctions brought by appellee finding that the action of the appeal was frivolous,...awarded attorney fees in the amount of \$3,164.53 as sanctions,...and denied appellant’s motion for relief from sanctions....Upon renewed motion by appellee the Supreme Court granted further sanctions,...and awarded sanction in the amount of \$2,400[.]” (internal citations omitted).

Respectfully submitted,



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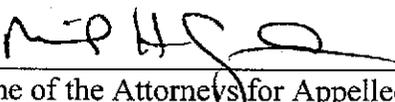
Attorneys For Appellee American Isuzu  
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**CERTIFICATE OF SERVICE**

This is to certify that the foregoing Appellee American Isuzu Motors Inc.'s Memorandum In Opposition To Appellants' Motion For Reconsideration was served by ordinary U.S. mail, postage prepaid, on this 14<sup>th</sup> day of December, 2006, upon:

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