

IN THE SUPREME COURT OF OHIO

State of Ohio ex rel. Nancy Rogers, : Case No. 08-1451
Attorney General of Ohio, :
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 :
 Plaintiff-Appellee, : ON APPEAL FROM THE FRANKLIN
 : COUNTY COURT OF APPEALS, TENTH
 v. : APPELLATE DISTRICT
 :
 :
 Midway Motor Sales, Inc., et al., : Court of Appeals
 : Case No. 07AP-744
 :
 Defendant-Appellee, :
 :
 :
 (General Motors Acceptance Corporation, :
 n/k/a GMAC LLC, :
 :
 :
 Defendant-Appellant). :

**MEMORANDUM OF AMICI CURIAE
NATIONAL AUTOMOBILE DEALERS ASSOCIATION AND
OHIO AUTOMOBILE DEALERS ASSOCIATION
IN SUPPORT OF JURISDICTION**

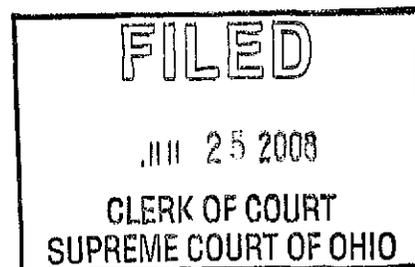
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EXPLANATION OF WHY THIS CASE IS A CASE OF PUBLIC
OR GREAT GENERAL INTEREST

Amicus Curiae National Automobile Dealers Association (“NADA”) is a national trade organization for franchised new automobile or truck dealerships. NADA represents 19,000 franchised automobile and truck dealers who sell new and used motor vehicles and engage in service, repair and parts sales. Together they employ in excess of 1.1 million people nationwide yet a significant number are small businesses as defined by the Small Business Administration. NADA represents 800 light-duty motor vehicle dealerships located in Ohio.

Amicus Curiae Ohio Automobile Dealers Association (“OADA”) is a political, economic and educational association created for and managed by Ohio franchised new automobile, truck and motorcycle dealers. For over 75 years, OADA has promoted the common interests of the automotive industry in Ohio and served as a liaison between dealers and their communities. OADA represents less than 1,000 dealerships, each of which has contributed to the impressive volume of jobs, income and tax dollars generated by the franchised motor vehicle industry in Ohio. In 2006, Ohio dealers posted over \$21 billion in sales revenue, representing approximately 20% of the total retail sales in the state. In 2002, Ohio dealers paid \$927.6 million in state sales tax, employed over 45,000 Ohioans (comprising 9.5% of total retail payroll in the state) and paid \$1.82 billion in wages. These statistics underscore how litigation adversely affecting the industry can endanger the economic growth and health of Ohio.

NADA and OADA are greatly concerned about the needless and inappropriate detrimental effects that the Tenth District Court of Appeals’ ruling will have on commerce involving used vehicles transferred in, into, or out of the State of Ohio. Holding innocent transferors strictly liable under O.R.C. § 4549.46 of the Ohio Odometer Rollback and Disclosure

Act (“Odometer Act”) for providing true odometer disclosures will directly and severely undermine all new and used vehicle commerce into, within, and out of the State of Ohio.

The Ohio odometer statute reflects a careful balancing of three important public policies:

1. The need to deter odometer fraud. 2. The need to discover and remedy odometer fraud should it occur. 3. The need to recognize and accommodate legitimate used vehicle commerce. The decision below, by creating a statutory strict liability where none exists, fails to recognize, let alone comport with these three critical purposes of the Odometer Act. Thus, a decision making GMAC and other vehicle transferors, including dealers, strictly liable for odometer disclosures that, to the best of their knowledge, are true is solely punitive in nature. At best it does nothing to further the statute’s purposes; at worst it frustrates them.

The prospect of strict liability for lessors under O.R.C. § 4549.46 will impact decisions by dealers as to whether to buy used cars at dealer-only auctions, which will disrupt the free flow of late model used vehicles to Ohio customers. In addition, should the ruling below be allowed to stand, dealer-transferors hypothetically could risk strict liability in certain situations despite having provided compliant odometer disclosures to their transferees. For example, it is possible for a dealer to be held strictly liable for odometer disclosure violations in connection with new vehicles whose odometers are rolled back by customers after extended test drives, in connection with service or rental vehicles whose odometers are rolled back by customers after significant use, or in connection with new or used vehicles with malfunctioning, but not observably broken, odometers. In each instance, when transferred, the vehicles at issue arguably would have been driven more miles than what the dealer disclosed to the best of its knowledge, as required by the State of Ohio’s mandatory odometer disclosure form.

Potential civil and criminal penalties for violations of the Odometer Act will increase the risk of selling used cars on automobile dealers and individual sellers and discourage the buying and selling of used cars by automobile dealers in Ohio. Increases in risks and decreases in supply in the Ohio market will inevitably drive up the cost of the thousands of used cars sold in Ohio each year, as the heightened risks and uncertain market conditions will be factored into the cost. The net result of strict liability for O.R.C. § 4549.46 violations is undue constraints on commerce throughout the State without any commensurate public policy benefit.

Amici Curiae urge this Court to accept jurisdiction over GMAC's appeal to ensure that used vehicle commerce is not unnecessarily frustrated by an inappropriate interpretation of O.R.C. § 4549.46.

STATEMENT OF THE CASE AND FACTS

Amici Curiae adopt the Statement Of The Case And Facts in GMAC's Memorandum In Support Of Jurisdiction.

ARGUMENTS IN SUPPORT OF PROPOSITIONS OF LAW

Proposition of Law No. I: O.R.C. § 4549.46(A) is not a strict liability statute inasmuch as it expressly and unambiguously incorporates the odometer disclosure requirements set forth in O.R.C. § 4505.06, which mandates the Registrar of the State of Ohio to promulgate a mandatory odometer affidavit disclosure form that vehicle transferors must complete and the form requires disclosures to the best of the transferor's knowledge.

Amici agree with the legal arguments presented by GMAC in this case. First, O.R.C. § 4549.46(A) is not a strict liability statute by its own terms, which incorporate O.R.C. § 4505.06(C)(1), which in turn incorporates the knowledge-based odometer disclosure affidavit issued by the Registrar of Ohio's Bureau of Motor Vehicles. Second, neither the statute's purposes nor its legislative history support reading O.R.C. § 4549.46(A) as a strict liability

offense. Finally, construing O.R.C. § 4549.46(A) as a strict liability offense leads to unjust and unreasonable results when, under O.R.C. § 1.47(C), we must presume that the General Assembly intended a just and reasonable result.

Moreover, Amici are concerned that the strict liability standard could be used to impose criminal penalties. O.R.C. § 4549.46(D) provides that violation of O.R.C. § 4549.46(A) is an odometer disclosure violation, a fourth degree felony. Imposing criminal penalties for O.R.C. § 4549.46 without proof of any culpable mental state would contravene fundamental principles of criminal law and current Ohio Supreme Court case law on strict liability. See, e.g., O.R.C. § 2901.21(B); State v. Collins, 89 Ohio St.3d 524, 2000-Ohio-231, 733 N.E.2d 1118; State v. Moody, 104 Ohio St.3d 244, 247, 2004-Ohio-6395, 819 N.E.2d 268; State v. Young (1988), 37 Ohio St.3d 249, 525 N.E.2d 1363. As a practical matter, the imposition of criminal penalties could cause dealers to lose their licenses to operate, to lose their franchises to sell new vehicles, or both.

CONCLUSION

For the reasons set forth above, this case involves issues of public and great general interest. The Amici Curiae therefore request that this Court grant jurisdiction and review the case on its merits.

Respectfully Submitted,

Darrell L. Dreher, Counsel of Record



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CERTIFICATE OF SERVICE

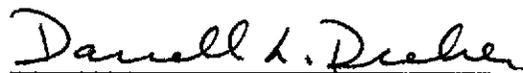
I hereby certify that a true copy of the foregoing Memorandum Of Amici Curiae National Automobile Dealers Association and Ohio Automobile Dealers Association In Support Of Jurisdiction was served, this 25th day of July, 2008, upon the following via regular, U.S. mail:

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