

IN THE SUPREME COURT OF OHIO

STATE OF OHIO, ex rel.
NANCY H. ROGERS
ATTORNEY GENERAL OF OHIO,

Plaintiff-Appellee,

v.

MIDWAY MOTOR SALES, INC., et al.

Defendant-Appellee,

(GENERAL MOTORS ACCEPTANCE
CORPORATION, n/k/a GMAC LLC,

Defendant-Appellant).

CASE NO. 08-1451

On Appeal from the Franklin County
Court of Appeals, Tenth Appellate
District

Court of Appeals
Case No. 071APE-09-744

MEMORANDUM OF PLAINTIFF-APPELLEE STATE OF OHIO
IN OPPOSITION TO JURISDICTION

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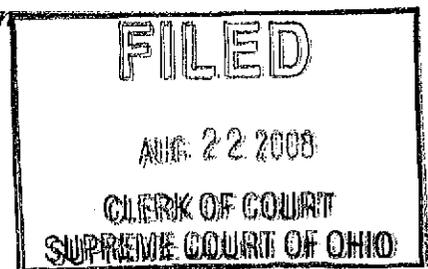


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INTRODUCTION

This case does not warrant review, as it involves the application of settled law to a unique set of facts that might never be repeated. Further, the case cost Defendant-Appellant General Motors Acceptance Corporation (“GMAC”) exactly zero dollars in court-ordered damages, so the outcome does not even concretely affect GMAC, let alone other Ohioans.

The case involves R.C. 4549.46 (the “Odometer Rollback Law” or “the Law”), a consumer protection law that forbids anyone from transferring a motor vehicle without providing a true odometer disclosure. Here, GMAC was technically guilty of violating that law, as it owned the vehicles that had rolled-back odometers, and when it sold them, it signed state-mandated odometer statements with false mileage disclosures. GMAC did not alter the odometers, but owned the cars at the time the odometers were rolled back by Defendant Midway Motors Corporation (“Midway”). The bad news for GMAC is that the appeals courts reviewing the issue (including ten of the twelve districts) all agree that the statute is a strict liability one, so unintentional violators are still liable. The further bad news is that GMAC does not qualify for the exception built into the law, which expressly protects a transferor who does not know of a “previous owner’s violation.” GMAC does not qualify because it, not Midway, was the owner when Midway tampered with the odometers.

Despite all this bad news, the good news for GMAC, and one reason the Court ought not review the case, is that the court below suspended the civil penalty, which was a statutorily mandated minimum, so GMAC was not harmed by the technical ruling against it. The further good news for GMAC is that it can protect itself in the future against unscrupulous partners by drafting better contracts and by performing better due diligence when it enters into this type of business arrangement. Indeed, as the trial court noted, GMAC had access to documents that reflected the higher, pre-tampering mileage, and it simply did not check them before reselling the

cars. This complicated scenario is unlikely to arise again. GMAC itself notes with emphasis that “*not a single Ohio court* has ever been confronted with the situation here,” and it is unlikely that any court will see this situation again. GMAC Jurisdictional Memorandum (“Jur. Mem.”) at 3.

The financier twist on the typical odometer rollback scenario is a unique, one-time event, and not worth this Court’s review. By contrast, the part of the case that arises more frequently, regarding odometer rollbacks and strict liability more generally, is not worth review because the lower-court consensus reflects a plain reading of the statute. Moreover, even if the broad issue of strict liability for rollbacks were worth review, this case is a poor vehicle to review the issue, because this case is an atypical example.

Finally, the court below was plainly correct in both its strict liability ruling and its recognition that GMAC did not qualify for the exception for a “previous owner’s violation.” To be sure, GMAC was a victim of Midway, and its position appears sympathetic. But the statute is plain. If fairness, in a policy sense, calls for the innocent-victim clause to be expanded to include victims of other third parties, and not just of previous “owners,” then GMAC should ask the General Assembly to modify it. The Assembly could then craft a provision that narrowly covers warranted exclusions, without watering down the entire statute, as GMAC would have the Court do. Such unwarranted dilution would create a loophole that would harm the even-more-innocent consumers who buy cars with altered odometers. The Court ought not risk harming them merely to relieve GMAC of the minimal or non-existent harm of a no-cost, technical ruling against it.

For these and other reasons below, the Court should not review this case.

STATEMENT OF THE CASE AND FACTS

This case turns solely on legal issues, and the parties do not dispute the relevant facts. As detailed below, GMAC admits, as it must, that it sold cars with inaccurate odometers. The Attorney General acknowledges that Midway, not GMAC, tampered with the odometers.

A. GMAC transferred vehicles with false disclosures; Midway had altered the odometers and GMAC did not review its records before selling the cars.

Midway, an auto dealer, initially owned the cars at issue, and it arranged to lease a fleet of cars to another company (not a party here), Modern Builders Supply, Inc. (MBS). As part of the arrangement, Midway assigned the leases and ownership of the vehicles to GMAC. Thus, GMAC became the titled owner, and it remained so until it later sold the cars. Under the agreement between GMAC and Midway, the titles of the vehicles were transferred to GMAC on the date that MBS signed a lease, or shortly thereafter. After MBS's leases expired, MBS returned the cars to Midway, and Midway then rolled back the odometers and took the vehicles to auto auctions where they were sold by GMAC. GMAC, owned the vehicles throughout the MBS lease periods and continued to own the cars during the time that Midway got them from MBS. Thus, GMAC owned the cars when Midway tampered with the odometers.

At the conclusion of the MBS leases, GMAC sold the cars to dealers at auctions or it sold them back to Midway. GMAC completed Odometer Disclosure Statements or Certifications, required by R.C. 4505.06 ("Affidavit" and "Affidavit Requirement"). The Affidavits stated that the odometers of the vehicles indicated the actual mileage that they had been driven. The disclosures in the Affidavit were untrue and inaccurate, as the odometers were rolled back and did not depict actual mileage. The cars were later sold to retail purchasers who did not know that they were buying vehicles with altered and/or rolled back odometers. GMAC did not know about the rollbacks before completing its odometer disclosures, but GMAC could have known if it had checked its own paperwork. As the trial court noted in granting summary judgment, GMAC did not check warranty records for the vehicles or do other due diligence that would have revealed mileage discrepancies, and as a result, provided affidavits with untrue mileage. See Entry of August 15, 2007 at 2.

B. The trial court found GMAC liable, but suspended the penalty, and the appeals court affirmed, agreeing with other courts that the Odometer Rollback Law is a strict liability provision and holding that GMAC did not qualify for the “previous owner” exclusion.

The Attorney General, charged with enforcing Ohio’s consumer laws, sued Midway and GMAC. The Franklin County Court of Common Pleas granted the State’s Motion for Partial Summary Judgment, finding that GMAC was strictly liable for its role in selling the cars and signing the false odometer statements in the Affidavits. See Entry of June 1, 2006 at 10-12. The law allows for penalties in the amount of actual damages or \$1,000 per violation, that is, per car sold. R.C. 4549.48(B). The maximum penalty is \$100,000, regardless of number of cars or actual damage. *Id.* The trial court chose to suspend the penalty, so that GMAC was charged nothing. See Entry of August 15, 2007 at 3. As GMAC notes, it chose to remediate by buying back the cars from the consumers or settling with them, see GMAC Jur. Mem. at 7, but that remediation was not court-ordered and is not at issue in this appeal. The Tenth District Court of Appeals affirmed the trial court’s decision, rejecting all of GMAC’s arguments. See *State ex rel. Rogers v. Midway Motor Sales, Inc.* (10th Dist.), 2008-Ohio-2799 (“App. Op.”), attached to GMAC Jur. Mem. as Ex. A. First, the appeals court agreed with a long line of Ohio appellate cases finding that the Odometer Rollback Law is a strict liability statute. *Id.* at ¶¶ 9-17; *id.* at ¶ 14 (noting “plethora of cases interpreting R.C. 4549.46(A) as a strict liability statute”); see below at 6 (citing cases). Second, the court rejected GMAC’s argument that the Affidavit Requirement, by requiring an affidavit with standard “best of [the signer’s] knowledge” language, undercut the strict liability holding, see *id.* at ¶¶ 15-17, and it rejected the idea that requiring such an Affidavit amounted to entrapment, *id.* at ¶¶ 18-19. Finally, after rejecting other arguments that essentially restated the strict liability argument, see *id.* at ¶¶ 20-22, the appeals court rejected GMAC’s attempt to invoke the statute’s “previous owner” exclusion. That exclusion says that a transferor

does not violate the law if a previous owner did the tampering and the innocent transferor did not know about it. See R.C. 4549.46(A). The appeals court acknowledged that Midway was a previous owner, in that it owned the cars before transferring title to GMAC at the beginning of the leases, but it read the law to refer to ownership at the time of tampering. *Id.* at ¶¶ 23-29

GMAC now asks this Court to accept jurisdiction in this case.

THIS CASE IS NOT OF PUBLIC OR GREAT GENERAL INTEREST

For several reasons, the Court should not review this case.

A. GMAC has not been harmed, because the penalty was suspended, and it can protect itself in the future from any recurrence of this rare scenario.

First, for all of GMAC's complaints about being found technically liable, the bottom line is that it suffered no court-ordered loss, as the trial court technically imposed the statutory penalties, but it then suspended those penalties. Thus, a ruling in GMAC's favor would not change the outcome for them in any real sense. As GMAC notes, it did settle with consumers, but those arrangements were not court-ordered, so the outcome here will not change those settlements. Further, any holding about strict liability under *this* law would not likely affect sellers' liability to consumers, as consumers can also sue for fraud or under other theories.

In addition, not only were the penalties here zero, but the penalties generally are not devastating to finance companies such as GMAC or car dealers or anyone else held to strict liability. The statute provides for \$1,000 to \$2,000 per violation, with a \$100,000 maximum. R.C. 4549.48(B). Courts may choose the lower end of the spectrum if circumstances warrant it. See, e.g., *Celebreeze v. Calautti* (7th Dist.), 1989 Ohio App. Lexis 3440 at *3 (imposing penalty of \$14,000 after State proved 15 violations out of 28 charges). More important, courts may suspend the penalty entirely, as it did here, and they are more likely to do so for technical violations by morally innocent offenders. Thus, businesses will not be devastated by the strict

liability approach, while conversely, imposing a knowledge requirement misreads the statute, makes it harder to catch the guilty, and instead devastates the innocent consumer.

Second, businesses such as GMAC can protect themselves from the statute's strict liability, so the Court need not review the case to protect such companies. As the trial court noted, GMAC had access to paperwork showing the higher mileages on the cars, so due diligence would have protected it against Midway's fraud. Further, finance agents such as GMAC could perhaps add contract terms holding them harmless if a business partner such as Midway triggers odometer rollback liability.

B. The strict liability issue does not warrant review, as shown by the consensus among ten appellate districts and the statute's plain language.

Ten of Ohio's twelve appellate districts have addressed the issue, and all agree that the statute is a strict liability one. See App. Op. at ¶¶ 13-14 (noting "plethora of cases" and citing several).¹ As those courts have noted, and as detailed further in the merits argument below (at 10), other parts of the statute have a knowledge requirement, but this one does not, showing that the Assembly's choice was deliberate. Further, the statute expressly excludes innocent transferors from liability when a previous owner did the tampering, "unless the transferor knows of or recklessly disregards facts indicating the violation." R.C. 4549.46. That exclusion has two elements: a knowledge/recklessness requirement *and* the previous owner requirement. If the

¹ Those cases include *Baek v. City of Cincinnati* (1st Dist.), 43 Ohio App. 3d 158; *Hammock v. Lozan*, (2nd Dist.), 1987 Ohio App. Lexis 5962; *Prickett v. Foreign Exchange, Inc.* (2nd Dist. 1990), 68 Ohio App. 3d 236; *Hughes v. Miller* (3rd Dist. 1991), 72 Ohio App. 3d 633; *State v. Burrell* (3rd Dist.), 2008 Ohio App. Lexis 1535, 2008-Ohio-1785; *Harrel v. Talley* (4th Dist.), 2007-Ohio-3784; *Ryan v. Matthews Ford Sandusky* (6th Dist. 1986), 1986 Ohio App. Lexis 8729; *Stover v. Auto & Home Center, Inc.* (6th Dist.), 1987 Ohio App. Lexis 9771; *Diakonis v. Reno* (6th Dist.), 1991 Ohio App. Lexis 2871; *Celebreeze v. Calautti* (7th Dist.), 1989 Ohio App. Lexis 3440; *Noble v. Atomic Auto Sales* (8th Dist.), 2008 Ohio App. Lexis 209, 2008-Ohio-233; *Flint v. Ohio Bell Tel. Co.* (9th Dist. 1982), 2 Ohio App. 3d 136; *Falasco v. Bishop Motors* (9th Dist.), 1990 Ohio App. Lexis 4938; *Triplett v. Voros* (9th Dist. 1996), 114 Ohio App. 3d 268;

statute has a global knowledge or recklessness requirement that applies to *all* cases, as GMAC urges, then the previous owner exclusion would be superfluous.

Thus, the plain statutory language and the appeals court consensus show that this is a settled and straightforward issue, even if this Court had not addressed it, so the Court need not review the case merely to confirm that consensus.

C. Neither GMAC's affidavit issue nor its previous-owner issue are worth review.

GMAC seeks to bolster its argument about strict liability by stressing the Affidavit Requirement, but, like the others, that issue does not warrant review. GMAC's argument cannot be squared with the plain language in the Odometer Rollback Law itself, which calls for strict liability, as explained above. While the other appeals courts may not have expressly assessed the Affidavit Requirement in the way GMAC argues it, such as claiming it amounts to entrapment, courts have noted the affidavit language and still ruled in favor of strict liability. See, e.g., *Baek*, 43 Ohio App. 3d at 160, and *Falasco*, 1990 Ohio App. Lexis 4938 at *5 (quoting the "to the best of my knowledge language" and still applying strict liability). The logic of all of the strict liability decisions implicitly exclude the idea that this argument could chip away at the clarity of the basic strict liability holding. In the alternative, if GMAC's version of the argument is so powerful that it undermines the strict liability consensus, the Court should allow other appeals courts to address this new approach before addressing it here.

GMAC's previous-owner issue is an attempt to shoehorn its rare scenario into the statutory exclusion. It is not worth review both because the general law is well-settled and because GMAC's scenario will likely never recur. First, lower courts agree that the previous owner exception applies only when actual previous owners have tampered with the odometer,

Hubbard v. Bob McDorman Chevrolet (10th Dist. 1995), 104 Ohio App. 3d 621; *Baker v. Hurst Buick* (12th Dist.), 1988 Ohio App. Lexis 1663

not other third parties that tamper and render the owner an innocent victim. See, e.g., *Hughes*, 72 Ohio App. 3d at 637. Thus, no split exists on the general issue. Second, GMAC's particular scenario in which the non-owning tamperer happened to be an owner earlier in time is unlikely to recur. This rare happenstance, especially in a case with suspended penalties, does not warrant review.

D. While GMAC does not need the Court to rewrite the law to protect itself, consumer interests would be jeopardized by judicially eliminating the statute's strict liability, and the General Assembly could craft a narrower exception to cover other innocent-victim scenarios that are not already covered by the previous-owner exclusion.

As explained above, GMAC has not been truly harmed by application of the strict liability approach here. But, on the other side of the scale, consumer interests would be jeopardized if the Court were to somehow read the strict liability standard out of the statute.

GMAC urges several scenarios that it says call for better protection of innocent transferors, but for several reasons, those scenarios are no reason to read the current law differently. First, several scenarios cited by GMAC and its amici might actually fall under the statute's previous owner exclusion. For example, GMAC and its amici allege that continuing the strict liability holding may prevent lessors from buying used cars at dealer-only auctions. National Auto Dealers Association Amicus Memorandum at 2. However, if a lessor were to purchase a vehicle at an auction, unless the lessor rolled back the odometer or had knowledge that the odometer was rolled back, the previous owner exception would apply. Second, some scenarios drawn by GMAC and its amici are simply unlikely to occur. Odometer rollbacks in today's cars require sophisticated illegal software and time and effort, not just a screwdriver. So perpetrators are those with a financial interest, that is, sellers (or lessors or lessees, depending on the arrangements) who wish to misrepresent a vehicle's value. The specter of test drivers victimizing dealers, or mechanics tampering with their customers' odometers, or valets on a

joyride, and so on, are not realistic. Thus, few “innocent victims” will suffer third party tampering.

More important, if other scenarios do justify, in a policy sense, exclusions beyond the current previous-owner one, then the General Assembly, not the Court, should craft those exclusions. The Assembly could do so by narrowly defining the exclusions, as it did with the previous-owner exclusions. For example, perhaps it could address leasing situations such as the one here, or other situations in which the titled owner does not have custody, such as with financing companies. But a global elimination of strict liability would not only violate the statute’s plain meaning, but it would also create a loophole for the guilty as well as the innocent, and the consumers would be the ones harmed.

E. The novel scenario here is not a good vehicle to address this statute.

Finally, if any of the legal issues here do warrant review, though they do not for the reasons above, this case is a poor vehicle to review those issues. As noted above, GMAC stresses that its factual scenario is unique; it says that “*not a single Ohio court* has ever been confronted with the situation here: a finance company (or any other vehicle transferor for that matter) with no knowledge . . . is held strictly liable for an inaccurate odometer disclosure” GMAC Jur. Mem. at 3. To the extent that these novel facts thus raise novel legal issues, that is a reason not to review the case, as one-time legal issues are not of general public interest, especially when the one-time scenarios cost the affected party nothing. On the other hand, to the extent that some issues here may be recurring ones that might someday warrant review, such as the general strict liability issue (apart from the finance-company-as-owner twist), the fact that a general issue is mixed in with narrower, rarer issues makes it a poor case to review the general issue. Again, even the broadest issue here is not worth review, as explained above, but if that

issue were worth review, the Court should do so in a case that squarely presents that issue without the complicating factors that are not present in the other, straightforward cases.

For all these reasons, the Court should not review this case.

ARGUMENT

APPELLEE'S COUNTER PROPOSITION OF LAW NO. 1

The Odometer Rollback Law, R.C. 4549.46, is a strict liability statute and does not contain a knowledge requirement in its general prohibition. Knowledge is relevant only to the application of the statute's previous-owner exception.

The plain meaning of the Odometer Rollback Law, as well as the history and judicial interpretation of the statute, confirm that it is a strict liability statute. The strict liability of R.C. 4549.46(A) was first recognized in *Flint*, 2 Ohio App. 3d 136. The Court in *Flint* noted that the odometer disclosure section of the broader odometer statute is the only section that fails to specify a culpable mental state. The absence of a mental element in this provision, in contrast to the preceding sections, in which the General Assembly expressly provided for culpable intent, shows that the choice was deliberate, and the Assembly meant to hold transferors who violate the Law strictly liable for their conduct. *Id.* at 137. Thus, *Flint* explains why GMAC is wrong in asserting that the Assembly intended to impose liability only for knowing violations of the statute. GMAC cites no case finding a legislative intent to include a knowledge component in the first sentence of the Law, and that is because courts agree that the Assembly intended precisely the opposite.

The strict liability standard is properly placed into the Odometer Rollback Law because of the significant public interest at stake in providing true odometer disclosures. No intent element is necessary in Ohio where there is a substantial or significant public interest involved. *State v. Williams* (6th Dist. 1952), 94 Ohio App. 249, 255. The *Flint* court recognized the substantial public interest in the accurate disclosure of odometer readings when motor vehicles

are transferred. *Flint*, 2 Ohio App. 3d at 137. In fact, motor vehicle laws are one of eight areas specifically identified by the United States Supreme Court as appropriate for imposing strict liability. *Morrisette v. United States* (1952), 342 U.S. 246, 262.

The strict liability approach is further confirmed by changes in the statute over the years. In 1987, the Odometer Rollback Law was amended to add language to include “recklessly disregard” language to the previous owner exception. The second sentence adds a knowledge element *only if* the violation was due to a previous owner’s violation. That confirms that the general rule, in the first sentence, does not already include some implied knowledge requirement. If the first sentence already required knowledge, as GMAC contends, then the second sentence would be entirely unnecessary.

The strict liability standard for the Odometer Rollback Law, as recognized in *Flint*, has been universally continued since the 1987 amendment to the statute. *Baek* was the first court to hold, post-amendment, that a transferor is strictly liable without regard for the transferor’s intent or the transferee’s knowledge. *Id.* at 161. The first sentence of the Odometer Rollback Law is an unequivocal command to furnish a true odometer reading. *Hammock*, 1987 Ohio App. Lexis 5962 at *3. Again, a knowledge element comes into play only when the second sentence, the previous owner exclusion, is triggered. *Prickett*, 68 Ohio App. 3d at 239.

Both the trial court and the appeals court here noted this consensus in the courts, and both agreed with the reasoning underlying that consensus. See App. Op. at ¶ 9. As the appeals court here explained, “if the legislature did not intend for R.C. 4549.46 to operate as a strict liability statute, it would have amended said provision, especially in light of judicial interpretation of the statute, both before and after its amendment in 1987, as a strict liability statute.” *Id.* at ¶ 15.

The appeals court below was right, as were the many other appeals courts to address the issue: the Odometer Rollback Law provides for strict liability, and knowledge is relevant only when the previous-owner exclusion is at issue.

APPELLEE'S COUNTER PROPOSITION OF LAW NO. 2

The imposition of strict liability and the use of the affidavit form prescribed pursuant to R.C. 4505.06(C)(1) is not misleading and does not lead to constitutional entrapment.

GMAC contends that the strict liability component of the Odometer Rollback Law amounts to entrapment because of its conflict with the Affidavit prescribed by the Registrar. But no conflict exists between the Affidavit requirement and the protections afforded to transferees by the Odometer Rollback Law. The entrapment argument is entirely unfounded and easily refuted by the plain meaning of the statutes. The Affidavit requirement requires the transferor to swear to “the **true odometer reading** of the motor vehicle (emphasis added).” R.C. 4505.06(C)(1). GMAC relies upon the language in the affidavit prescribed by the Registrar that states the disclosure is “to the best of the knowledge of the transferor.” The language in the affidavit prescribed by the Registrar does not change the plain meaning and legislative intent in the Affidavit requirement and the Odometer Rollback Law that a transferor of a motor vehicle has an absolute duty to provide a true odometer disclosure. The Tenth District properly recognized that neither statute contains a knowledge element.

The Odometer Rollback Law places strict liability on transferors of motor vehicles in Ohio when they fail to provide true and complete odometer disclosures, even if they did not possess knowledge of the inaccurate odometer disclosures and have filled out an affidavit to the best of their knowledge. The strict liability standard properly places the liability on transferors when odometer discrepancies occur during their ownership of the vehicle. As explained above, the General Assembly intended, and several courts have recognized, that the transferor is the

proper party to bear the burden of inaccurate odometer disclosures, not the transferee who purchases a vehicle based upon the transferor's false odometer disclosures.

The affidavit language is not a new requirement in this area. In both *Baek*, 43 Ohio App. 3d at 160, and *Falasco*, 1990 Ohio App. Lexis 4938 at *5, the courts quoted the "to the best of my knowledge" language in their decisions and failed to give it any weight in imposing strict liability. No Ohio court has found that the affidavit conflicted in any way with the Odometer Rollback Act or is any basis for entrapment. As the Tenth District recognized, "[t]he Ohio Registrar's affidavit does not change the language or requirement of R.C. 4505.06 that a transferor shall swear to the true odometer reading of the motor vehicle. While the state of Ohio required that GMAC use its forms to effect the transfers at issue, GMAC was not induced by the state of Ohio to set forth untrue odometer readings." App. Op. at ¶ 19.

Thus, the Tenth District properly appropriately held that the Affidavit Requirement and the form of the Affidavit, joined with the strict liability of the Odometer Rollback Act, does not create entrapment.

APPELLEE'S COUNTER PROPOSITION OF LAW NO. 3

The previous-owner exemption in the Odometer Rollback Law applies only when the tampering was performed by someone who owned the car at the time of tampering, not when any previous owner gains access to someone else's car and tampers with the odometer.

While the statute is generally a strict liability one, it does include one exception to strict liability: when the violation occurs due to a "previous owner's" violation of the Odometer statute, and the innocent transferor did not know about it (or was not recklessly disregarding facts indicating it). The defense is found in the second sentence of the Odometer Rollback Law, and it is the *only* defense to the strict liability of that section. GMAC, as an alternative to trying to eliminate entirely strict liability, argues that it qualifies for that exception, because Midway,

long before the tampering, had once owned the cars before transferring title to GMAC. GMAC is wrong, and the appeals court was right in holding that the exception applies only when the previous owner did the tampering while it was the owner.

The appeals court and the trial court both applied the statute pursuant to its plain meaning and consistent with case law. As both courts noted, the court in *Hughes*, 72 Ohio App. 3d 633, properly recognized the legislative intent to hold the owners of motor vehicles strictly liable for a violation of the Odometer Rollback Law when an odometer is altered during the course of their ownership of the vehicle. The Court held:

Strict liability under R.C. 4549.46 applies to a transferor when a discrepancy in the odometer reading **occurs during their ownership of the vehicle**, unless the transferor properly discloses the discrepancy upon transfer.

Id. at 638 (Emphasis added.). The Court went on to further address the strict liability exception of the second sentence by stating:

The **second sentence of R.C. 4549.46 places liability only on the transferor of a vehicle which has not had its odometer tampered with during his ownership**, but the transferor nonetheless has actual knowledge of tampering with, or discrepancy in, the odometer reading.

Id. (Emphasis added.). It is undisputed that GMAC owned the motor vehicles when the odometer rollbacks occurred and subsequently transferred them without true odometer disclosures. Therefore, GMAC was properly found to be strictly liable for violations of the Odometer Rollback Law.

The Tenth District explained why GMAC's reading cannot be right:

Assume A is a transferor, B is a prior owner, C is an outside party, and D is a transferee. Unbeknownst to A, C, an outside party such as one performing maintenance of A's vehicle, alters the odometer of A's vehicle during A's ownership. A then transfers the vehicle with an odometer disclosure, such as the one at issue here, to D. A would be strictly liable for failing to provide a true odometer reading pursuant to R.C. 4549.46. However, if B, a prior owner, had performed the same act as C, i.e., altering the odometer during A's ownership of

the vehicle, A would not be subject to strict liability pursuant to R.C. 4549.46. These anomalous results would occur despite the fact that in either instance the alteration of the odometer occurred during A's ownership and without A's knowledge.

App. Op. at ¶ 25. The court further explained that it would be “anomalous to think the legislature would intend a result such that a transferor is absolved of strict liability in one instance, *i.e.*, where a prior owner altered an odometer, but not in another, *i.e.*, where a third party altered an odometer, even though in either scenario the act took place during the transferor's ownership. *Id.* at ¶26).

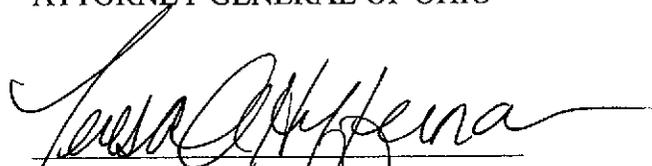
Thus, the Tenth District properly held that the previous-owner exception does not apply here.

CONCLUSION

For the above reasons, the Court should decline jurisdiction in this case.

Respectfully submitted,

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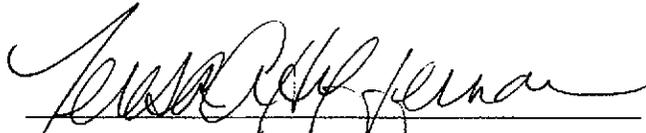
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CERTIFICATE OF SERVICE

I hereby certify that a copy of Memorandum of Plaintiff-Appellee State of Ohio in Opposition to Memorandum in Support of Jurisdiction was sent by regular United States mail, postage prepaid this 22nd day of August 2008, to counsel for GMAC, Michael H. Carpenter, Carpenter, Lipps, and Leland LLP, 280 Plaza, Suite 1300, 280 North High Street, Columbus, Ohio 43215.



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