

FILED  
SUPREME COURT  
STATE OF WASHINGTON  
2/5/2018 1:33 PM  
BY SUSAN L. CARLSON  
CLERK

No. 95246-9  
No. 95442-9

---

SUPREME COURT  
OF THE STATE OF WASHINGTON

---

SWANSON HAY COMPANY;  
HATFIELD ENTERPRIZES, INC., a Washington corporation; and  
SYSTEM-TWT TRANSPORT, a Washington corporation,

Petitioners,

v.

STATE OF WASHINGTON  
EMPLOYMENT SECURITY DEPARTMENT,

Respondent.

---

MACMILLAN-PIPER, INC.,

Petitioner,

v.

STATE OF WASHINGTON  
EMPLOYMENT SECURITY DEPARTMENT,

Respondent.

---

MOTION TO CONSOLIDATE  
PURSUANT TO RAP 3.3(b)

---

Aaron Riensche, WSBA #37202  
Ogden Murphy Wallace PLLC  
901 Fifth Avenue, Suite 3500  
Seattle, WA 98164-2008  
(206) 447-7000

Philip A. Talmadge, WSBA #6973  
Thomas Fitzpatrick, WSBA #8894  
Talmadge/Fitzpatrick/Tribe  
2775 Harbor Avenue SW  
Third Floor, Suite C  
Seattle, WA 98126  
(206) 574-6661

Attorneys for Petitioners  
System-TWT Transport, Hatfield Enterprises, Inc.,  
and MacMillan-Piper, Inc.

1. IDENTITY OF PARTIES

The petitioners Hatfield Enterprises and System-TWT Transport in Cause No. 95246-9 and MacMillan-Piper, Inc. in Cause No. 95442-9, ask for the relief designed in part 2.

2. RELIEF REQUESTED

Consolidate legally-identical cases involving the imposition of unemployment compensation taxes on trucking carriers for independent contractors (owner/operators) from whom they lease equipment, currently pending in this Court, pursuant to RAP 3.3(b).

3. FACTS RELEVANT TO MOTION

The present case relates to the Employment Security Department's ("ESD") assessment of unemployment compensation taxes against trucking carriers for their owner/operators, traditional trucking industry independent contractors. Owner/operators have been a part of the industry since the early Twentieth Century. Because the cargo carrying needs of trucking carriers are extremely cyclical in nature, carriers routinely lease equipment from owner/operators to meet spikes in service demand. Federal law regulates the carrier-owner/operator relationship, and 49 C.F.R. Part 376 actually specifies the terms of the equipment leasing contracts. That equipment is expensive; owner/operators often invest hundreds of thousands of dollars in trucks and trailers.

ESD targeted the trucking industry to eliminate the owner/operator business model. It conducted hundreds of audits of trucking carriers. The carriers have fought ESD's efforts in the administrative process and through the trial courts. All three divisions of the Court of Appeals have now ruled in several of these cases.

The appeals of three carriers – Swanson Hay Company, Hatfield Enterprizes, Inc., and System-TWT Transport were consolidated in the Division III case, and Division III rendered its decision adverse to them. All three carriers petitioned this Court for review in Cause No. 95246-9. The State has answered. The identical legal issues are at stake for MacMillan-Piper in Division I. That court issued its opinion. MacMillan-Piper has filed a petition for review to this Court in Cause No. 95442-9. The State has not yet answered. The issues in the two matters – federal preemption under 49 U.S.C. § 14501, exemption from coverage of the owner/operators under RCW 50.04.140, and the rigging of audits and illegal imposition of taxes on equipment – are identical. In addition to involving identical legal issues, the parties in those cases are represented largely by the same attorneys. The facts vary only marginally carrier-by-carrier, particularly where federal law dictates many of the key contract terms.

#### 4. GROUNDS FOR RELIEF AND ARGUMENT

RAP 3.3(b) permits this Court to consolidate pending cases, stating:

The appellate court, on its own initiative or on motion of a party, may order the consolidation of cases or the separation of cases for the purpose of review. A party should move to consolidate two or more cases if consolidation would save time and expense and provide for a fair review of the cases. If two or more cases have been consolidated for review in the Court of Appeals, the cases remain consolidated for review in the Supreme Court unless the Supreme Court otherwise directs.

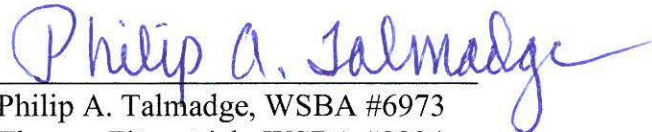
Consolidation makes complete sense in this situation. Consolidation will promote the orderly administration of justice, saving not only time and expense for the parties, but for the court. It also makes very little sense for this Court to separately address the exactly identical legal issues.

5. CONCLUSION

To promote orderly administration of these cases, petitioners ask this Court to consolidate these cases.

DATED this 5th day of February, 2018.

Respectfully submitted,



Philip A. Talmadge, WSBA #6973

Thomas Fitzpatrick, WSBA #8894

Talmadge/Fitzpatrick/Tribe

2775 Harbor Avenue SW

Third Floor, Suite C

Seattle, WA 98126

(206) 574-6661

Aaron Riensche, WSBA #37202  
Ogden Murphy Wallace PLLC  
901 Fifth Avenue, Suite 3500  
Seattle, WA 98164-2008  
(206) 447-7000

Attorneys for Petitioners  
System-TWT Transport,  
Hatfield Enterprises, Inc.,  
and MacMillan-Piper, Inc.

DECLARATION OF SERVICE

On said day below I electronically served a true and accurate copy of the *Motion to Consolidate Pursuant to RAP 3.3(b)* in Supreme Court Cause No. 95246-9 to the following parties:

Eric D. Peterson  
Leah E. Harris  
Assistant Attorneys General  
Licensing and Administrative Law Division  
800 Fifth Avenue, Suite 2000 MS TB-14  
Seattle, WA 98104-3188  
Email: ericpl@atg.wa.gov; leahh1@atg.wa.gov

Aaron Riensche  
Ogden Murphy Wallace PLLC  
901 Fifth Avenue, Suite 3500  
Seattle, WA 98164  
Email: ariensche@omwlaw.com

Ryan McNeice  
Becki Wheeler  
McNeice Wheeler  
11404 E. Sprague Avenue  
P.O. Box 14758  
Spokane Valley, WA 99214-0758  
Email: ryan@mcneicewheeler.com; becki@mcneicewheeler.com

Laura E. Kruse  
Mark Tyson  
Betts, Patterson & Mines  
701 Pike Street, Suite 1400  
Seattle, WA 98101  
Email: lkruse@bpmlaw.com; mtyson@bpmlaw.com

Original E-filed with:  
Supreme Court  
Clerk's Office

I declare under penalty of perjury under the laws of the State of Washington and the United States that the foregoing is true and correct.

Dated this 5th day of February, 2018 at Seattle, Washington.



---

Matt J. Albers, Paralegal  
Talmadge/Fitzpatrick/Tribe



**TALMADGE/FITZPATRICK/TRIBE**

**February 05, 2018 - 1:33 PM**

**Transmittal Information**

**Filed with Court:** Supreme Court  
**Appellate Court Case Number:** 95246-9  
**Appellate Court Case Title:** Swanson Hay Company v. Employment Security Department  
**Superior Court Case Number:** 15-2-03704-2

**The following documents have been uploaded:**

- 952469\_Motion\_20180205133025SC599247\_5311.pdf  
This File Contains:  
Motion 1 - Consolidation  
*The Original File Name was Mot to Consolidate Pursuant to RAP 3.3b.pdf*

**A copy of the uploaded files will be sent to:**

- LALOlYEF@ATG.WA.GOV
- LeahH1@atg.wa.gov
- ariensche@omwlaw.com
- becki@mcneicewheeler.com
- chenry@omwlaw.com
- ericp1@atg.wa.gov
- lalseaef@atg.wa.gov
- lkruse@bpmlaw.com
- matt@tal-fitzlaw.com
- ryan@mcneicewheeler.com
- tom@tal-fitzlaw.com

**Comments:**

Motion to Consolidate Pursuant to RAP 3.3(b) (this motion will also be filed in MacMillan-Piper, Inc. v. State of Washington Employment Security Department, Cause No. 95442-9)

---

Sender Name: Matt Albers - Email: matt@tal-fitzlaw.com

**Filing on Behalf of:** Philip Albert Talmadge - Email: phil@tal-fitzlaw.com (Alternate Email: matt@tal-fitzlaw.com)

Address:  
2775 Harbor Avenue SW  
Third Floor Ste C  
Seattle, WA, 98126  
Phone: (206) 574-6661

**Note: The Filing Id is 20180205133025SC599247**