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SUPREME COURT
STATE OF WASHINGTON

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No. 77985-6 BY C. J. HERRITT

CLFRK
SUPREME COURT OF THE STATE OF WASHINGTON

HERBERT NELSON

On his behalf and on behalf of all others similarly situated,

Respondent-Appellee,

v.

APPLEWAY CHEVROLET, INC., a Washington corporation, d/b/a
APPLEWAY SUBARU/VOLKSWAGEN/AUDI, APPLEWAY
ADVERTISING, APPLEWAY AUDI, APPLEWAY
AUTOMOTIVE GROUP, APPLEWAY CHEVROLET LEASING,
APPLEWAY GROUP, APPLEWAY MAZDA, APPLEWAY
MITSUBISHI, APPLEWAY SUBARU, APPLEWAY TOWING,
APPLEWAY TOYOTA, APPLEWAY VOLKSWAGEN, EAST
TRENT AUTO SALES, LEXUS OF SPOKANE, OPPORTUNITY
CENTER, and TSP DISTRIBUTORS; and AUTONATION, INC., a
Delaware corporation,

Petitioners-Appellants.

**AMICI CURIAE MEMORANDUM OF
CAMP AUTOMOTIVE, INC. AND LITHIA MOTORS, INC.
IN SUPPORT OF PETITION FOR REVIEW**

Jill D. Bowman
STOEL RIVES LLP
600 University Street, Suite 3600
Seattle, WA 98101-3197
(206) 624-0900
Attorneys for Amici Curiae

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STATUTES

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I. This Case Involves Issues of Substantial Public Importance That Should Be Determined by This Court

Camp Automotive, Inc. (“Camp”) sells motor vehicles in the state of Washington. It is a wholly owned subsidiary of Lithia Motors, Inc. (“Lithia”). Because Camp engages in business in the State of Washington, it pays Business and Occupation (“B&O”) taxes to the State. Accordingly, Camp and Lithia possess a substantial interest in the proper interpretation and application of the B&O tax laws, especially as applied to motor vehicle dealers.

The pending Petition for Review arises out of a published opinion of the Court of Appeals of Washington, Division 3, affirming a partial summary judgment concluding that certain car dealerships’ itemization of and collection of funds to pay B&O taxes was unlawful and holding that the trial court did not abuse its discretion in certifying the case as a class action under CR 23(b)(2). Nelson v. Appleway Chevrolet, Inc., 129 Wn. App. 927, 121 P.3d 95 (2005). The widespread public importance of these issues is self-evident, and underscored by the fact that Camp and Lithia are the named defendants in a copycat action recently filed in Spokane County by the same plaintiffs’ counsel who represent Respondent Herbert Nelson in this case. See Johnson v. Camp Automotive, Inc. Spokane County Superior Court, Case No. 05-2-05059-9.

Bringing suit on their own behalf and on behalf of a putative plaintiff class, the Johnson plaintiffs are asserting claims for alleged

violation of the B&O tax laws against Camp and Lithia individually and as representatives of a putative defendant class composed of “[a]ll motor vehicle dealers who itemized and collected B&O Tax and/or B&O Sales Tax on the sale of motor vehicles, parts, merchandise, or service in the State of Washington.” The Johnson plaintiffs allege that the “hundreds of entities” comprising the proposed defendant class “should be ordered to disgorge, for the benefit of the Plaintiff Class, all or part of the ill-gotten monies they received from itemizing and collecting B&O Tax and B&O Sales Tax....” The statutory violation allegations are identical to those made by Respondent Nelson in this action, while the class certification allegations made by the Johnson plaintiffs mirror those made by Respondent Nelson on behalf of his plaintiff class.

Interpretation and application of this state’s B&O tax laws and class certification rules will affect thousands of Washington residents. This case raises issues of substantial public interest that should be determined by this Court.

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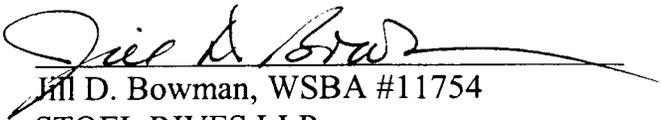
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II. Conclusion

For the reasons stated in this memorandum and in the Petition for Review, Camp and Lithia urge this Court to accept discretionary review.

DATED this 12th day of January, 2006.

Respectfully submitted,



Jill D. Bowman, WSBA #11754

STOEL RIVES LLP

600 University Street, Suite 3600

Seattle, WA 98101-3197

(206) 624-0900

Attorneys for Camp Automotive, Inc. and

Lithia Motors, Inc., Amici Curiae

