

**IN THE SUPREME COURT OF THE STATE OF NEVADA**

BOULDER CAB, INC.

Petitioners,

vs.

THE EIGHTH JUDICIAL  
DISTRICT COURT OF THE  
STATE OF NEVADA, IN AND  
FOR THE COUNTY OF CLARK;  
AND THE HONORABLE  
TIMOTHY C. WILLIAMS,

Respondents,

and

DAN HERRING,

Real Party in  
Interest.

Case No. 68949

District Court Case No. A-13-69155-1-C

Dept. No. XVI

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Tracie K. Lindeman  
Clerk of Supreme Court

**MOTION BY SUN CAB, INC. FOR  
LEAVE TO FILE AMICUS CURIAE  
BRIEF IN SUPPORT OF PETITION  
FOR WRIT OF MANDAMUS**

Sun Cab, Inc. dba Nellis Cab Co. (hereinafter “Nellis Cab”) owns and operates a taxi cab company that services all of the greater Las Vegas area. Like Petitioner in this matter, Nellis Cab is involved in a lawsuit in the Eighth Judicial District Court of Nevada and is confronting alleged violations of Nevada’s Minimum Wage Amendment, Nevada Constitution Article XV § 16 (the “Minimum Wage Amendment”). Nellis Cab files the instant Motion for Leave to File Amicus Curiae Brief in Support of Petition for Writ of Mandamus as it will undoubtedly raise the legal arguments and ramifications advanced by Petitioner on this pivotal issue and seeks to provide additional points and authorities for this Court’s consideration.

**I. The Court Should Grant Leave for Nellis Cab to File an Amicus Brief.**

The ability for an amicus to file a brief is within this Court's discretion. *See Nev. R. App. P. 29(a) and 21(b)(3)*. "Amicus curiae presentations assist the court by broadening its perspective on the issues raised by the parties. Among other services, they facilitate informed judicial consideration of a wide variety of information and points of view that may bear on important legal questions." *Bily v. Arthur Young & Co.*, 3 Cal. 4th 370, 406 n.14, 834 P.2d 745 (1992). Courts "frequently welcome amicus briefs from non-parties concerning legal issues that have potential ramifications beyond the parties directly involved or if the amicus has 'unique information or perspective that can help the court beyond the help that the lawyers for the parties are able to provide.'" *NGV Gaming, Ltd. v. Upstream Point Molate, LLC*, 355 F. Supp. 2d 1061, 1067 (N.D. Cal. 2005) (citations omitted). Nellis Cab offers its experience and points and authorities reinforcing the argument that equitable principles dictate a purely prospective application of *Thomas v. Nevada Yellow Cab Corp.*, 130 Nev. Adv. Op. 52, 327 P.3d 518 (2014).

**A. Nellis Cab has a direct interest on this Writ Petition.**

Nellis Cab owns and operates a taxi cab company in all of the greater Las Vegas area and is subject to the Minimum Wage Amendment pursuant to *Thomas v. Nevada Yellow Cab Corp.* Nellis Cab is involved in a lawsuit in the Eighth Judicial District Court of Nevada, entitled *Neal Golden and Abaikarim Hassan v.*

*Sun Cab. Inc., dba Nellis Cab Co.*, Case No.: A-13-678109-C, and is confronting alleged violations of the Minimum Wage Amendment. It is the position of Nellis Cab that the *Thomas v. Nevada Yellow Cab* decision should be afforded purely prospective effect. Nellis Cab will be raising the legal arguments and ramifications advanced by Petitioner in this Writ proceeding, as the appropriate application of this Court's decision in *Thomas v. Nevada Yellow Cab* implicates Nellis Cab's potential liability and discovery obligations. These direct interests qualify proposed Amicus Curiae to participate in this matter.

**B. An amicus brief is desirable for the Court to consider all relevant points and authorities concerning the Writ Petition.**

Taxicab drivers have filed numerous lawsuits pursuant to the Minimum Wage Amendment against Nevada taxicab companies alleging violations of Nevada's minimum wage. In these matters, the claimants largely maintain that the defendant taxicab companies were required to pay drivers the minimum wage since the ratification of the Minimum Wage Amendment in 2006, in spite of NRS 608.250(2)'s long-standing exemption of taxicab drivers from the minimum wage. It is the position of Nellis Cab that the District Court's order finding that *Thomas v. Nevada Yellow Cab* should be applied retroactively is incorrect and, instead, the decision should be afforded prospective application only.

As identified in Nellis Cab's Brief, for nearly fifty years before the *Thomas*

*v. Nevada Yellow Cab* decision, taxicab companies relied on the statutory scheme in Chapter 608 of the Nevada Revised Statutes to comply with Nevada’s minimum wage laws. In the Chapter, NRS 608.250(2) exempted taxicab and limousine drivers from any entitlement to the State’s minimum wage. Following the passage of the Minimum Wage Amendment, however, questions arose regarding the viability of Nevada’s statutory wage and hour laws. The Minimum Wage Amendment did not reference Chapter 608’s statutory scheme and did not express any abrogation of the same. Accordingly, taxicab companies like Nellis Cab continued to comport with Nevada’s long-standing statutory laws that exempted taxicab drivers from Nevada’s minimum wage. Moreover, Nevada’s Office of the Labor Commissioner, either believing that NRS 608.250(2)’s exemptions were still binding or being uncertain of the state of the law, failed to take action on constitutional wage claims until after the Court’s decision in *Thomas v. Nevada Yellow Cab*.

Eight years after the ratification of the Minimum Wage Amendment, this Court found in *Thomas v. Nevada Yellow Cab*, that NRS 608.250(2)’s well-established statutory exemptions were “irreconcilably repugnant” with the Minimum Wage Amendment such that both could not stand. For the first time and in the face of a contrary ruling reconciling the Minimum Wage Amendment and Chapter 608’s exemptions, this Court ruled that the Minimum Wage Amendment

impliedly repealed NRS 608.250(2).

Taxicab Companies, like Nellis Cab, are now faced with potential significant liability based on their long-standing reliance on Nevada statutory law. Nellis Cab seeks to assist the Court with additional points and authorities on the question presented by Petitioner, which include specific facts in Nellis Cab's case. Indeed, a full consideration of the equities cannot ignore the significant inequity that will result from *Thomas v. Nevada Yellow Cab*'s application retroactively to Nellis Cab and other companies alike. Therefore, Nellis Cab respectfully requests the opportunity to be heard on this momentous issue.

## **II. Conclusion**

An Amicus Curiae brief will be both useful and timely given the importance of the petitioned issue to taxicab companies, like Nellis Cab, confronting alleged violations of the Minimum Wage Amendment. Accordingly, this Court should grant leave for the attached brief to be filed.

Dated: November 2, 2015

Respectfully submitted,

/s/ Montgomery Y. Paek, Esq.

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## **CERTIFICATE OF SERVICE**

I am a resident of the State of Nevada, over the age of eighteen years, and not a party to the within action. My business address is 3960 Howard Hughes Parkway, Suite 300, Las Vegas, Nevada 89109-0920. On November 2, 2015, the following document was served on the following:

### **MOTION BY SUN CAB, INC. FOR LEAVE TO FILE AMICUS CURIAE BRIEF IN SUPPORT OF PETITION FOR WRIT OF MANDAMUS**

- ☒ By **United States Mail** – a true copy of the document listed above for collection and mailing following the firm's ordinary business practice in a sealed envelope with postage thereon fully prepaid for deposit in the United States mail at Las Vegas, Nevada addressed as set forth below.

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I declare under penalty of perjury that the foregoing is true and correct.  
Executed on November 2, 2015 at Las Vegas, Nevada.

/s/ Erin J. Melwak  
Erin J. Melwak