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Legal limelight

Scopelitis to argue trucking case at U.S. Supreme Court

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IBJ Photo/Robin Jerstad
Local attorney James Hanson

Counsel from an Indianapolis law firm will argue before the U.S. Supreme Court in April that an annual truck fee charged by the state of Michigan should be struck down. If the high court agrees, trucking firms in Indiana and around the nation could see more than \$70 million in fees paid since 1995 refunded.

Trucking firms have a lot riding on Scopelitis Garvin Light & Hanson. A ruling upholding the Michigan fee could embolden other states to adopt similar measures costly to the industry.

"If Michigan can do it, why can't the other 49 states?" said James Hanson, a Scopelitis partner who will argue the case.

The high court on Jan. 14 agreed to review an earlier ruling by the Michigan Supreme Court, which upheld a \$100 annual fee charged by the Michigan Public Service Commission for each for-hire truck plated in Michigan and used in interstate commerce.

Scopelitis also is co-counsel with American Trucking Associations in a related case being heard in April by the nation's top court. It seeks to overturn a \$100 per-truck fee charged to trucking firms outside Michigan that make runs within the state.

That includes a number of Indiana carriers such as Celadon Group. The Indianapolis trucking giant must pay Michigan \$100 for each of its 3,000 trucks even though only part of its fleet delivers and picks up goods there.

"That's \$300,000 per year. That's a heck of a bill," said Celadon President Tom Glaser.

Ultimately, trucking companies' customers help pay that bill.

"Discriminatory charges impede the free flow of commerce, hurting not only the trucking industry but the national economy as well," Bill Graves, president of the ATA, said in a statement.

The trucking industry has long sought uniformity in fees among states and contends it has the backing of the federal government. Hanson will argue that Michigan's \$100 fee violates a \$10 maximum under the fed's Single State Registration System, which sets a uniform procedure for state registration of interstate carriers.

Trucking firms like Celadon say they are being taxed at the same rate as intrastate carriers, yet use Michigan roads less than they do, Glaser said. He added that Celadon already pays Michigan taxes at the fuel pump.

"This puts a burden on and can shut an out-of-state carrier out of the [Michigan] market," said Robert Digges Jr., an attorney for the ATA.

Michigan courts have disputed that there is a burden on interstate commerce, finding no evidence the fees caused carriers to alter their routes. State regulators have argued the fees are justified as a source of funds for safety and other programs.

These are well-worn arguments to Scopelitis partner Andy Light, who began litigation in 1995. He knew that Michigan's fee would hurt a number of his trucking clients. Light and partners launched a class action case that resulted in Riverview, Mich.-based Mid-Con Freight Systems vs. Michigan Public Service Commission.

"Unfortunately, Michigan courts were just extremely slow in getting this through the process," Light said.

The law firm tapped Hanson to make what for most attorneys is a once-in-a-lifetime oral argument before the U.S. Supreme Court because "he's far and away the most experienced. Jim has been litigating for a long time," said Scopelitis attorney Lynne Lidke.

While Hanson has asked the Supreme Court to hear three other cases, those requests were all denied. By the law firm's own research, only three attorneys from the Indianapolis area have argued before the U.S. Supreme Court in the last four years.

Hanson's 30-minute appearance will be shared with the U.S. solicitor general, which also is arguing against the Michigan fee.

Not only does he have little time to make his case, Hanson also faces a virtual legal pecking by justices known for their cranky inquisitiveness.

"It's similar to arguing in front of any appellate court. It's just to a much higher degree because you have nine justices and they tend to ask a lot of questions and engage in a lot of bantering with the lawyers and with each other during the argument," Hanson said.

"What you really have to be ready for is anticipating anything one of the Supreme Court justices may ask."

To do that, Lidke and her team are researching individual justices' opinions from over the years.

"For the actual argument, the key is to try your darndest to think about every question they can ask you. We've lived with this case for 10 years. We don't want to be entrenched with our view of the case," she said. "You need to be able to abandon your prepared speech because as a general rule they're going to take up your time."

Until then, Hanson and partners will be practicing before lawyers who will play the role of the Supremes.

Arguing before the Supreme Court is every law student's dream, one that's tempered as one's career advances "because you think your chances of doing it are slim," Hanson said.

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