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## Court to hear appeal of lawsuit on lenders for 3rd time since '03

**BY DAVID SMITH**

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LITTLE ROCK — For the third time in four years, a lawsuit questioning the constitutionality of Arkansas' payday lending law will be appealed to the Arkansas Supreme Court.

Pulaski County Judge Barry Sims ruled Tuesday that the Arkansas Check-cashers Act is constitutional.

It was the second time in three years that Sims made that order in the case, McGhee v. the Arkansas State Board of Collection Agencies. In November 2005, he also ruled from the bench that the act was constitutional.

But when the order was written for Sims by an attorney in the case, it did not include Sims' statement that the law was constitutional. It said Todd Turner's case first should have been brought before the Board of Collection Agencies before being filed in court. The Supreme Court disagreed with that decision and sent the case back to Sims.

The Supreme Court first declined to make a definitive decision on the law's constitutionality in the McGhee case earlier in 2005 and sent it back to Sims.

Tuesday's hearing lasted less than 10 minutes. Sims specified that constitutionality was all he wanted included in his order this time.

The quick ruling surprised Turner, who filed the case in 2003 on behalf of Sharon McGhee and others who had paid high fees for payday loans, and Tom Thrash, who represented the board of collection agencies, which regulates payday lenders in Arkansas.

"We felt like [McGhee's attorneys] would attempt to put on evidence to support their burden of establishing that the statute is unconstitutional," said Thrash, a Little Rock lawyer. "But it would have been appealed [to the Supreme Court] under either decision [by Sims]."

Turner, an Arkadelphia lawyer, said he will appeal Sims' decision to the Supreme Court in a couple of weeks.

Since no major documents need to be filed in the case - most have been filed in previous appeals to the Supreme Court - Turner and Thrash said they believe oral arguments could be heard before the highest court within five or six months. A decision could come from the Supreme Court within four weeks of oral arguments, the two attorneys said.

Taking out a payday loan in Arkansas works like this: The customer writes a check for \$400, for example, and receives \$350 in cash. The lender usually keeps the check for two weeks before cashing it.

A \$50 charge on a \$350 loan for 14 days equals 371 percent in annual interest. Under the Arkansas Check-cashers Act, the customer must repay the loan before the agreed-upon date or the lender must deposit the check. Once the loan is repaid or the check deposited, the customer can take out another loan by exchanging another check for cash and promising to repay the loan.

Thrash's position is that the Supreme Court already has decided the act to be constitutional in a 2001 case.

"The court considered the constitutionality of the statute and struck one sentence from the statute that was in conflict with the constitution," Thrash said.

When the Check-cashers act was passed in 1999, it permitted payday lenders to charge rates that exceeded Arkansas' 17 percent constitutional usury limit by stating that the charges were fees and weren't to be considered interest. The Arkansas Supreme Court ruled in the 2001 case, *Luebbers v. Money Store Inc.*, that the Legislature did not have the authority to decide what is and is not interest and struck the reference to fees not being interest from the act.

But since the Supreme Court's decision didn't specifically declare whether the entire Checkcashers Act is constitutional, Turner filed the McGhee lawsuit in 2003, directly challenging the constitutionality of the act.

Turner believes the wording the Supreme Court removed from the act was the crux of the entire law.

"But the [state board] continues to license these places and says you can charge these maximum fees," Turner said. "Our position is [the rest] of the law needs to be stricken, too."

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