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Court Hears Payday Lender Bond Case

By [Rob Moritz](#)

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LITTLE ROCK -- Customers who won a \$191,000 judgment against a Russellville payday lender should be allowed to file a claim against the company's surety bond, lawyers for the plaintiffs argued Thursday before the state Supreme Court.

A lawyer for Old Republic Surety Co., which issued a \$50,000 surety bond to Arkansas Check Express in Russellville, countered his client did not have to pay the money because the circuit judge who handled the case never ruled the payday lender violated the state Check Cashers Act.

The case involves customers who won a lawsuit claiming the payday lender violated the Arkansas usury law, which limits interest rates to 17 percent. Opponents contend payday lenders charge triple-digit interest rates on short-term loans.

The industry cites the 1999 Check Cashers Act, which designates the charges as fees, not interest.

In late 2003, plaintiffs received a \$191,000 judgment against Arkansas Check Express. The lender was unable to pay and has since gone out of business.

"When (the surety company) agreed to be surety on the terms of a bond that says that we're going to come in and stand good if our principal commits any violation of any law, then the risk is on them to make sure that their principal is not violating the law," Todd Turner of Arkadelphia, the plaintiffs' lawyer, told the high court Thursday.

But Joel Taylor of Morrilton, a lawyer for Old Republic, said his client "did not assure constitutionality of the act. We only assured compliance with the statute."

When Arkansas Check Express failed to pay the 2003 judgment, Turner sued the surety company in Pope County Circuit Court. A judge ordered Old Republic to pay \$50,000 to cover part of the judgment.

The company appealed the decision to the state Supreme Court, which ruled Turner and his clients had to ask the State Board of Collection Agencies for the \$50,000. The agency regulates the payday lending industry.

In 2005, Turner asked the board to tap the payday lender's surety bond to help pay the judgment. The board denied the request, saying the surety bonds did not cover usury law violations.

A Pulaski County circuit judge later ruled the surety bonds did cover the violation of any law and said the surety bond could be used to pay the \$191,000 judgment.

Old Republic appealed that decision to the state Supreme Court.

During Thursday's oral arguments, Justice Robert Brown raised several questions.

"What you seem to be saying ... is that because the statute said these (charges) were not interest that the check cashers could rely on that statute?" Brown asked.

Arnold Jochums, an assistant attorney general representing the Board of Collection Agencies, said that was the rationale.

"If I'm doing business with Russellville Check Express and I want to feel comfortable about it. Don't I have the protection against unconscionable fees being charged because of bond?" Brown asked.

"The rationale is that Russellville Check Cashers did everything they were supposed to do under the act, and you don't normally penalize people for doing everything they are supposed to do," Jochums said.

After the hearing, Turner, who has been fighting the state's Check Cashers Act for years, said he expects to argue another payday lending case before the Supreme Court sometime next year.

In November, a Pulaski County circuit judge ruled that the state's law that allows payday loan fees that exceed the state's interest limits is constitutional.