

Could \$6B court battle over Pa. Turnpike tolls end with a compromise?

Updated Apr 11, 2:05 PM; Posted Apr 11, 2:05 PM



A federal lawsuit seeking \$6 billion in refunds of Pennsylvania Turnpike tolls is a "highly unusual" case, a transportation law expert says. (file photo)

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Could a \$6 billion court battle between two independent trucker associations and the Pennsylvania Turnpike commission be resolved with a less-costly compromise?

Such a deal, perhaps one that would curtail the toll increases planned for the highway over the next 26 years, might be a possible scenario, a transportation law expert said Wednesday.

Attorney Frank C. Botta's assessment can best be described as educated speculation. Neither Botta nor his firm, The Lynch Law Group, is a party to the federal court fight between the commission and the Owner-Operator Independent Drivers Association and the National Motorists Association.

The Pittsburgh-area attorney is, however, president of the Transportation Lawyers Association, a multi-national body of experts on the legalities of getting from here to there.

Botta has been watching as the U.S. Middle District Court battle blossoms. The crux of the dispute is the trucking groups' demand for a \$6 billion refund on increasing tolls charged by the turnpike since 2009. Those jumps are tied to the Legislature's demand that the commission hand over \$450 million annually to PennDOT for mass transit and transportation projects elsewhere.

The truckers claim that fiscal shift violates a precept that turnpike tolls must be used only for the upkeep and operation of that trans-Pennsylvania road.

"I would say it's a highly unusual case in the sense that what the trucking associations are seeking would have a tremendous impact on the state's funding engine," Botta said of the court tussle.

He predicted the fighting will revolve around a central question. "I believe that what this case will come down to is, are the (tolls) being used for their intended purpose?" he said.

Ancillary factors will have to be weighed as well, he said, including the fiscal impact on the commission and the state government if they lose the case and quickly have to fill a \$6 billion hole.

The commission has claimed in court filings that a victory by the trucking groups would be financially catastrophic and could prompt an immediate call on its \$11 billion debt. It is opposing a request the trucking groups have made to Judge Yvette Kane for an injunction that would block the commission's next \$112.5 million payment to PennDOT scheduled for April 30.

Botta said truckers will have the not-so-easy task of showing they are suffering immediate irreparable harm due to an interference with interstate commerce.

That the groups waited nine years to sue could undermine that argument, he said. Also, he said they'll have to overcome the fact that the turnpike isn't the only road that crosses Pennsylvania. Alternatives include Interstates 80, 81 and 78, which are toll-free.

Convincing a federal judge that the state government is exceeded its authority in ordering the commission-to-PennDOT monetary transfers might prove to be a "high hurdle" as well, Botta predicted.

The timing of the suit likely relates to the steadily increasing financial pressures independent truckers are experiencing on and off the turnpike, he said. Changes in federal tax laws have reduced their deduction options, he noted, while fuel and maintenance costs for their rigs continue to rise. Perhaps they see the toll boosts as one of the few fiscal annoyances they can actually attack, Botta said.

"I think the tolls have increased to a point where there is some pushback," he said.

In speculating about a compromise scenario, Botta observed that a \$6 billion toll refund might be too difficult to secure because "it's hard to get something back that's already been given."

"If there is a compromise, it could be about the planned further escalation of the tolls," he said. Perhaps, Botta said, a deal could be struck to forgo any refund and instead pare back those toll increases that are set to kick in automatically in coming years.

Such an ending might be a financial boon to every turnpike traveler, not just the truckers, since the commission is scheduled to boost tolls by 6 percent every year through 2044. The most recent jump took effect in January.

The cash toll for a passenger car to cross the state from Neshaminy Falls in the west to the Delaware Valley exit in the east now stands at \$47.55. For a six-axle truck weighing up to 50 tons the cash toll for that same trip is \$333.85.