

Red-Light Camera Mega-Case Inches Forward

The cases are accelerating like Florida drivers at yellow lights.

Ever since the Fourth District Court of Appeal discredited Hollywood's red-light camera program, angry ticket holders from Aventura to Zephyrhills have been fighting back in state court. They were energized in April when the Florida Supreme Court accepted the Fourth District's ruling as the final word in the case of Eric Arem.

The stakes for cities and three companies that operate the camera systems are enormous: more than \$200 million in citations over four years, and counting.

Miami federal court is the venue for the latest camera action. U.S. District Judge Federico Moreno is overseeing 10 consolidated cases involving about 80 governments and a potential plaintiffs' class of hundreds of thousands of drivers.

On Aug. 10 Moreno let the litigation inch ahead by denying, in part, a defense motion to dismiss. The plaintiffs kept their unjust enrichment and procedural due process claims against the camera vendors. They can still go after local governments on theories of unjust enrichment and federal and state procedural due process violations. And they can seek declaratory and injunctive relief.

What this means in terms of who's winning the global chess match isn't clear. A critical ruling on class certification is yet to come.

"It's the beginning and not the end of the litigation," said Theodore Leopold of Cohen Milstein Sellers & Toll in Palm Beach Gardens.

Leopold and Stephen Rosenthal, co-lead counsel for the plaintiffs' steering committee are claiming a modest preliminary success.

"Anytime you get through a motion to dismiss with many claims surviving, you've avoided the defendant's first line of

defense," said Rosenthal, with Podhurst Orseck in Miami.

Also, they must be encouraged by the fact that Moreno relied heavily on the Fourth District's *Arem* decision in his Aug. 10 order.

QUICK APPEAL

Edward Guedes, who represents many of the municipal defendants, said he doesn't put much stock in that reliance. The fully developed record will justify the camera procedures Hollywood and the other cities used, he asserted.

"I think there's a temptation certainly for the plaintiff to say Judge Moreno has validated that *Arem* is going to decide this case, but that's not what he said," according to Guedes.

Still, the cities are showing their unhappiness with Moreno's ruling by mulling an immediate appeal to the federal court in Atlanta on the issue of sovereign immunity. Moreno said they can't use the doctrine as a shield against this lawsuit.

"That is a real possibility," said Guedes, Coral Gables-based chairman of the appellate practice at Weiss Serota Helfman Cole & Bierman. He said he doesn't have the green light yet but sounded optimistic about his side's chance of prevailing in the U.S. Court of Appeals for the Eleventh Circuit.

"It's going to have a dramatic impact on what happens with the class action moving forward," Guedes said.

Rosenthal said a sovereign immunity appeal wouldn't be viable and wouldn't impede the case against the vendors. The Fourth District ruled in the *Arem* case that Hollywood improperly ceded to a private contractor the city's power to decide whether any given caught-on-camera driver ran a red light and should get a \$158 ticket.

Like Hollywood, many cities hired Arizona-based American Traffic Solutions. Rosenthal said he's confident his team will be able to establish those ATS cities follow common, illegal practices for purposes of passing the class-certification test and winning the case.

ROAD TO TALLAHASSEE

In retrospect the courtroom clashes were inevitable. What city can resist a system that brings in a ton of money by deterring unsafe behavior? At the same time, should drivers respect the Big Brother who fines them for making a split-second decision that might actually avoid an accident?

After cities installed red-light cameras five or six years ago, cases started bubbling up from county courts. Drivers challenged tickets pro se or by hiring lawyers from firms like the Ticket Clinic. Court records were too sketchy for appellate review until the *Arem* case.

It took an unusual turn in the Fourth District. In April 2014 a panel ruled 2-1 for *Arem* and certified a question of public importance to the Florida Supreme Court. Judge Mark Klingensmith dissented, saying a statute empowered the city to outsource citations for camera violations.

Six months later, on rehearing, Klingensmith wrote a unanimous panel opinion that also sided with the plaintiff but denied certification to the Supreme Court. The Fourth District was no longer asking the justices to consider the case.

Sure enough they didn't. On April 13 the court issued a two-paragraph order declining to accept jurisdiction. Chief Justice Jorge Labarga and Justices Barbara Pariente, Peggy Quince, Fred Lewis and James E.C. Perry signed the order.

"The justices were told the Fourth DCA has spawned class action litigation, and they still denied review," Rosenthal said. The federal case was filed 12 days after the second *Arem* opinion, on Oct. 27, 2014.

Even so, the case could eventually get to Tallahassee by way of Atlanta if the Eleventh Circuit certifies a question of Florida law.

Now there are three state court challenges in addition to the federal mega-case. Rosenthal declined to speculate about one or more winding up in the Supreme Court.

"We've just got to put one foot in front of the other," he said.

CITY OF HOLLYWOOD, APPELLANT, V. ERIC AREM, APPELLEE

Case no.: SC15-236

Date certiorari denied: April 13, 2015

Case type: Red-light cameras

Court: Florida Supreme Court

Lawyers for petitioner: Edward G. Guedes, Weiss Serota Helfman Cole & Bierman, Coral Gables; Jeffrey P. Sheffel, City Attorney, Hollywood;

Joseph Hagedorn Lang and Kevin P. McCoy, Yerrid Law Firm, Tampa;

Ted Hollander, Ticket Clinic, Fort Lauderdale; and Jason T. Forman,

Law Offices of Jason T. Forman, Fort Lauderdale

Lawyer for respondent: Louis C. Arslanian, Law Offices of Louis C.

Arslanian, Hollywood

Originating court: Fourth District Court of Appeal

Author of opinion below: Judge Mark W. Klingensmith

Panel below: Klingensmith and Judges Carole Y. Taylor and Burton C. Conner