

John Duncan Varda

Partner

Madison, Wisconsin

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Service Areas:

- Appellate
- Litigation
- Transportation & Logistics

Education:

- J.D., University of Wisconsin Law School
- B.A., University of Wisconsin – Madison

Admissions:

- Wisconsin
- Supreme Court of Wisconsin
- U.S. Court of Appeals for the 3rd, 7th, 8th and 11th Circuits
- U.S. District Courts for the Eastern and Western Districts of Wisconsin
- U.S. Supreme Court

John continues to provide counsel to carriers, shippers, and shipper associations on evolving issues in transportation logistics and supply chain management, public policy initiative and related litigation.

Beginning in 1970 as strategist and trail lawyer, he led a team in a series of landmark cases, based on the Commerce Clause of the U.S. Constitution, that established preempting state laws to in establishing national standards related to truck size and safety. The cases laid the foundation for federal statutes preempting state and local laws affecting commercial vehicle rates, routes and services. Today, they may play a role in determining trucking industry public policy issues to be heard by the U.S. Supreme Court and debated in the U.S. Congress.

Day-to-day, John's practice ranges from nut-n-bolts transportation contract matters to major public policies affecting transportation. A few examples, from over the years are drug and alcohol testing; commercial drivers' licensing; hazardous materials training; shortline railroad spin-offs leading to creation of Wisconsin Central System (1987-1995); Negotiated Rates Act (1993); Trucking Industry Regulatory Reform Act (1994); ICC Termination Act (1995); Canadian National Wisconsin Central merger (2001); proposed hours-of-service regulations and re-write and updating of Federal Motor Carrier Safety Regulations (2000), shipper group activities, and Surface Transportation Board proceedings related to fuel surcharge and competitiveness issues (2001).

John currently serves as counsel to the Lake States Shippers Association, Inc., the Wisconsin Central Group and the Mercury Group. Additionally, he works with a team of DeWitt partners and associates on litigation related cases, ranging from loss and damage claims to hours-of-service rulemaking, from rail car leasing disputes to a series of bankruptcy proceedings and related cases involving minor to major disputes arising from simple miscommunications to major challenges to the transportation industry in the marketplace and from regulators. During his career, John has represented many clients in a variety of matters, principally involving transportation and logistics.

Affiliations

- American Bar Association
- Association of Transportation Law / Logistics and Policy
- Dane County Bar Association
- State Bar of Wisconsin Standing Ethics Committee (2000-2008)
- Transportation Lawyers Association
- Wisconsin Board of Attorneys Professional Responsibility - District 9 Committee (1994-1999)
- Wisconsin Supreme Court Office of Lawyer Regulation Special Investigative Panel (2001-2010)

Articles & Presentations

- "Motor Carrier Comprehensive Risks Management - Program for Defensible Independent Contractor Classifications Update" - July 2022
- "Motor Carrier Comprehensive Risks Management 2022 - Program for Defensible Independent Contractor Classification" - December 2021
- "Catastrophic Accidents CMV Involvement, Avoiding Nuclear Verdicts, Settlements Within Policy Limits" - August 2021
- "2021-2022 Perilous Times for Motor Carriers – Why Updating Legal Structures & Documents Is Prudent" - July 2021

Notable Representations

Early Transportation Regulatory Proceedings for Carriers and Shippers

He has appeared in more than 500 administrative proceedings before the Interstate Commerce Commission, Ontario Highway Transport Board, and Wisconsin Public Service Commission and in related appellate cases involving, e.g.. motor carrier operating rights, leasing, and rates; rail rates and services; and rail and car ferry abandonments. Prior to "deregulation" in 1980, these included proceedings which determined motor and rail rates, regional and national general rate increases and reasonableness of specific rail rates on coal, wood chips, pulpwood, and clay. From this early experience, John acquired a broad, practical knowledge of operating practices, costs, and governing law in the transportation industry (rail, motor, distribution, warehousing, and logistics).

Commerce Clause Cases, U.S. Supreme Court

John crafted the strategy for challenging state bans on twin trailer trucks under the Commerce Clause of the Constitution. This led to more than 12 years of litigation, including three trips to the U.S. Supreme Court (challenging the laws of Wisconsin and Iowa) and a case-pending decision (Pennsylvania), which convinced Congress to act.

The Plaintiff carriers demonstrated, with operational evidence, effectively "beyond a reasonable doubt" that the twin trailer vehicle was an integrated part of a system for transporting interstate small shipment freight. They also proved, by comparative and direct safety evidence, there was no rational basis for excluding the vehicle from Interstate Highways and access routes. The U.S. Supreme Court complimented the quality of counsel's effort:

- "As one commentator has written, Commerce Clause adjudication must depend in large part "upon the thoroughness with which the lawyers perform their task in the conduct of the constitutional litigation. Here, as in many other fields, constitutionality is conditioned upon the facts, and to the lawyers the courts are entitled to look for garnering and presenting the facts." Dowling, Interstate Commerce and State Power, 27 Va. L. Rev 1, 27-28 (1940)

- Raymond Motor Transportation v. Rice, 417 F. Supp. 1352 (W.D. Wis. 1976), 434 U.S. 429 at 448, n. 25 (1978) (unanimous U.S. Supreme Court enjoined Wisconsin's exclusion of twin trailers)
- Kassel v. Consolidated Freightways, 475 F. Supp 544 (S.D. Iowa 1979), 612 F.2d 1064 (8th Cir. 1979), 450 U.S. 662 (1981) (enjoined Iowa's restrictions on twin trailers)

In the fall of 1982, after seven weeks of trial, Plaintiff carriers obtained a stay of decision in a case challenging Pennsylvania's exclusion of twin trailers, due to imminent action by Congress – the primary objective of this series of cases.

The Surface Transportation Assistance Act of 1982 ("STAA") endeavored to establish national truck size and weight standards (including twin trailers) for the Interstate Highway System and access routes; it reflected in legislative history the critical role of Wisconsin, Iowa and Pennsylvania twin trailer cases.

Enforcement of National Standards, Truck Length, Width, Access and Freight Undercharge Common Defense Groups, Regulatory Transition

John's team that defended ("STAA") and related rules; enforced access rights against State limitations; enforced removal of overall length limits; and provided proofs and prosecuted standards for "grandfathering" 53-foot and longer semi-trailers under the 1982 Act.

Clients included Consolidated Freightways, Roadway, Yellow, United Parcel Service, Dart Transit, National Freight, Schneider National, Continental Can Company, Frito-Lay and Owens-Illinois.

Group Pension Plan Claim

In 1988, John assessed their claim and organized 250 named-plaintiff employees (using techniques developed in the freight undercharge common defense groups). John made all trial court appearances in their successful challenge to the employer's retention of over $6.4 million in surplus funds on termination of a defined benefit pension plan. Albedyll v. Wisconsin Porcelain Co. Revised Retirement Plan, 11 E.B.C . 1072 (W.D. Wis. 1989), aff'd, 947 F2d 246 (7th Cir 1991).

Notable Representations

- Consolidated Freightways v. Thomas D. Larson, et al.; 647 F. Supp. 1479 (M.D. Pa. 1986), 827 F.2d 916 (3rd Cir. 1987), cert. denied, 484 U.S. 1032 (1988) (incorporated record from suspended Commerce Clause litigation against Pennsylvania's ban of twin trailers to enforce new federal access standard)
- National Freight, Continental Can, et al. v. Thomas D. Larson, et al., 583 F. Supp. 1461 (M.D. Pa. 1984), 760 F.2d 499 (3rd Cir. 1985), cert. denied, 474 U.S. 902 (1985) (enforced STAA prohibition of overall length limit)
- Continental Can Company, Inc., et al. v. Howard Yerusalim, et al., No. 87-0219 (M.D. Pa. 1987) (unpublished), 854 F.2d 28 (3rd Cir. 1988) (enforced STAA standard 102-inch width)
- Continental Can Co., Inc., et al. v. Leonard Mellon, et al., No. 86-3563 (N.D. Fla. 1986) (unpublished), 825 F.2d 308 (11th Cir. 1987) (required Florida to issue permits for trailers longer than 48 feet)
- Continental Can Company, et al. v. Henry Gray, et al., No. LR-C-87-70 (E.D. Ark. 1988) (unpublished) (enforced STAA compliance in Arkansas)
- Continental Can Company, et al. v. Leo J. Trombatore, et al.; No. CIVS-87-0166 RAR JFM (E.D. Cal. 1987) (favorably settled, enforced California's compliance with STAA length limits)
- Notably, to secure the benefits of "deregulation" enacted by Congress in the Motor Carrier Act of 1980, John originated one of the earliest (1983) common defense groups for defending against freight undercharge claims of bankrupt motor carriers. He defended against claims in approximately two dozen carrier bankruptcies, representing over 300 defendant shippers. His work helped streamline proceedings by grouping defenses by tariff issue and claim type and defeated bankrupt plaintiffs' efforts to extort settlements through litigation cost leveraging. In 1991, John petitioned successfully to the Federal Judicial Panel on Multi-district Litigation to consolidate cases involving common issues to defeat similar litigation cost leveraging

Service Area Subspecialties

- Litigation
  - Appeals in State & Federal Court
  - Professional Ethics/Discipline
  - Trials in State & Federal Courts

DeWitt LLP Law Firm

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Partner