

# KANSAS CITY BUSINESS JOURNAL

## KC attorneys help shape Supreme Court's EPA ruling

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Tristan Duncan and Tom Grever, partners at Shook Hardy & Bacon LLP in Kansas City, represented power companies that recently won a case in front of the U.S. Supreme Court.

The ruling in *Michigan v. EPA* held that regulatory agencies like the Environmental Protection Agency must not bypass doing a cost-benefit analysis when considering new regulations. Agencies should not be allowed to enact rules that do more harm than good when looked at from a fiscal viewpoint, the ruling says. The case put on hold the EPA's proposed Mercury and Air Toxics Standards for power plants; the issue will return to the circuit court.

Justice Antonin Scalia wrote in the majority opinion that because it's an ordinary and customary practice for administrative offices to do a cost-benefit analysis, it is a significant consideration, one that must be done before enacting regulations. This was a key argument in an amicus brief submitted by the Shook Hardy & Bacon attorneys, who are lead appellate counsel for St. Louis-based Peabody Energy Corp.

"For a lawyer, there is nothing more exciting," Duncan said. "Arguing these big important issues and being involved in a case before the Supreme Court. Only 3 percent of cases that are appealed



there get accepted. So it's a very rare opportunity. The issues that do get there are important to the nation."

This ruling certainly will have widespread implications, not just for the EPA, but all regulatory agencies. It also places an emphasis on the lower courts to either issue a stay against contested regulations or expedite review. In this case, the companies involved

still were forced to comply with the EPA regulations – at a cost of \$9.6 billion – even though the rule later was found to be unreasonable because it generated only about \$5 million in health benefits.

"That meant people lost their jobs, and livelihoods were at stake, yet the rule continued only to find out later that it was invalid," Duncan said. "That's a major problem."