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# ATA LITIGATION CENTER, INC.

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## MINUTES OF THE MEETING OF THE BOARD OF DIRECTORS OF THE ATA LITIGATION CENTER, INC.

Arlington, Virginia  
February 22, 2010

Pursuant to notice, the Board of Directors of the ATA Litigation Center, Inc. (ATALC) met on February 22, 2010, at the Arlington Westin Hotel in Arlington, Virginia. ATALC Chairman Mack Dove called the meeting to order at approximately 1:30 p.m. After self introductions, Board Chief Counsel Robert Digges, Jr. reported that there was a quorum present. Attachment 1 lists the attending Directors. The Chairman asked members of the Board to review and adhere to the “Antitrust Guidelines for Meetings” provided to them and then the Board approved the Minutes of the Meeting of the Board of Directors of October 5, 2009.

The Board began its meeting with the election of two (2) individuals to open Director positions for three year terms expiring in October 2013. Attachment 2 lists the individuals elected.

The Chairman then asked Mr. Digges to introduce the guest speaker, Ms. Caroline Bruckner, Counsel to the U.S. Senate Committee for Small Business and Entrepreneurship. Ms. Bruckner provided the Board her perspective on the pending legislation in both the House and Senate that would drastically amend and weaken the Section 530 safe-harbor provisions that protect taxpayers against IRS independent contractor reclassification efforts. Ms. Bruckner explained that up until now, the effort to amend Section 530 was not high on the Senate’s agenda and that it did not seem to be on the radar screen of the Senate’s Finance Committee. She believed that the legislation was introduced as a placeholder and to build and continue momentum for possible enactment in later Congresses. She noted that she did not believe a case had been made for amending the provision and believed that an IRS Report due in 2013 on the impact of Section 530 was a necessary prerequisite to a serious effort to pass the legislation. Ms. Bruckner did allow that the inclusion of similar amending proposals in the White House’s proposed budget resolution would ratchet up interest in the provision and make action on it somewhat more likely. She concluded by offering to consult with ATA on the issue as it moved forward.

The Chairman then called upon Robert Digges, Jr. to provide an update on the Center’s litigation activities since the Board’s last meeting. Mr. Digges began by giving the Board a full briefing on the developments in the Center’s legal challenge to the Port of Los Angeles Concession Plan. Noting first that a settlement had been reached with the Port of Long Beach, Mr. Digges began by describing the effort to secure a more comprehensive injunction against the Los Angeles Plan from the Ninth Circuit in a second injunction appeal. He allowed that based on the oral argument before that Court, he did not expect any changes to the scope of the injunction previously issued. Mr.

Digges then described the parties' cross motions for summary judgment and explained that the focus of the ATA motion would be on four key provisions, which it is arguing do not address motor vehicle safety concerns: the owner-operator ban; financial capability requirements; off-street parking provisions; and certain engine emission maintenance requirements. He advised that the hearing on the summary judgment motions would be on February 25 and that he expected a decision shortly thereafter. Finally, he noted that trial was scheduled to begin in the case on March 16 and that the District Court's final ruling would likely be appealed by the losing party, extending the litigation into 2011.

Next, Mr. Digges reported on the unexpected October settlement of the Public Citizen hours-of-service (HOS) challenge. He explained that Public Citizen and FMCSA had agreed to hold the litigation in abeyance while the agency conducted a further review of the rules in a new rulemaking proceeding. Under the settlement terms, the agency is to release a new HOS NPRM by July 2010 and a final HOS rule by approximately July 2011. He noted that ATA would aggressively participate in the rulemaking and work toward creating a record that would support the 11 and 34 hour provisions in future litigation either in a defense of or an ATA challenge to the new HOS rule. Mr. Digges then noted that the D.C. Circuit still had not ruled upon the ATA challenge to the allowance by the EPA of California's enforcement of the transport refrigeration unit (TRU) regulation. He reminded the Board that the ATA challenge is based upon the agency's gross underestimation of the regulation's impact on TRU-equipped trailers based outside California and associate gross underestimation of the cost of the regulation to the trucking industry. Mr. Digges then advised the Board that, based on its approval of a new case proposal, that the Center had filed suit against the Federal Motor Carrier Safety Administration (FMCSA) seeking a court order compelling it to issue a long overdue HOS supporting documents regulation. He explained that the agency's current expansive view of what constitutes a supporting document was overly costly to the industry and created uneven and unpredictable enforcement. He concluded by noting that the Court was likely to force the agency to follow Congress' mandate by quickly issuing a rule that more precisely defines supporting documents and that ensures their retention is at a reasonable cost for motor carriers.

Lastly, Mr. Digges gave a brief report on the status of the pending cases in which ATA had submitted an *amicus* brief. He first noted that action had been taken in two cases before the United States Supreme Court. In the first, the Court rejected an ATA-backed effort to gain review of a case posing the issue of whether RICO is available for suits alleging fraud in the handling of a workers compensation claim. However, in another Supreme Court matter involving how a corporation's principal place of business is determined, he reported that the Court had been very favorable inclined to the position supported by ATA, that is that a corporation's principal place of business is its headquarters state, not the state where it conducts its greatest volume of business. He also noted that briefing had been concluded in the California meal-break regulation case, but no other action taken by the California Supreme Court. Finally, he reported on a very recent decision by a Kansas Court of Appeals rejecting a claim that Kansas state law provisions mandated payment of overtime to interstate truck drivers.

Chairman Dove then introduced Michael Robinson, Director, ATA Legislative Affairs Division, who briefed the Board on Port of Los Angeles effort to amend the federal rates, routes, and services provision so as to allow the Port to force motor carriers to use only employee drivers. He reported that meetings with both interested House and Senate offices revealed limited sympathy with the Los Angeles effort, but allowed that ATA must remain vigilant on the issue. He further noted the positive impact that a coalition of trucking-customer shippers was having on the debate, a coalition coordinated by ATA.

Ken Core then gave the Treasurer's Report. A copy of the Report is attached as Attachment 3. Mr. Core noted that the Center was about \$1.7 million over budget because of the extraordinary costs of the Port litigation. He, however, explained that when the Port litigation costs were not included, that the Center was less than \$20,000 over budget, an amount attributable to smaller attendance at the Litigation Center's annual Forum. He further noted and thanked Walmart for \$50,000 voluntary contribution it had made to Center litigation expenses earlier in the meeting.

The Chairman adjourned the meeting at approximately 2:30 p. m.

Respectfully submitted

Robert Digges, Jr.  
Chief Counsel, ATALC

Attachments: List of Directors Attending  
Newly Elected Directors  
Treasurer's Report