



ATA LITIGATION CENTER, INC.

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

Las Vegas, Nevada
October 5, 2009

Pursuant to notice, the Board of Directors of the ATA Litigation Center, Inc. (ATALC) met on October 5, 2009, at the Mandalay Bay Hotel and Convention Center in Las Vegas, Nevada. ATALC Vice-Chairman Dick Reiser called the meeting to order at approximately 10:15 a.m. After self introductions, Board Executive Secretary Richard Holcomb 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 February 23, 2009.

The Board began its meeting with the election of three (3) individuals to open Director positions for three year terms expiring in October 2012. Attachment 2 lists the individuals elected.

The Vice-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 an overview of the developments in the Center’s legal challenge to the Port of Los Angeles and Long Beach Concession Plans. Mr. Digges described the successful effort to secure an injunction from the Ninth Circuit and noted that the Plans’ most egregious elements, including financial disclosure provisions and the Los Angeles employee mandate, had been enjoined. He further explained that a second appeal to the Ninth Circuit had been taken in an attempt to secure a narrower definition of the motor vehicle safety exception to preemption. He noted that ATA is seeking a ruling that the exception does not cover Port regulation related to security or to regulation that only has an indirect safety benefit. Mr. Digges also noted that settlement discussions with the Port of Long Beach are underway and that the parties are engaged in extensive discovery leading up to a trial now scheduled for early February 2010.

Next, Mr. Digges provided a report on the ATA appeal of the grant of an EPA waiver that will allow California to enforce its Transport Refrigeration Unit (TRU) regulation as of January 1, 2010. He explained that ATA is challenging the waiver based upon the State’s gross underestimation of the number of TRUs that it will affect and consequently of its cost. ATA is also arguing that the rule will set a de facto national standard that will rob other states of their ability to decide for themselves whether trailers based in their states should be equipped with the TRU emission technology. Mr. Digges advised that the D.C. Circuit Court of Appeals had heard argument in the case on October 2, 2009, and that it was likely that a decision would be issued before the scheduled January 1, 2010 effective date of the regulation. Mr. Digges then briefly mentioned that the

expected third legal challenge by Public Citizen had been filed against the hours-of-service rules and that ATA had formally intervened in the rules' defense. It was reported that the ATA brief was due in the case on October 28. Mr. Digges also notified the Board that it had by electronic ballot authorized litigation, if necessary, to secure the issuance by the Federal Motor Carrier Safety Administration (FMCSA) of an appropriate supporting documents regulation.

Lastly, Mr. Digges reported on six *amicus* briefs that ATA had filed in cases of importance to the trucking industry and individual ATA members. He noted two filings in the United States Supreme Court: in a case involving how a corporation's principal place of business is determined (important for federal court jurisdictional reasons) and in a case involving whether RICO is available for suits alleging fraud in the handling of a workers compensation claim. He also noted two filings in state supreme courts: supporting the position that the California meal-break regulation only requires employers to allow and not to ensure that meal breaks are taken and in a suit involving whether a default judgment against a driver should be set aside when neither the carrier or its insurer were notified of the suit. Finally, Mr. Digges reported on two state court of appeals filings: in a case involving the need to exhaust administrative remedies in a workers compensation case and what is an acceptable level of punitive damages and in a case involving the eligibility of interstate drivers for overtime under a state's overtime system.

The Vice-Chairman then introduced the first of two guest speakers, Mr. Russell Hollrah, the founder and director of the Coalition to Protect Independent Contractor Status. Mr. Hollrah began by describing a current Congressional proposal (H.R. 3408) that would, in his view, virtually eliminate the current Section 530 protection against IRS reclassification of independent contractors to employee status. He next noted the issuance of a GAO study that found significant misclassification and called for enhanced coordination between state and federal agencies related to classification. He observed that in his view the GAO study could have been much worse. Mr. Hollrah then noted various IRS proposals that would affect independent contractors including required income tax withholding and concluded with a warning that the confluence of a tax gap, health care reform, and the greater influence of organized labor and workers' rights groups created a very dangerous atmosphere for those who work with independent contractors.

Vice-Chairman Reiser then introduced the second guest speaker, former Board member Mark Goodwin, now working in private practice the Richmond LeClairRyan law firm. Mr. Goodwin provided an update on the status of Employee Free Choice Act (EFCA) and possible so-called compromises that would enact part of its requirements. First, Mr. Goodwin described the elements of EFCA as originally proposed, including certifications based on authorization cards and contracts developed through binding mandatory arbitration. He then noted various Democratic Senators who apparently have problems with EFCA as written and described the options he saw that organized labor has regarding EFCA, including compromises that would include fast elections and retain binding arbitration. Mr. Goodwin then briefly shared with the Board his views on what motor carriers can do maintain non-union status.

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 less than \$10,000 over budget, an amount attributable to smaller attendance at the Litigation Center's annual Forum. He further reported that the Board's policy to accept voluntary contributions had resulted in over \$60,000 of contributions to offset out-of-pocket legal expenses.

The Chairman adjourned the meeting at approximately 11:45 p. m.

Respectfully submitted

Robert Digges, Jr.
Chief Counsel, ATALC

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