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## ATA LITIGATION CENTER, INC.

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950 N. Glebe Road ★ Suite 210 ★ Arlington, VA 22203-4181 ★ 703-838-1865 ★ Fax: 703-838-1705

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

Phoenix, Arizona  
October 17, 2010

Pursuant to notice, the Board of Directors of the ATA Litigation Center, Inc. (ATALC) met on October 17, 2010, at the Phoenix Convention Center in Phoenix, Arizona. Chairman Mack Dove called the meeting to order at approximately 10:30 a.m. After self introductions, Center 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 February 22, 2010.

The Board began its meeting with the reelection of five (5) individuals to open Director positions for three year terms expiring in October 2013. Attachment 2 lists the individuals elected.

The Chairman then called upon Mr. Digges to provide an update on the Center’s litigation activities since the Board’s last meeting. Mr. Digges began by giving the Board a detailed briefing on the District Court’s decision in the Center’s legal challenge to the Port of Los Angeles Concession Plan. Mr. Digges described the provisions of the Plan being challenged, most notably, the owner-operator ban, and the legal issues before the Court. He reported that although the two-week trial in April had seemingly gone very well, the Court had unfortunately ruled against ATA based on what is referred to as the market-participant exception to preemption. He explained that the District Court had reversed its prior ruling at the preliminary injunction stage on that issue and found that in imposing the challenged Concession requirements the Port was acting as a market participant rather than as a government regulator and that, therefore, the provisions of the plan were not subject to federal preemption. Mr. Digges reported that he believed the District Court’s ruling was clearly wrong as a matter of law and stated that he was very confident that ATA would ultimately prevail in the case in an appeal before the Ninth Circuit, which had also previously rejected the market-participant defense. He concluded by noting that ATA would attempt to either keep the preliminary injunction in place during the appeal, thereby prohibiting the Port from enforcing the owner-operator ban, or expedite the appeal to a final decision before motor carriers would need to take any action to comply with the 4<sup>th</sup> Quarter 2011 20% phase in of the owner-operator ban.

Next, Mr. Digges provided a short report on other ATA legal initiatives. First, he noted that the D.C. Circuit Court of Appeals had granted an ATA request and ordered the

Federal Motor Carrier Safety Administration (FMCSA) to issue a Notice of Proposed Rulemaking by December 31, 2010 establishing a supporting-documents regulation. He noted that, at Congress' direction, the regulation must precisely define the supporting-documents a motor carrier must retain for hours-of-service oversight and that it must do so in a way that will impose only a reasonable level of cost on carriers. He explained that without the rule in place, the agency had taken an expansive view of the scope of supporting documents that must be retained and by doing so was causing the industry to bear an excessive level of costs. He further reported that guidance issued by the agency in conjunction with the litigation, while not fully acceptable, had eliminated the need to retain several categories of documents and had made clear that motor carriers need not retain electronic records in any format other than the way in which they are used in the carrier's normal course of business.

Mr. Digges then reported that since the Board's February meeting, the industry had won three cases in which ATA appeared as an *amicus*. Those cases involved a favorable ruling related to where a corporation's principal place of business is located (the state from which the company's activities are directed or its nerve center); a ruling that Kansas law effectively adopts the federal law's exemption from overtime for interstate drivers; and a Texas ruling that motor carrier employees must exhaust administrative remedies before suing a carrier over its workers compensation administration. Finally, Mr. Digges noted that ATA had recently filed *amicus* briefs in two other cases of significance to the trucking industry: a Colorado independent contractor status case under the State's unemployment compensation law and a Washington sales tax case involving the taxability of satellite tracking systems.

Prasad Sharma, Center Deputy Chief Counsel, then briefed the Board on an *amicus* filing ATA had made in the United States Supreme Court in a case involving a railroad tax-discrimination claim. Mr. Sharma explained that the case was brought under a provision of the Railroad Revitalization and Regulatory Reform Act, which prohibits discriminatory state taxation against railroads. He further explained that the railroads were challenging Alabama's imposition of a sales tax on their fuel purchases on the ground that their primary competitors, motor carriers, were exempt from the tax. He reported that in its *amicus*, ATA argued that under the terms of statute, exemptions from a tax should not be considered when determining whether a tax is discriminatory and that in any event, the proper comparative class for determining discrimination was not the narrow group of railroad competitors, but rather the much wider group of commercial and industrial taxpayers in general.

The Chairman then introduced the first of two guest speakers from the Mayer-Brown law firm, Mr. John Nadolenco. Mr. Nadolenco briefed the Board on issues related to the California meal-break litigation. He noted that the primary issue in the meal break cases was whether employers must only allow (and not discourage) employee meal breaks or whether employers are under an affirmative duty to ensure that meal breaks are taken. He noted that that issue was currently before the California Supreme Court in the *Brinker* case and that while that case was pending, the State of California had announced an administrative policy consistent with the position that employers only need to allow meal

breaks. He did caution that employers still were required to document the taking of such breaks. Mr. Nadolenco also reviewed with the Board other possible legal defenses in meal break cases, including federal preemption of state laws that impact motor carrier rates, routes, and services.

Mr. Nadolenco's colleague, Mr. Jerome Jauffret, then briefed the Board on another wage and hour litigation threat against the trucking industry: claims for minimum wage for work for which no compensation was allegedly made. Mr. Jauffret explained that several private class actions had arisen on behalf of drivers seeking compensation at the minimum wage level for non-driving work performed and allegedly not compensated by the driver's per-mile compensation. After describing the differences between federal and California minimum wage requirements, Mr. Jauffret outlined various defenses trucking companies could make to such claims, including a claim that any California minimum wage provision that differs from federal law is preempted by the rates, routes, and services preemption standard. He also explained that paying drivers by the mile is an acceptable form of piece-rate compensation and that as such non-driving time need not be separately compensated as long as the employee is aware that the per-mile pay is intended to compensate him or her for all work activities, driving and non-driving.

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 \$1,707 better than budget in revenue and that expenses were \$36,720 less than budgeted amounts, making the Center a total of \$38,427 ahead of budget. He explained that positive result was attributable primarily to lower than expected expenses associated with the Center's annual Forum. He further reported that the Center's efforts to attract voluntary contributions were almost exactly at budgeted levels, but that an additional \$50,000 of contributions would have to be raised to meet the year-end budget goal.

The Chairman adjourned the meeting at approximately 12:05 p.m.

Respectfully submitted

Robert Digges, Jr.  
Chief Counsel, ATALC

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



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OFFICERS AND DIRECTORS PRESENT AT THE MEETING OF  
THE BOARD OF DIRECTORS OF  
THE ATA LITIGATION CENTER, INC.

Phoenix, Arizona

October 17, 2010

The following officers and directors of the ATA Litigation Center, Inc. (ATALC) answered present to the call of the roll at the meeting of the ATALC Board of Directors held in Phoenix, Arizona on October 17, 2010:

Berry, David C.  
Card, Michael S.  
Core, Kenneth L.  
Chipman, Ronald A.  
Digges, Robert  
Dove, G. Mack  
Evans, Thomas E.  
Fracassi, Roderick  
Jensen, Thomas F.  
Kretsinger, Jr., Tom B.  
McReynolds, Judy  
Quinn, Patrick E.  
Reiser, Richard S.  
Rhea, Robert  
Warner, Sheryl D.  
Windsor, Barbara J.

Of the 33 individuals then comprising the ATALC Board of Directors, the above were present. Under the ATALC Bylaws (Art. IV), one third of the Board members comprising the Board at the time of any meeting constitutes a quorum for the transaction of business. Thus, a quorum for the transaction of business was present at the meeting.



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The ATA Litigation Center Board elected 5 board members at its October 17, 2010 Board Meeting. The following individuals were elected to three-year terms:

Mr. Michael S. Card, President, Combined Transport, Inc.

Mr. Lance Craig, President, Craig Transportation Company

Mr. Patrick D. Kuehl, Executive Vice President, Great West Casualty Company

Mr. Robert H. Rhea, SVP & General Counsel, FedEx Freight

Mr. John M. Smith, Chairman of the Board, CRST International, Inc.

TREASURER'S REPORT TO THE BOARD OF DIRECTORS  
OF THE ATA LITIGATION CENTER, INC.  
PHOENIX, ARIZONA  
OCTOBER 2010

The Board Members have a Budget Summary for the Litigation Center in your meeting books that summarizes the Center's financial picture for January through August 2010.

Revenues exceeded budgeted levels by a total of \$1,707. That amount is attributable to slightly higher than expected contribution revenue income from the Litigation Center Forum above expected levels.

Expenses were \$36,720 less than the budgeted amount. Lower than anticipated meeting expenses associated with the Forum produced that result.

In total, the Litigation Center was under budget by \$38,427. That positive result reduces the Center's budgeted deficit from \$471,664 to \$433,237.

The Center's effort to secure funding via voluntary contributions will continue throughout the remainder of 2010, with a target for additional contributions over the rest of the year of approximately \$50,000. A fundraising effort will be conducted in late October and November in an effort to reach or surpass that goal.

That concludes my Report.