

ATA LITIGATION CENTER

25<sup>th</sup>

ANNIVERSARY



# CHAIRMAN'S MESSAGE



**Mack Dove**  
*ATA Litigation Center  
Chairman*

It has been my pleasure to serve as Chairman of the ATA Litigation Center now for over a decade. I am proud of our achievements and contribution to the well-being of the trucking industry. I would like to share with you a detailed description of the Center's activities and successes over the last 25 years, but appreciate that today's busy world demands that information be presented succinctly. Consequently, we have attempted in this "Digest" to provide you a broad overview of the Center's activities and to highlight its major accomplishments.

More than 150 legal victories, hundreds-of-millions of dollars in tax refunds, and literally billions of dollars in tax and regulatory savings concisely summarizes the Center's achievements on behalf of the trucking industry. Those victories preserved our operational preferences, such as using the independent-contractor business model or scheduling operations under a reasonable hours-of-service regulation. They kept highways open to our trucks and ensured that our interstate operations would not be discriminated against. Moreover, the Center's achievements have sent the signal that the trucking industry is ready and willing to vigorously defend its interests in court and therefore, has acted as a deterrent against even greater government interference with our operations.

Over the years, the Center, because of its success in securing attorneys' fee awards, has been able to bring these legal benefits to our industry at very little cost. Now that those fee awards have been exhausted, the dramatic cost of complex litigation will require more financial support from individual motor carriers. However, by sharing that cost, individual investments can be kept modest. The recent setback in our port case underscores the need for us to continue to provide the Center the resources it needs. We have a very strong legal position in the port litigation, but will need to pursue an appeal, possibly to the United States Supreme Court, to ultimately vindicate our position. The port case and the other future legal challenges facing the trucking industry demand that we ensure that the ATA Litigation Center remains our strong legal advocate.

A handwritten signature in black ink that reads "Mack Dove". The signature is written in a cursive, flowing style.

## MISSION

The ATA Litigation Center was incorporated in Virginia in May 1985. As originally conceived, the Center was designed to pool individual carrier resources so as to allow the industry to pursue costly litigation whose financial burden would be too great for an individual trucking company to bear. Its corporate mission was identified as the promotion and defense of motor carriers' common interests through advocacy, legal counseling, training, and information.

The Center's activities are overseen by a 33-person Board of Directors and its day-to-day operations managed by an in-house professional staff. The Center represents ATA or individual members in cases that have broad public policy implications for the trucking industry. The Center selects the cases in which it will participate based on objective selection criteria, including: chance of success; precedential value; benefit to the industry; and cost.

The Center serves as its clients, ATA, ATA members, and affiliated entities such as the state trucking associations. Over the last quarter century, the Center has represented trucking in virtually all types and levels of court (including nearly 20 cases in the U.S. Supreme Court) and backed members as an amicus in scores of cases that have industry-wide importance.



# NOTABLE VICTORIES

The ATA Litigation Center has achieved more than 150 legal victories on behalf of the trucking industry (the Center's Victory List is available at the Litigation Center webpage on [www.truckline.com](http://www.truckline.com)). Those victories have come in cases in the United States Supreme Court, U.S. Courts of Appeal and District Courts, and in all levels of state court. Virtually every legal issue relevant to the trucking industry has been involved, including: federal truck safety regulations; independent contractor status; commerce clause restrictions on states; federal preemption of state regulation; highway routing limitations; labor issues (disability claims, overtime, workers compensation, etc.); environmental requirements; hazardous materials regulation; cargo claims; broker liability issues; and many others.

Five key victories in cases with enormous financial consequences for the trucking industry were:

 **Scheiner (1987)** - This landmark U.S. Supreme Court victory established that flat per-truck annual fees inherently favor local trucks over interstate and violate the Commerce Clause. This victory set the stage for elimination of more than two dozen state flat truck fees and nearly \$250 million in refunds to the trucking industry. Also, by outlawing this spreading form of discriminatory truck taxation, the ruling saved the interstate trucking industry from paying billions of dollars in discriminatory taxes.

 **HOS Defense (2007-2008)** - Following Public Citizen's procedural victory in its second hours-of-service rule challenge, ATA, as an intervenor, led the way in securing a stay of the Court's decision allowing the FMCSA time to readopt the HOS rule as an Interim Final Rule. ATA then assisted the agency in defending against a legal challenge to the IFR. Continuation of the current

HOS rules has saved trucking hundreds of millions of dollars or more annually.

 **Port Litigation (2009-2010)** - Using the federal rates, routes, and services preemption provision, ATA was able to block the Port of Los Angeles' effort to ban the use of independent contractors in drayage operations. This Teamster-backed effort threatened the use of independent contractors in ports nationwide and is estimated to cost trucking over \$1 billion in the Port of Los Angeles alone if allowed to be put in place. At this writing, ATA is appealing an adverse District Court decision in this very important matter and attempting to keep the injunction in place pending the outcome of the appeal.

 **Arkansas and Idaho Weight-Distance Tax Challenges (1990 & 2000)** - These two successful challenges led to the elimination of these two states' weight-distance taxes, approximately \$50 million in tax refunds, and acceptable two-tiered replacement highway tax systems that collected millions less annually from trucking.

 **Owner-Operator Status Litigation** - The Center has participated in numerous successful defenses of owner-operator independent contractor status. Perhaps the most useful precedent was created in Pennsylvania Supreme Court's 2000 Universal Am Can decision. Adopting almost in total the legal arguments advanced by ATA, the Court found that carrier control mandated by government regulation is not employer-type control. The Center also used the federal Section 530 safe harbor provision in 2006 to protect a motor carrier from an IRS attempt to reclassify owner-operators. Wholesale reclassification of owner-operators to employee status would result in enormous back-tax assessments and increased future worker cost.

## FUTURE CHALLENGES

The current political circumstances threaten to create ongoing legal and regulatory problems for businesses in general and trucking in particular. As detailed below, state and federal regulators are already considering courses that may well burden trucking operations and a variety of labor-related concerns are already manifesting themselves. Three areas with the severest potential consequences are:

- **FMCSA Regulation** - The agency's agreement to revisit the hours-of-service rules, despite their sterling safety record, creates obvious concerns. Other regulatory efforts, including the promulgation of supporting-documents and EOBR rules and the implementation of CSA-2010, have an enormous impact on trucking interests that may well need to be defended in court.
- **Worker Classification** - The assault on independent contractor classification at both state and federal levels is the most intense that it has been in decades. Trucking's use of owner-operators will likely require even greater industry defense of their independent status in state workers compensation and unemployment cases and quite possibly against renewed IRS reclassification efforts. The ongoing port litigation presents a core challenge to the use of the independent contractor business model in trucking.
- **Other Labor Issues** - Signs already indicate that the EEOC, OSHA, and the NLRB are going to be more aggressive in their supposed worker-protection agenda. Amendments to the American Disabilities Act also make it far easier for workers and employee candidates to pursue disability claims. In addition, private attorneys have begun instituting class-action claims for additional compensation for alleged violations of overtime requirements and minimum wage laws. All of these areas involve substantial financial exposure for trucking and will require a diligent defense.

# OTHER LITIGATION CENTER ACTIVITIES

The ATA Litigation Center also promotes trucking-industry legal interests through a variety of non-litigation efforts. Those efforts can be categorized as follows:

- **Legal Counseling** - As licensed Virginia corporate counsel, Center attorneys provide policy and legal guidance to ATA members, state trucking association executives, and other affiliated organizations on virtually a daily basis on the full array of trucking-related legal issues.
- **Training** - The Litigation Center's Forum for Motor Carrier General Counsel has become the leading trucking industry legal conference. Two and one-half days of CLE accredited sessions annually provide industry attorneys information on trucking-specific legal issues and highway accident litigation best practices.
- **Information** - The Litigation Center keeps its membership updated about its efforts through its webpage which can be found at [www.truckline.com](http://www.truckline.com). The Center has also developed and made available on the website white-papers on common legal challenges (e.g. bankruptcy collection issues and wage and hour class action litigation strategies) faced by many individual trucking companies. In addition, Center staff reviews court decisions of interest to trucking as released and provides a synopsis of those decisions in the web-based *Transpoints* publication.



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