Counsel’s Report
ABA Board of Directors Meeting
Washington, DC
May 2, 2019
Antitrust Guidelines

- No discussion of rates or components of rates
- No division of markets, passengers or services
- No agreements to not deal with competitors, vendors or customers
- These rules apply throughout the meeting at all times
FAST Act Tolling Equity

- OTRBs to receive same rates, terms and conditions as transit vehicles at tolling facilities constructed with federal funds under 23 USC § 129(a)
- FHWA released guidance for funding recipients on Feb. 22, 2018; list of affected facilities included but no information on rates or terms for public transit buses
Tolling Equity Issues

- Constructed with federal funds means all facilities subject to sec. 129 tolling agreements, and those that have or will become subject to sec. 129 post-FAST Act

- Serve the public means service to general public, including general, special or charter service on a regular and continuing basis (same as designated public transportation under ADA)
FHWA Tolling Issues

- Initial list of affected facilities found in the docket, but no info on terms for public transit vehicles
- ABA sent letters to MassDOT and 20 other toll facility operators on Nov. 30 asking for certification of compliance with equity requirements and info on terms/rates for transit buses
Gathering data from facility operators:
- 8 of 20 have said no special deals for transit buses
- 3 others (Minneapolis, SF Bay Area, Louisville) have exemptions for transits that OTRBs may also use
- Follow up to complete the research on others
Massachusetts DOT

- FHWA issued preliminary finding April 22 that Ted Williams Tunnel is the only Mass. facility subject to sec. 129
- Massachusetts statute exempts MBTA transit buses from all tolls
- 60 day comment period to June 26; then final determination from FHWA
SFO Airport Access

- Airport requiring annual bus inspection and decals, fees
- Inspection standards are in addition to FMCSA rules: no safety benefit, incompatible with federal rules, and undue burden on interstate commerce
- Subject to preemption by FMCSA; petition filed October 18, 2018
- Expect publication in Fed. Reg. soon
California Meal and Rest Breaks

- FMCSA preempted Calif. MRB rules for motor carriers of property on Dec. 28.
- Agency split off passenger carriers due to separate legal issues.
- ABA filed preemption petition for bus operators on January 10.
- We expect favorable treatment from FMCSA, court challenge.