Counsel’s Report
ABA Board of Directors Meeting
Washington, DC
May 3, 2018
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 April 28; list of affected facilities included
American Trucking Assns has class action lawsuit over diversion of a portion of toll revenue to NY Canal System

Won on summary judgment; case went to class certification stage

Class defined only to include truckers, not bus operators
NY Thruway

- ABA, DATTCO and Starr Tours filed separate suit for motorcoaches on contingent fee basis
- Federal judge then dismissed both cases due to 1991 congressional act allowing diversion of funds
- Court of Appeals affirmed lower court decision; case dismissed
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-MAP-21

- 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 publicly-funded vehicles

- Question of refunds for overpayments since October 1, 2015 not addressed; outside counsel has indicated that refunds may be available under 42 USC § 1983
Tolling Refunds, Exemptions

- Retained Mayer Brown firm to assist with research on “special deals” for transit agencies
- Drafted model demand letter to MassDOT for MBTA exemption; no response yet
- Expecting stonewalling and denials from agencies; need to develop info on how transits are treated
SFO Airport Access

- Airport requiring annual bus inspection and decals, fees
- Subject to preemption by FMCSA under 49 USC § 31141; draft petition under review
- Intending to meet w/ FMCSA counsel re this issue, Chicago ordinance and NY Article 19-A petition from 2013
Entertainers Motorcoach Council petitioned NHTSA for exemption from 3-point seatbelt requirement on sideways-facing seats; rule went into effect Nov. 2017

Congress mandated 3-pt. belts at all seats; no consideration of safety for passengers in side-facing seats
CBP Immigration Checks

- CBP has boarded buses searching for illegal immigrants; ACLU wants industry to resist, require warrants
- Federal law gives CBP right to board any vehicle within 100 miles of border to search for illegal aliens w/ out warrant
- Question of whether 4th amendment to U.S. Constitution requires warrant in these situations