

[ORAL ARGUMENT SCHEDULED FOR JANUARY 15, 2010]

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

PUBLIC CITIZEN, ET AL.,)	
)	
Petitioners,)	
v.)	No. 09-1094
)	
FEDERAL MOTOR CARRIER)	
SAFETY ADMINISTRATION,)	
)	
Respondent.)	
)	

**JOINT MOTION OF PETITIONERS AND RESPONDENT TO
HOLD CASE IN ABEYANCE PENDING THE ISSUANCE OF A
NEW NOTICE OF PROPOSED RULEMAKING**

Pursuant to Rule 27 of the Federal Rules of Appellate Procedure and D.C. Cir. Rule 27, Petitioners Public Citizen, et al., and Respondent Federal Motor Carrier Safety Administration (FMCSA), hereby respectfully move this Court for an order holding proceedings in abeyance, pending further motions by the parties, to be filed upon issuance of a new Notice of Proposed Rulemaking (NPRM) concerning the “Hours of Service” rule at issue in this case. Under the terms of a settlement executed by petitioners and FMCSA, the agency will submit a Notice of Proposed Rulemaking to the Office of Management and Budget (OMB) for approval within nine months of the date of settlement. Within 30 days of the publication of the NPRM in the Federal Register, the parties will file motions to govern further proceedings.

1. The Petition for Review in this case challenges FMCSA's November 19, 2008 Final Rule on Hours of Service of Drivers, 73 Fed Reg. 69,567 (2008). Petitioners filed their opening brief on August 27, 2009. Respondent's brief is due (as extended) October 27, 2009. The case is scheduled for argument January 15, 2010.

2. FMCSA has decided to review and reconsider the 2008 Rule.

3. In light of FMCSA's decision to reconsider the rule challenged here, the petitioners and FMCSA have entered into a settlement agreement. The agreement provides, *inter alia*, that: (1) petitioners and respondent will jointly move to hold the case in abeyance pending the issuance of the NPRM; (2) FMCSA will submit the NPRM to OMB for review nine months from the date of the settlement (October 26, 2009); and (3) FMCSA will publish a final rule within 21 months of the date of settlement.

4. An order holding this case in abeyance will serve judicial economy and prevent the expenditure of the resources of the Court and the parties. If FMCSA promulgates a new rule that is substantially different from the 2008 Rule, that may obviate the need for judicial review of the current rule.

5. Counsel has contacted intervenor William B. Trescott, who intervened in support of petitioners in this matter. Mr. Trescott indicated that he consents to the current motion.

6. The undersigned counsel contacted Adam Sloan, counsel for Intervenors supporting respondent. Mr. Sloan stated that the Intervenors take no position on the motion.

CONCLUSION

For the foregoing reasons, Petitioners and Respondent respectfully request an order holding this case in abeyance pending further motions by the parties, to be filed upon issuance of a new NPRM.

Respectfully submitted,

/s/ Michael Jay Singer
MICHAEL JAY SINGER
(202) 514-5432

/s/ Gregory A. Beck
GREGORY A. BECK
Public Citizen Litigation Group
1600 20th St., N.W.
Washington, DC 20009
(202) 588-1000

/s/ Matthew M. Collette
MATTHEW M. COLLETTE
(202) 514-4214
Attorneys, Appellate Staff
Civil Division, Room 7212
U.S. Department of Justice
950 Pennsylvania Ave., N.W.
Washington, D.C. 20530

CERTIFICATE OF SERVICE

I certify that on October 26, 2009, I filed the foregoing Motion of Petitioners and Respondent to Hold Case In Abeyance Pending The Issuance of A New Notice of Proposed Rulemaking with the Clerk of this Court by using the appellate CM/ECF system, which will send Notice of Electronic Filing to the following persons (as indicated), with additional counsel served by mail (as indicated):

Gregory A. Beck [ECF]
Public Citizen Litigation Group
1600 20th St., N.W.
Washington, D.C. 20009

Adam C. Sloane [ECF]
Mayer, Brown, LLP
1909 K. St., N.W.
Washington, DC 20006

William B. Trescott [ECF]
8028 Farm Market Rd. 457
Bay City, TX 77414

Paul D. Cullen, Sr. [ECF]
The Cullen Law Firm
1101 30th St., NW, Ste. 300
Washington, DC 20007

Inimai Manickam Chettiar [ECF]
Michael Livermore
New York University School of Law
Institute for Policy Integrity
245 Sullivan St.
Suite 472, Furman Hall
New York, NY 10012

Stephen Gardner [ECF]
Center for Science & the
Public Interest
5646 Milton St.
The Meadows Bldg., Suite 211
Dallas, TX 75206

Nicholas J. DiMichael [Mail]
Karyn A. Booth
Thompson Hine
1920 N Street, NW, Suite 800
Washington, DC 20036

John M. Cutler [Mail]
McCarthy, Sweeney, &
Hardaway
2175 K St., N.W. , Suite 600
Washington, DC 20007

Robin S. Conrad [ECF]
National Chamber Litigation Center
1615 H St., Suite 230
Washington, DC 20062

Robert Digges, Jr. [Mail]
ATA Litigation Center
950 North Glebe Road
Suite 210
Arlington, VA 22203

Henry M. Jasny [Mail]
Advocates for Highway &
Auto Safety
750 First St., NE, Suite 901
Washington, DC 20002

/s/ Matthew M. Collette
Matthew M. Collette
Counsel for Respondent