



## **Rumor Control: What's Up With This TWA Lawsuit I've Heard About?**

The Internet is a grand thing. It allows us instant access to a cornucopia of information, but it also forces upon us a cornucopia of misinformation. In this day and age, anyone with a computer and an Internet connection has the potential to reach as large an audience as a legitimate news source. Based on some internet hysteria, we now have to respond to some recent misinformation that has been circulating about the lawsuit known as *Brady v. ALPA* or as it is more commonly known, the TWA pilots' lawsuit.



*Bensel v. ALPA* was a lawsuit filed in 2002 that arose out of American's purchase of TWA assets. TWA was in bankruptcy and facing the real possibility of going out of business with TWA's pilots going to the streets. The suit was renamed *Brady v. ALPA* when Mr. Bensel was removed as a named plaintiff. Very misleading information is being spread, especially by some legal "professionals" who make their living attempting to represent independent pilot groups. This edition of *Touch & Gos* will provide you with some background and the facts surrounding the case in order to address these misrepresentations.

### **Background**

When American purchased TWA's assets, the TWA MEC was very supportive of the transaction because it meant good jobs at a then strong carrier for the TWA pilots. As part of the process, the TWA MEC voted to waive the pilots' contractual right to seniority arbitration; they agreed to this waiver because it was demanded by

American management as a condition for going forward with the transaction.

Later, after the seniority lists were integrated and a portion of the TWA pilots were "stapled," to the bottom of the list, a group of former TWA pilots (now American pilots), including former MEC members, alleged that the waiver decision was forced upon them by ALPA and that ALPA was motivated by a desire to bring the American Airlines pilots into ALPA. ALPA has argued that there is no evidence to support this bizarre conspiracy theory because that's not what happened. ALPA's advice and actions were geared toward *supporting the MEC's own decisions*.

### **More Background in "Plain Speak"**

Imagine a baseball player who is facing free agency and wants more than anything to play for the Yankees. In order to ingratiate himself with the Yankees, whenever his team plays the Yanks, he strikes out and in the field, muffs every chance to make a play. His theory



is that if he helps the Yankees win by playing poorly; they will then reward him with a big contract in the offseason. This is, in essence, analogous to the theory being advanced by the litigants in this lawsuit. They contend that ALPA

tried to make themselves more attractive to future members of ALPA (American pilots) by striking out while representing their current members (TWA pilots). If this sounds ridiculous, then you understand why ALPA is vigorously fighting this case.

That theme of duplicity was allegedly enhanced by a report that was authored by a lawyer, experienced in

union raiding activities, who painted a dire picture of deception and betrayal. The reality is that this lawyer was denied status as an “expert witness” in the Brady case and furthermore, his report was dismissed as nothing more than innuendo and hearsay by the trial judge. Yet the Internet keeps this report alive just as if it were penned by Walter Cronkite himself.

The final theory behind the case was that ALPA failed to push hard enough to force the American pilots into a preferred seniority integration outcome. For instance, ALPA did not institute a “jumpseat war” with American by denying American pilots access to jumpseats on ALPA carriers. The theory suggests that the American pilots would somehow have been cowed into submission and modified their seniority proposals to make the TWA pilots happy. The plaintiffs in this case seem to ignore the fact that ALPA actually enlisted the support of a U.S. Senator that intervened on behalf of the TWA pilots and was able to secure important job protections along with a more favorable seniority outcome. Perhaps a jumpseat war would have been more valuable than one of the hundred most powerful politicians in the country, but you decide.

### The Trial

After lengthy delays for a variety of reasons, the lawsuit finally went to trial in June of 2011. The trial lasted about six weeks and a verdict was issued on July 13, 2011. The jury found that:

1. ALPA had violated its duty of fair representation;
2. As a result of this violation, “some” TWA pilots were harmed in an unspecified way.

### How Could ALPA Lose the Jury Trial?

For many years, the courts, including the U.S. Supreme Court, have recognized an accepted standard for unions to fairly represent their members. This standard gives a wide range of latitude to unions to negotiate as long as they are not arbitrary, discriminatory, and negotiate in good faith. In this case, ALPA believes that a federal judge made an error when he instructed the jury and interpreted the standard that the union had to follow. In short, his standard was this: Is there anything the union could have done better to improve the outcome for even one pilot?

Let’s sit back and think about that standard for a moment. Imagine it’s the end of your next checkride, and the sim

instructor has to ask himself, “Is there anything, even the smallest detail, this pilot could have done better during this entire simulator?” Even if you are the next Chuck Yeager, you quickly realize that none of us could ever pass a checkride using that standard. In essence, the jury determined that the union had to perform to perfection in order to be found not liable.

ALPA argued that this was not the appropriate legal standard but was unable to change the judge’s ruling. But that is why there are appeals courts. Even judges with tremendous experience using their best efforts can make mistakes. In this case, ALPA does not think that the proper standard of union conduct was applied, and in fact, believes that the standard was one that was impossible to meet.

The jury verdict is one step along the way in a lengthy legal process that still has a long way to go.

Following the trial, ALPA filed several motions. One was for a judgment to overturn the verdict or for a new trial. These motions are based on ALPA’s belief that the trial judge committed several errors in conducting the trial, and as a result:

1. The jury heard false and misleading testimony;
2. The jury did not hear certain important and relevant testimony;
3. The jury received inadequate instructions on the law prior to their consideration of the case.

Another motion asks to decertify the class in light of the jury’s finding that only “some” of the TWA pilots were injured by ALPA’s DFR violation. It is ALPA’s belief that the verdict is contrary to DFR law—and the facts.

This case is *bifurcated*, which means that while there has been a jury verdict on liability, there has been absolutely *no* process for determination of damages. Any such process would not even begin until after ALPA’s motions are ruled upon. At that time, the judge would order a period of discovery (document production and depositions) to be followed by another trial with respect to plaintiffs’ damage claims. At that proceeding, the issues to be determined would include whether and to what extent damages may be ordered and for whom.

**Rumor Control:** There have been rumors that the damages will be very large, requiring an assessment of the ALPA membership. There is no basis for this assertion. ALPA has *never* assessed its membership to pay for litigation, awards, verdicts or settlements.

No discovery has taken place regarding possible damages, and neither the jury nor the judge has even considered the amount of damages—if any. Any dollar amounts or descriptions of the amount of damages or of a possible settlement have *absolutely no basis* in reality and are simply unsupported, wild speculation.

### What's this I hear about mediation?

In December, ALPA agreed to a suggestion by the TWA pilots' counsel that we engage in mediation to try to resolve the case. In light of this mediation agreement the Court has stayed the case while the mediation proceeds. There will be an initial mediation session in February and additional dates in March. ALPA representatives and representatives of ALPA's insurers will participate. It is important to note that the fact that ALPA will be participating in a process of mediation does *not* mean there will be a settlement anytime soon—or at all.

If there is no settlement as a result of mediation, the judge will rule on ALPA's motions. If he denies the motions, there is the possibility of an immediate appeal, but it is more likely that ALPA would go forward with the damages phase and appeal (if necessary) to the U.S. Court of Appeals for the Third Circuit following the conclusion of the damages phase.

**Rumor Control:** The mediation process *does not* require ALPA or the plaintiffs to agree to *anything*. ALPA will not agree to *any* settlement that would undermine its financial stability or its ability to serve the pilots it represents. Any settlement would be reviewed and approved by the ALPA Executive Council. If a reasonable settlement is not available, ALPA has the right to, and will, proceed with the litigation.

### How Much is This Going to Cost Me?

Part of the current Internet hysteria includes a call to “act now” to avoid having you become personally liable for damages. The first thing you need to know is that individual ALPA members have ***no personal liability*** for any lawsuit brought against the Association including this one. If at some point there is a final judgment requiring that ALPA pay damages, then ALPA has insurance to cover damages. Even in the most severe outcome, there is no need or compelling reason to make a decision now, and in fact the legal process moves at a deliberate pace so that each party can adjust as the process moves along.

### Summary

It is not at all unusual for cases like this to take many years to resolve. As mentioned before, this case was initially filed a decade ago. It could be many more years before a final resolution is reached. Please do not allow yourself to “buy into” the false innuendo, rumors and misinformation that you may encounter. In the meantime, ALPA will continue to fight hard for a fair outcome using all avenues available.

**Rumor Control:** Contrary to rumors, even if damages were eventually awarded, there is ***no (nada, zilch, zipo) individual liability*** to ALPA members for a DFR violation. ALPA has substantial insurance coverage, precisely for this type of situation. The rumor that individual ALPA pilots share liability or that ALPA's insurance would not apply to this case or would somehow be exhausted is just simply ***wrong!***