



Rumor Control: *Brady v. ALPA* Update

In *Touch & Gos* 12-01, published last January, we provided you with an update on the lawsuit known as *Brady v. ALPA* or as it is often referred to, the TWA pilots' lawsuit.

As a review, 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 somehow forced upon them by ALPA and that ALPA was motivated by a desire to bring the American Airlines pilots into ALPA. That's not what happened, and ALPA has argued that there is no evidence to support this bizarre claim. Instead, ALPA's advice and actions were geared toward *supporting the MEC's own decisions*.

It is not at all unusual for cases like this to take many years to resolve. This case was initially filed a decade ago. After lengthy delays for a variety of reasons, the lawsuit finally went to trial in June of 2011 and a verdict was issued on July 13, 2011. This case is *bifurcated*, which means that while there has been a jury verdict on liability, there has not yet been any determination of damages.

On July 31, 2012, the judge in the case denied ALPA's motion for permission to appeal before further discovery or trial on damages occurs. This was not unexpected. District judges don't like to permit intermediate appeals based upon their own alleged mistakes and rarely do they do so. ALPA believes that the judge made several statements during the July 31 hearing concerning the legal standards that are simply wrong and that conflict directly with the applicable law and Supreme Court precedent. Others are using those statements as convenient "sound bites" to mischaracterize ALPA's legal obligations. ALPA is confident that the law, properly applied, will establish that ALPA did *not* breach its legal obligations.

During the July 31 hearing, the judge also directed the plaintiffs to produce by no later than September 28, 2012 their expert report(s) showing at least what *they* believe the seniority integration would have looked like but for ALPA's alleged breach of its duty of fair representation. If the plaintiffs meet this deadline, they will *finally have to describe for the very first time* their theory of damages – including which pilots were legally harmed, how they calculate their damages, and how much they think they should get from our union.

As part of this "theory of damages" report, we can expect a substantial but fancifully absurd dream list, which will likely include:

- An extraordinarily large number of pilots the plaintiffs intend to try to prove actually were harmed,

- A proposed seniority list reflecting the plaintiffs' "fantasy integration" based on their theory that ALPA should have done more to get the American pilots to give up their seniority rights; this list will likely rely on an unsupported and unrealistic view of what "might have been if only . . .",
- An equally unrealistic and astronomically high damages number; we should expect that the plaintiffs and others will make the most of the opportunity to circulate for effect this wildly inflated damages number.

Despite these anticipated tactics, bear in mind that the judge has clearly warned the plaintiffs they will have a very tough road ahead in trying to prove any damages *at all*.

During the damages phase, ALPA will have the opportunity to discredit and disprove these claims with evidence from our own experts and other witnesses. It is not at all unusual in these types of cases for a party to retain outside legal counsel that specializes in damage litigation, and ALPA has done just that. ALPA has retained the services of three attorneys from the law firm of *Paul, Weiss, Rifkind, Wharton and Garrison*. All three are highly regarded trial attorneys with extensive experience and expertise in defending against damages claims. They will work closely with members of ALPA's existing legal team.

Note that a trial date for the damages phase has *not* yet even been set. A status conference is

scheduled to be held on October 2 at which the judge is expected to establish additional deadlines for discovery that likely will include when ALPA must submit its responding expert reports.

As we reported in *Touch & Gos 12-01*, there have been rumors and wild but unsupported speculation that the awarded damages will be very large, requiring an assessment of the ALPA membership. There is no basis for this assertion. Further, ALPA has *never* assessed its membership to pay for litigation, awards, verdicts or settlements, and no such assessment is being considered. But to add to what we wrote in *Touch & Gos 12-01*, you should understand that under ALPA's Constitution and By-Laws, an assessment of the membership can be adopted:

- *Only* by a majority vote of the Board of Directors or the Executive Board *and then*
- *Only* by a majority vote of the active members in good standing, i.e. ALPA's line pilots

Don't allow yourself to react to or be influenced by rumors, speculation, and misinformation that you may encounter on the line. ALPA will continue to use every resource at its disposal in defense of this case, and we will keep you updated with *facts* as the case goes forward.