



October 30, 2013

The Facts about *Brady v. ALPA*

On October 23, Judge Irenas held a teleconference with counsel to the parties in the Brady case to discuss the trial and pretrial schedule for the damages phase. Pretrial discovery is nearly concluded and the parties have completed their briefing on the motions to exclude certain expert testimony and on ALPA's motion for summary judgment. Counsel for the parties advised Judge Irenas that they scheduled a mediation session for November 26. The Judge agreed to postpone a pre-trial conference previously set for that date and set a trial date of March 17, 2014. Setting a trial date at this stage in the proceedings is quite normal. However, in the event the trial goes forward, ALPA welcomes the opportunity to demonstrate that the plaintiffs' inflated damage claims are entirely without merit.

Because of the ongoing litigation, we have been hesitant to discuss the background of the Brady case in detail. However, given the serial distortions of the law and the facts disseminated by DPA in order to support its effort to decertify ALPA, we provide the following overview.

Here are the facts in a nutshell:

- ALPA, like all other unions (international, national, and company-based), encounters litigation from time to time, sometimes by airlines and sometimes by its own members. But ALPA has *never* assessed its members to pay for damages arising from litigation, and we have *no* reason to think this time will be different.
- Notwithstanding all their claims about potential damages, DPA ignores that the jury in the first trial only found that "some" TWA pilots were "harmed" by ALPA's supposed failure to satisfy its duty of fair representation (DFR), and their lawyer argued that a jury could make this finding even if only one TWA pilot would have gained one position on the AA seniority list. So, plaintiffs' hopes of big damages are baseless. We have little reason to believe that this situation will be any different from dozens of others where claims of big damages have been denied.

With these facts in mind, let's look further at the background of the case:

- TWA was in bankruptcy for the third and last time when American Airlines agreed to buy certain of its assets, and to take certain of its employees, too. ALPA had a contract provision that, if it had been effective, would have given the TWA pilots the ability to have an arbitration over seniority list integration. But the Allied Pilots Association (APA) had a provision in *its* contract with American that gave APA a complete *veto* over any seniority integration and so gave APA the right to veto the transaction itself. This provision wouldn't work today, due to the McCaskill-Bond law [[link to 49 U.S.C. § 42112 Labor Requirements of Air Carriers - Labor Integration](#)], but it worked then because TWA was in bankruptcy, with 1113 rights, and AA was the only path out.

- The TWA MEC received advice from professionals retained by ALPA, but it wasn't content to rely on these advisors - it hired its own *separate* legal and financial advisors and they talked *at length* with the TWA MEC. After consulting the pilot group, the MEC, given the extreme situation at hand, voted to accept the AA deal and to waive their right to arbitration of seniority integration with the American pilots to make sure that the transaction would go forward. They decided to make sure they had jobs and then to simply negotiate with the AA pilots as to the integrated seniority list.
- Later that year, during the ISL negotiations, the TWA MEC could have negotiated a better ISL deal than the one that APA ultimately imposed on them, but they turned it down. Regrettably a number of the MEC members responsible for this decision decided to blame "ALPA" rather than take responsibility for their own judgment. And that is the origin of the *Brady* case.
- At the liability phase of the *Brady* trial, a jury found that ALPA breached its duty of fair representation and caused injury to "some" pilots among the group. In reality, though, plaintiffs' purported damages experts have failed to present any competent evidence that ALPA's supposed breach harmed *the TWA pilots' seniority position or prevented the achievement of any conditions and restrictions*. Without such evidence, there is no basis for any damages award.
- If you read the reports of ALPA's experts, in contrast to the methodologically deficient reports that plaintiffs have cobbled together, you will get the picture quickly enough - the list that APA imposed was well within the range of expected outcomes given what each side stood to gain and lose from the transaction. The idea that the AA pilots would have agreed to put themselves in a worse position than they were in without a transaction by agreeing to the kind of ISL that the *Brady* plaintiffs are now proposing is just plain ludicrous.
- The *Brady* plaintiffs propose to use supposed "experts" whose reports should not even be put before a jury, because they are not qualified to testify on this subject and their reports are just unsupported speculation about what might have happened had ALPA acted differently. This kind of speculation is not a sufficient foundation for an award of damages under the law.
- We don't expect you to take our word for this. Take a look at the expert reports filed by ALPA in this action and the conclusions reached by these experts [link to Expert Reports of [James Feltman](#), [Richard Kasher](#), [Michael Levine](#), [Kevin Murphy](#), and [Katia Sycara](#)]. Indeed, one of ALPA's experts is someone the plaintiffs actually claim to rely on for their theories. She filed a report that explains that her theories have been distorted and misapplied in the plaintiffs' own expert report [link to [Expert Report of Katia Sycara](#)].
- Of course, DPA claims to be shocked at how expensive it is to defend a case. However, as mentioned above, all unions, including the company unions the DPA seeks to have you copy, are subject to litigation and it costs money to defend against litigation, and more money if the litigation is successful. Remember the \$45 million dollar judgment against APA for an alleged sick out or the ongoing *Addington* case brought by former America West pilots against USAPA. Indeed, USAPA (using DPA's counsel before USAPA terminated his services) went so far as to bring RICO litigation against its own members - an utterly wasteful lawsuit which was eventually dismissed as without merit [link to [US Airline Pilots Ass'n v. AWAPPA, Op. July 30, 2010 ECF 77](#)].

To sum up:

The fact that a plaintiff claims he is entitled to damages does not mean the claim has legal or evidentiary support. Plaintiffs' damage claims here lack any evidentiary basis and ALPA therefore has asked the Court to exclude them from the case as a matter of law.

A proposed "association" which bases its campaign on distortions of ongoing litigation and fear of hypothetical judgments that have not been rendered and are not supported by law or evidence, does not have much to offer. We do not accept fear mongering or distortions from the Company in collective bargaining or contract enforcement, and you should not accept it from an organization that is asking you to trust it with your career.