IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
CIVIL ACTION NO. 3:14-CV-577-RJC-DCK

US AIRLINE PILOTS ASSOCIATION,	)
	)
Plaintiff,	)
	)
v.	)
	)
ROGER VELEZ, and LEONIDAS, LLC,	)
	)
Defendants.	)
	)
_____	)

JOINT RESPONSE TO OBJECTIONS TO SETTLEMENT AGREEMENT

The parties jointly submit this response to the objections filed against the class action settlement agreement and release, which the Court preliminarily approved on April 22, 2016 (the "Preliminary Approval Order") (Doc. 117), and in support of their motion for final approval of the class action settlement agreement and release.

Objections of Andrew M. Riolo

On July 1, 2016, Andrew M. Riolo submitted four objections by e-mail to USAPA Global Settlement Responses, which was established by Grant Thornton, LLP, in order to receive comments and/or objections pursuant to the Notice of Settlement Agreement and Fairness Hearing (the "Notice"). None of his objections have merit.

Objection 1: Mr. Riolo claims that he did not physically receive the Notice directly from the parties. Upon receipt of this objection, Class Counsel reviewed the data that was used to create the mailing list for the distribution of the Notice. The data was supplied by US Airways prior to USAPA's decertification, and had indicated Mr. Riolo's status as retired. Accordingly, it

was determined that Mr. Riolo was not a member of the class, and therefore not eligible to receive the Notice. (Silverstone Decl. ¶ 3; Owens Decl. ¶ 5).

Nevertheless, it is clear that Mr. Riolo's objections reflect that he had in fact reviewed the Notice and had submitted his objections pursuant to the procedure set forth therein. For example, Mr. Riolo's Objections 1 and 2 cite specific sections of the Notice. However, out of an abundance of caution, based on Mr. Riolo's statement that he believes that he is "a class member as described in the Agreement, Terms of Proposed Settlement Agreement Number 1, Page 4," and in the event that the Company-supplied data was inaccurate, Class Counsel sent a duplicate copy of the Notice and its attachments to Mr. Riolo by Fed Ex overnight delivery and e-mail. (Silverstone Decl. ¶ 3).

Objection 2: Mr. Riolo argues that $3.6 million of the $5.5 million settlement "should not be from the USAPA treasury but should be paid by the USAPA officers, former officers and BPR members who were found guilty of their duty of fair representation by their self interest." (Riolo Letter at 2). However, no USAPA officer, former officer, member of the Board of Pilot Representatives ("BPR"), or any individual was "found guilty" of any breach of the duty of fair representation, as alleged by Mr. Riolo. No individuals were named as defendants in the *Addington* DFR litigation,[1] nor could they be. *Williams v. UAL, Inc.*, 2012 U.S. Dist. LEXIS 177733, *16 (N.D. Calif. Dec. 13, 2012) (holding that "federal law is well-established that claims against individual union officers for breach of the duty of fair representation are not permitted.") (citations omitted); *Bate v. Teamsters Local Union 1108*, 2008 U.S. Dist. LEXIS 116305, *25-26 (E.D. Ohio Aug. 1, 2008) (dismissing DFR claims against union president). The

[1] *Addington v. USAPA*, 08-CV-1633-PHX-NVW (D. Ariz.) (*Addington I*); *US Airways v. USAPA/Addington*, 2:10-CV-01570-ROS (D. Ariz.) (*Addington II*); *Addington v. USAPA*, 2:13-CV-00471-ROS (D. Ariz.) (*Addington III*).

only party found to have breached its duty of fair representation was USAPA,[2] which is the appropriate party to pay the settlement.

Objection 3: Objection 3 is a similar improper request to shift the payment obligation to the individual defendants, and should be rejected for the same reasons as stated in response to Objection 2. Further, Mr. Riolo incorrectly interprets the Settlement Agreement to read that "an additional $1.9 million ($5.5M-$3.6M) will be paid from the USAPA treasury to settle the LMRDA claims." (Riolo Letter at 2). The Settlement Agreement provides that the $5.5 million settlement represents "full and final consideration in settlement of the USAPA DJ Action, LMRDA action I, LMRDA action II, and the claim for attorneys' fees in *Addington I, II, and III*." (Settlement Agreement ¶ 2). Thus, in addition to settling the claim for attorneys' fees and the LMRDA actions, the $5.5 million settlement also settles the counterclaims and third-party claims in the USAPA DJ Action against USAPA and five individuals sued in their official capacity as officers of USAPA. (Doc. 64). The counterclaims sought, among other things, reimbursement of money that USAPA spent to support the USAPA Merger Committee after USAPA's September 16, 2014 decertification in the approximate sum of $1.8 million, West Pilots' allocation of the merger dues increase (in the approximate sum of $1.4 million), and West Pilots' share of the $1.3 million reimbursement from American Airlines (in the approximate amount of $500,000).

Contrary to Mr. Riolo's allegations, the settlement is not an attempt to "have the members and the non-members pay for [the individual defendants'] breaches…" (Riolo Letter at 2), and indeed the settlement is without any admission of liability, and there has been no finding of a breach as against any of the individual defendants. Instead, the settlement reflects USAPA's

[2] *Addington v. US Airline Pilots Ass'n*, 791 F.3d 967 (9th Cir. 2015).

decision to settle all claims against it and its officers and BPR members. USAPA has consistently taken the position that the LMRDA defendants acted at all times pursuant to USAPA's Constitution and Bylaws, and, therefore, they are entitled to indemnification pursuant to the Constitution and Bylaws.[3]

Objection 4: Mr. Riolo's fourth objection is based on his argument that non-members represented by USAPA who paid agency fees instead of membership dues should receive a refund of the portion of their agency fees that were used by USAPA to pay the expenses of the *Addington* and LMRDA lawsuits. Non-members are permitted to object to payment of union expenses used to support political or ideological activities that are not related to the union's duties as collective bargaining representative. *Kidwell v. Transportation Communications Int'l Union*, 946 F.2d 283, 291 (4th Cir. 1991), *citing Abood v. Detroit Bd. Of Educ.*, 431 U.S. 209, 235-36, 97 S. Ct. 1782, 1799-1800 (1977). However, it is well-established that a union's defense of litigation arising in the bargaining unit is germane to the union's collective bargaining function, and is therefore chargeable to objecting non-members:

> The expenses of litigation incident to negotiating and administering the contract or to settling grievances and disputes arising in the bargaining unit are clearly chargeable to petitioners as a normal incident of the duties of the exclusive representative. The same is true of fair representation litigation arising within the unit, of jurisdictional disputes with other unions, and of any other litigation before agencies or in the courts that concerns bargaining unit employees and is normally conducted by the exclusive representative.

Ellis v. Railway Clerks, 466 U.S. 435, 453 (1984).

With respect to the expenses of the *Addington* litigation, arbitration of non-member objector challenges to USAPA's calculation of the agency fee has resulted in determinations that

[3] The dissolution and indemnification provisions of the USAPA Constitution and Bylaws have remained unchanged since USAPA was certified as the collective bargaining representative of the pilots of US Airways, and remained unchanged after USAPA was decertified.

the *Addington* expenses are germane to USAPA's duties as collective bargaining representative, and therefore, are chargeable to non-member agency fee payers:

> As in the prior agency-fee arbitrations, this Arbitrator finds that the expenses of this litigation, which, as the Ninth Circuit wrote, "arose out of a bitter seniority dispute precipitated by the merger" of US Air and America West, are germane because (1) the litigation relates to Section 22 of the Collective Bargaining Agreement and thus is directly relevant and germane to bargaining and (2) the United States Supreme Court in *Ellis v. Railway Clerks*, 466 U.S. 448, 453 (1984), held that expenses incurred in defending a fair representation litigation arising within the unit are chargeable.

USAPA and Seven Dues Challengers, at 7 (Sept. 10, 2012) (Drucker, Arb.) (Silverstone Decl. Ex. C).

Based on *Ellis* and the arbitration decisions involving USAPA dues challenges, Mr. Riolo is not entitled to any refund of his agency fees.

Objections of Frederick M. Brown, Jr. and Jose Gonzalez

Frederick M. Brown, Jr. and Jose Gonzales filed identical objections on July 11, 2016, by their counsel, William Wilder, who also represents the East Pilots Seniority Integration Committee, and formerly represented USAPA and its Merger Committee. Their objections have no merit and should be rejected.

Objection No. 1 (Adequacy of East Pilot Representatives)

(a) The Objectors argue that the law firm of Seham, Seham, Meltz & Petersen, LLP ("SSMP"), has a conflict of interest with the East Pilot Settlement Class members because it represents some of the defendants in the *Bollmeier* LMRDA I action.[4] The Objectors' argument is incorrect.

[4] SSMP represents Gary Hummel, Stephen Bradford, Rob Streble, Steve Smyser, Courtney Borman, John Taylor, Joe Stein, Pete Dugstad, Jay Milkey, and Stephen Nathan.

First, the proposed settlement is a global settlement of the attorneys' fees motion in *Addington III*, the claims, counterclaims and third party claims in the USAPA DJ Action, and the claims, counterclaims, and third party claims in the *Bollmeier* LMRDA actions. The *Bollmeier* LMRDA claims are the only claims asserted against individual defendants in their individual capacities. The claims in *Addington III* were against USAPA, and the claims in the USAPA DJ Action were asserted by USAPA. The counterclaims and third-party claims in the USAPA DJ Action were asserted against USAPA and USAPA officers in their official capacities. As a global settlement of these cases, it is entirely appropriate that USAPA pay the settlement monies in consideration of the settlement of all the litigation and dismissal of all claims, counterclaims and third-party claims.

Second, there is no conflict between the defendants in the *Bollmeier* LMRDA actions and the East Pilot Settlement Class, of which, as East Pilots, defendants are all members. This is shown by the fact that no East Pilot was a plaintiff in the *Bollmeier* LMRDA actions, nor sought to intervene in those actions. USAPA has consistently taken the position that the challenged acts of the *Bollmeier* LMRDA action defendants were proper, valid, and enforceable and were at all times consistent with and in furtherance of USAPA's objectives and interests.

The *Bollmeier* plaintiffs' dispute was essentially with USAPA, as confirmed by the counterclaims and third-party claims in the USAPA DJ Action, which were asserted against USAPA and its officers in their official capacities. From the commencement of the *Bollmeier* cases, USAPA took the position that the plaintiffs' dispute "is with USAPA and not the defendants in their individual capacities." (Doc. 49-1 at 26). In moving to dismiss the *Bollmeier* claims, USAPA stated that "[t]he plain and simple fact is the challenged acts of the National Officers were proper, valid and enforceable, and consistent with the explicit language of

USAPA's Constitution and Bylaws, clearly made for the benefit of USAPA, and in keeping with USAPA's long standing objectives." *Id*. Indeed, USAPA has consistently taken the position that the *Bollmeier* defendants are entitled to indemnification under USAPA's Constitution and Bylaws.

Moreover, the very nature of the *Bollmeier* LMRDA actions was the West Pilots' claim that USAPA, through the individual defendants, was advocating solely for the interests of the East Pilots at the expense of the West Pilots. *See Bollmeier* LMRDA I action Complaint, Doc. 1, ¶33 ("USAPA's position before the PAB advanced only the interests of the East Pilots (which includes Defendants here) at the expense of the interests of the West Pilots. Accordingly, expenditures in furtherance of this position were not *collective* in nature nor on behalf of *the pilots group* as a whole.") (emphasis in original); Doc. 1, ¶34 ("Since September 16, 2014, and continuing to the present, Defendants have authorized the use of, used, and continue to use USAPA funds for the purpose of advancing the seniority interests of only the East Pilots (including Defendants) at the expense of the interests of the West Pilots (including Plaintiffs) in the Substantive SLI Process."). Thus, the nature of the *Bollmeier* claims shows that there is no conflict between the individual defendants and East Pilots.

Third, the fact that this case was conditionally certified as a Rule 23(b)(2) class reflects the fact that both classes are homogenous and cohesive groups without internal conflicts. The Court in its Preliminary Approval Order found that "the East and West Settlement Classes satisfy Rule 23(b)(2) because the relief sought in the Consolidated Cases is predominantly injunctive or declaratory, and not for money damages." (Doc. 117 at 4). Class actions certified under (b)(2) are "intended to focus on cases where broad, class-wide injunctive or declaratory relief is necessary." *Allison v. Citgo Petroleum Corp*., 151 F.3d 402, 412 (5th Cir. 1998), *citing Holmes*

v. Continental Can Co., 706 F.2d 1144, 1155 n. 8 (11th Cir. 1983). "[B]ecause of the group nature of the harm alleged and the broad character of the relief sought, the (b)(2) class is, by its very nature, assumed to be a homogenous and cohesive group with few conflicting interests among its members." *Berry v. Schulman*, 807 F.3d 600, 608-609 (4th Cir. 2015), *citing Allison*, 151 F.3d at 413. Consistent with this Court's conditional finding that the East and West classes are homogenous and cohesive groups without conflicts, no East or West class member has objected to the formation of two settlement classes.

That the *Bollmeier* LMRDA actions were brought against individual USAPA officers and BPR members does not affect the cohesiveness of the East Pilot Settlement Class. All of the *Bollmeier* defendants are members of the East Pilot Settlement Class, and the interests of USAPA, the *Bollmeier* defendants, and the East Pilot Settlement Class are aligned and all share a common objective in resolving these actions. The settlement will resolve all outstanding claims and litigation and allow USAPA, which is no longer a certified bargaining representative and has not collected dues in over two years, to wind up its business affairs and distribute its remaining assets to the East Pilot Settlement Class. Thus, in representing the *Bollmeier* defendants and the East Pilot Settlement Class, there are no antagonistic or conflicting interests. The entire East Pilot Settlement Class will receive the same benefit – an end to years of litigation, and the ability to receive a distribution of remaining assets.

The Objectors' reliance on *National Air Traffic Controllers Association v. Dental Plans, Inc*., 2006 U.S. Dist. LEXIS 12544 (N.D. Ga. 2006) is misplaced. In that case, the National Air Traffic Controllers Association ("NATCA"), and individual NATCA members, sued two companies in order to recover dental benefits under a dental expense reimbursement plan. The plaintiffs claimed breach of fiduciary duty, breach of contract and negligence in connection with

the design and implementation of the Plan. *Id*. at *6. The individual defendants moved to certify the action as a Rule 23 class action, and to have the law firm of Slevin & Hart, P.C. ("S&H") appointed as class counsel. *Id*. at *6-7. S&H also represented NATCA. *Id*. at *11. Unlike in the case at bar, the defendants in *NATCA* opposed the motion for class certification and the appointment of S&H as class counsel. *Id*. The defendants argued that NATCA could be deemed to be a fiduciary of the Plan, and, therefore, "because NATCA is potentially liable to the proposed class, a conflict of interest exists for the class counsel." *Id*. at *12-13. The court agreed that a potential for conflict existed because NATCA could be liable as a fiduciary of the Plan:

> Class counsel may not adequately or vigorously pursue the interests of the proposed class because it is simultaneously representing and protecting the interests of NATCA. It might be in the best interests of NATCA to direct responsibility for the failure to pay benefits onto the Defendants; however, the best interests of the proposed class may be better served by pursuing its claims against NATCA as well as the named Defendants.

Id. at *14.

The conflict that existed between NATCA and the individual plaintiffs is not present in this case. Unlike NATCA, all of the *Bollmeier* defendants are members of the East Pilot Settlement Class, and share the same interest in resolving all claims, winding up USAPA's business affairs, and dissolving USAPA. The individual *Bollmeier* defendants cannot direct any potential liability onto the East Pilot Settlement Class, of which they are members; nor have any members of the East Pilot Settlement Class asserted any LMRDA claims against the individual *Bollmeier* defendants.

Under these circumstances, in which the interests of USAPA, the East Pilot Settlement Class, and the individual *Bollmeier* defendants are aligned, SSMP has no

actual or apparent conflict of interest in representing the individual defendants and the East Pilot Settlement Class.

(b) The Objectors argue that John Owens is an inadequate class representative "for the additional reason that he is an officer of USAPA and a potential defendant in this proceeding since he came into office on April 18, 2015 and was an officer during the period of alleged improper expenditures." (Objection at 2). The fact that Owens is an officer of USAPA does not create a conflict because the interests of USAPA and the East Pilot Settlement Class are aligned, as explained above. Owens is not a defendant in the *Bollmeier* LMRDA actions, nor is he a "potential defendant" as the *Bollmeier* plaintiffs never moved to join him as a defendant. That he represented the interests of USAPA in settlement negotiations does not create a conflict since USAPA's interests have always been aligned with the interests of the East Pilot Settlement Class.[5]

(c) The Objectors argue that East Pilot Settlement Class representative Bob Burdick is not an adequate representative because he "acted as a Duly Designated Representative under the USAPA Constitution of defendant Ronald Nelson during 2015." (Objection at 2). Under the USAPA Constitution, a Duly Designated Representative ("DDR") is a USAPA member who is authorized to act on behalf of an absent member of the Board of Pilot Representatives. In 2015, Bob Burdick attended 2-3 BPR meetings and participated in 2-3 conference calls as a Duly Designated Representative for defendant Nelson. (Owens Decl. ¶ 8). There is no basis to disqualify Burdick as a class representative, and the Objectors fail to explain how Mr. Burdick's attendance at a few meetings creates a conflict of interest with the East Pilot Settlement Class.

[5] Other than to state that a conflict exists, Objectors provide no detail or explanation as to precisely how Owens' involvement in the settlement negotiations creates a conflict of interest with the East Pilot Settlement Class.

Objection No. 2 (The Class Notice)

The Objectors' argument that the class Notice is inadequate should be rejected. The Notice complies with Rule 23(e), as it is "reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the [settlement] and afford them an opportunity to present their objections." *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 314, 70 S. Ct. 652, 657 (1950) (citations omitted). "The notice must be of such nature as reasonably to convey the required information … and it must afford a reasonable time for those interested to make their appearance." *Id.* (citations omitted). The notice must "fairly apprise the prospective members of the class of the terms of the proposed settlement and of the options that are open to them in connection with [the] proceedings." *In re Mid-Atlantic Toyota Antitrust Litigation*, 585 F. Supp. 1553, 1563 (D. Md. 1984), citing *Grunin v. Int'l House of Pancakes*, 513 F.2d 114, 122 (8th Cir. 1975). See also, *UAW v. General Motors Corp.*, 497 F.3d 615, 629 (6th Cir. 2007).

In this case, the Notice provided all of the required information. It advised class members of the terms of the proposed global settlement, attached the proposed Settlement Agreement and the parties' signed Memorandum of Settlement, and advised class members of their right to submit comments and/or objections to the settlement and appear at the fairness hearing. The Objectors argue that the Notice does not provide sufficient information. While Class Counsel maintain that the Notice is sufficient, additional information regarding the financial aspect of the settlement is provided in the accompanying Declaration of John Owens. (Owens Decl. ¶ 7).

Notice of the settlement was provided to 5,222 class members (3,576 members of the East Pilot Settlement Class and 1,646 members of the West Pilot Settlement Class)[6] by regular first-class mail, e-mail, and by posting the notice on the public portion of the USAPA and

[6] *See* Declaration of John Owens, Doc. 116-1, ¶ 3.

Leonidas, LLC websites,[7] all of which was accomplished within twenty days of the entry of the April 22, 2016 order. (Owens Decl. ¶ 4).

In the event that Class members had any questions regarding the Settlement Agreement, the Notice invited and provided the contact information (address, telephone number, fax number, and e-mail address) of Class Counsel for the East Pilot Settlement Class and the West Pilot Settlement Class. (Notice at 11-12). Class Counsel for the East Pilot Settlement Class received one telephone call from one retired East Pilot who asked general questions regarding the litigation and the settlement. (Silverstone Decl. ¶ 5). Class Counsel for the West Pilot Settlement Class received one written inquiry, to which a written response was provided that reminded the pilot of the July 11 deadline to file an objection or response. (Harper Decl. ¶ 3). Counsel also received one telephone call, and the caller was directed to all of the relevant websites and deadlines, and was advised of his right to submit a comment or objection in writing. (Harper Decl. ¶ 4).

None of the Objectors contacted East or West class counsel. (Silverstone Decl. ¶ 6). On July 20, 2016, Class Counsel for the East Pilot Settlement Class sent an e-mail to William Wilder, the Objectors' purported attorney (though no notice of appearance has been filed) to offer to discuss the objections and provide any additional information that might help to resolve the objections. However, on July 21, Mr. Wilder responded that he did "not see any purpose in discussing the objections." (Silverstone Decl. ¶ 6).

Because the Notice apprises all class members of the proposed settlement and of the options that are available to them to comment and/or object, and given the lack of questions regarding the Settlement Agreement and the Objectors' attorney's refusal to discuss the

[7] www.usairlinepilots.org and www.cactuspilot.com.

objections in order to attempt to resolve his concerns, the objections to the adequacy of the Notice should be rejected.

Objection No. 3 (Fairness of the Settlement)

The Objectors challenge the fairness of the settlement without discussing any of the factors to be considered in assessing the fairness of a proposed settlement, namely, "(1) the posture of the case at the time settlement was proposed, (2) the extent of discovery that had been conducted, (3) the circumstances surrounding the negotiations, and (4) the experience of counsel in the area of . . . class action litigation." *In re Jiffy Lube Sec. Litig.*, 927 F.2d 155, 159 (4th Cir. 1991). Their claim that "East Pilots receive no distribution from USAPA under the proposed settlement" is incorrect. The settlement provides that West Pilots disclaim their rights to a distribution to which they would have been entitled under the USAPA Constitution and Bylaws (Settlement Agreement, ¶3), and that distribution to the East Pilots will proceed as per the USAPA Constitution and Bylaws. (Settlement Agreement, ¶7). Additionally, USAPA is seeking to recover money from its insurer and from an arbitration decision in its favor, all of which would be available for distribution to East Pilots only. (Owens Decl. ¶ 7).[8]

As explained in the parties' Joint Memorandum of Law in Support of Final Approval of Proposed Settlement Agreement and Release, the proposed global settlement satisfies all four fairness factors and should therefore be approved by the Court.

Objection No. 4 (LMRDA)

(a) The parties in making their joint motion for final approval of the settlement are asking this Court to find that the settlement is fair, adequate, and reasonable. The parties are not asking

[8] *See* Notice of Settlement Agreement and Fairness Hearing, 5(B) (Payments to Class Members), at pages 9-10 ("The pool of money for distribution to the East Pilot Settlement Class may include money recovered on behalf of USAPA from any insurance policies and an arbitration against US Airways relating to USAPA's right to reimbursement for merger-related expenses.").

the Court to determine the merits of the claims asserted in the litigation. As is common with settlements, there is no admission of liability.

The Objectors argue that the proposed settlement violates the LMRDA, but cite no case involving the *settlement* of LMRDA claims. By arguing that the global settlement must provide for the recovery of money by USAPA, the Objectors essentially argue that the Court must find that the LMRDA was violated. But the function of the Court in this proceeding is to determine whether the global settlement is fair, adequate and reasonable, and not to rule on the merits of any one of the various claims covered by the global settlement.

In reviewing a proposed class settlement, a court should "not decide the merits of the case or resolve unsettled legal questions." *Carson v. Am. Brands, Inc.*, 450 U.S. 79, 88 n.14 (1981). Because the object of settlement is to avoid, not confront, the determination of contested issues, the approval process should not be converted into an abbreviated trial on the merits. *See Flinn v. FMC Corp.*, 528 F.2d 1169, 1172-73 (4th Cir. 1975) (noting that the settlement hearing is not "a trial or a rehearsal of the trial" (quotation marks and citation omitted)). This point is especially pertinent to this case where, for eight years, the two pilot groups have been unable to agree on essentially anything without protracted litigation. Instead, courts have consistently held that the function of a judge reviewing a settlement is to determine whether the proposed settlement is fundamentally fair, adequate and reasonable, *see United States v. North Carolina*, 180 F.3d 574, 581 (4th Cir. 1999), "without modifying [the settlement's] terms, and without substituting its business judgment for that of counsel, absent evidence of fraud or overreaching." *In re Global Crossing Sec. & ERISA Litig.*, 225 F.R.D. 436, 455 (S.D.N.Y. 2004) (internal quotation marks and citations omitted). "A district court in reviewing a settlement agreement 'should not attempt to decide the merits of the controversy … (because) (a)ny virtue which may reside in a compromise is based upon doing

away with the effect of such a decision.'" *Airline Stewards and Stewardesses Ass'n, Local 550 v. American Airlines*, 573 F.2d 960, 963 (7th Cir. 1978), quoting *Patterson v. Stovall*, 528 F.2d 108, 114 (7th Cir. 1976) (abrogated on other grounds).

According to the Objectors, "[t]he proposed settlement does not recover any money or provide any benefit to USAPA…," completely ignoring the fact that the global settlement substantially benefits USAPA by ending eight years of litigation against USAPA. The global settlement finally allows USAPA to wind up its business affairs and distribute remaining assets to the East Pilots.

The Objectors also argue, without relevant authority, that the monetary compensation that the proposed global settlement provides to the West Pilot Settlement Class "cannot be awarded in a LMRDA Section 501(b) claim." (Objection at 6). However, the cases cited by the Objectors do not involve *settlements* of LMRDA claims, and do not support the Objectors' conclusion that the parties cannot enter into a settlement that settles multiple claims in multiple cases, and that results in the full release of all claims by all parties on all issues. The Objectors ignore that many claims are being resolved in addition to LMRDA claims, including the claim against USAPA for attorneys' fees in *Addington III* and the counterclaims against USAPA in the DJ Action, which sought from USAPA reimbursement of approximately $1.8 million that USAPA spent to support the USAPA Merger Committee after decertification, the West Pilots' allocation of the merger dues increase (approximately $1.4 million), and West Pilots' share of the $1.3 million reimbursement from American Airlines.

Under the Objectors' theory of settlement, no global settlement could be approved unless it included a finding or admission of liability by defendants. This is contrary to the "strong judicial policy in favor of settlements, particularly in the class action context." *Case v.*

Plantation Title Co., 2015 U.S. Dist. LEXIS 33580, *22 (D.S.C. Mar. 5, 2015) (*quoting In re PaineWebber Ltd. P'ships Litig.*, 147 F.3d 132, 138 (2d Cir. 1998); *see also In re U.S. Oil and Gas Litig.*, 967 F.2d 489, 493 (11th Cir. 1992) ("Public policy strongly favors the pretrial settlement of class action lawsuits"); *South Carolina Nat'l Bank v. Stone*, 749 F. Supp. 1419, 1423 (D.S.C. 1990) ("The voluntary resolution of litigation through settlement is strongly favored by the courts" and is "particularly appropriate" in class actions).

(b) The Objectors argue that the settlement payment to the West Pilot Settlement Class does not comply with the dissolution distribution formula in the USAPA Constitution. As each of the Objectors, and their attorney, knows, however, the global settlement monies being paid here is in consideration for the settlement of litigation, and not pursuant to the dissolution distribution formula found in USAPA's Constitution. Additionally, under the terms of the settlement, it is clear that the settlement payment to the West Pilot Settlement Class is *not* a post-dissolution distribution to the West Pilots. Rather, it is the global settlement of multiple pieces of litigation, including a pending claim for attorneys' fees and costs that would be properly assessed against USAPA, as well as payment of an amount to essentially equalize USAPA spending on seniority that benefitted only the East Pilots.

(c) The Objectors argue that USAPA cannot indemnify the *Bollmeier* defendants for their legal fees unless they prevail in the *Bollmeier* LMRDA litigation. Again, the Objectors cite no case involving the settlement of LMRDA cases. Instead, the Objectors condemn the individual defendants to a continuation of expensive and difficult litigation in order to reach the merits of the claims, which the global settlement is specifically designed to avoid. In this case, where USAPA has consistently taken the position that the *Bollmeier* plaintiffs' dispute "is with USAPA and not the defendants in their individual capacities" (Doc. 49-1 at 26), the eventual payment of

the individual defendants' legal fees out of USAPA's funds is entirely appropriate. *Highway Truck Drivers v. Cohen*, 182 F. Supp. 608, 620 (E.D. Pa.), *aff'd*, 284 F.2d 162 (3d Cir. 1960), *cert. denied*, 365 U.S. 833 (1961) ("There are undoubtedly situations in which a suit against a union officer would have a direct and injurious effect upon the union itself or would in reality be directed at the union. In such a situation the union would have the power to lend its financial support to such officer.").

(d) The Objectors incorrectly assert that the settlement "sanctions the continued existence of USAPA…." (Objection at 7). They are incorrect. The purpose of the global settlement is to resolve all claims, and allow USAPA to wind up its business affairs and dissolve.

(e) The Objectors' speculation that the USAPA officers will "dissipate USAPA's treasury … by allowing USAPA and/or its officers to initiate new litigation against insurer AIG…" (Objection at 7) is wrong. As an initial matter, there is nothing prohibiting USAPA officers from initiating new litigation as is their right under the USAPA Constitution and Bylaws.[9] Regardless, USAPA's treasury will not be used to fund the litigation against AIG, which is being handled on a contingency basis. (Owens Decl. ¶ 9).

Objection No. 5 (LMRDA Plaintiffs)

The Objectors' argument that the West Pilot representatives are improper LMRDA plaintiffs runs afoul of the rule that in reviewing a proposed class settlement, a court should "not decide the merits of the case or resolve unsettled legal questions." *Carson v. Am. Brands, Inc.*, 450 U.S. 79, 88 n.14 (1981) (see response to Objection 4(a) above). The function of the Court in this process is to determine whether the settlement is fair, adequate and reasonable, not to determine the legal question of whether the West Pilot representatives are proper LMRDA plaintiffs.

[9] So long as it is not in violation of this Court's preliminary injunction.

> [The Court's] task is not to decide whether one side is right or even whether one side has the better of these arguments. Otherwise, we would be compelled to defeat the purpose of a settlement in order to approve a settlement. The question rather is whether the parties are using settlement to resolve a legitimate legal and factual disagreement.

UAW v. General Motors Corp., 497 F.3d 615, 632 (6th Cir. 2007).

The Late Objections Should be Rejected

On July 15, 2016, four days after the July 11 objection deadline, William Wilder filed ten additional objections on behalf of Billy Lewis Erwin, Bruce Quinby, Dennis Babyak, Jan Randle, James C. Tatum, Michael C. Babyak, Patrick Cronin, Stephen M. Hinshaw, Theodore H. Bonham, and William B. McKee, all of whom object for the same reasons as stated in the Brown objection.

On July 29, 2016, 18 days after the July 11 objection deadline, Mr. Wilder filed four additional objections on behalf of Paul Kitchin, Andrew Laczko, Daniel Roberts, and Graham Simpson, all of whom object for the same reasons as stated in the Brown objection.

On August 1, 2016, 21 days after the July 11 objection deadline, Mr. Wilder filed seven additional objections on behalf of Jon Carlson, Michael Crowley, Paolo Hereter, Samuel Loeffler, David Maier, Brooks Tilton, and Gary Weiser, all of whom object for the same reasons as stated in the Brown objection.

On August 5, 2016, 25 days after the July 11 objection deadline, Mr. Wilder filed three additional objections on behalf of John Lehning, William Rhynals, and Pawel Roszko, all of whom object for the same reasons as stated in the Brown objection.

The parties to the global settlement respectfully submit that all of the above 24 late-filed objections should be rejected. Notice of the settlement was provided by mail on May 6, 2016, and by e-mail on May 8, 2016 (Owens Decl. ¶ 4), giving all class members at least 60 days to

review the settlement and submit comments or objections. None of the late-filing objectors denied receiving the Notice, or objected to the amount of time provided in which to submit objections. None of the late-filing objectors claimed that they had insufficient time in which to object or gave any reason for failing to meet the July 11 deadline. Under these circumstances, the late objections should not be considered, and the late-filing objectors' requests to be heard should be denied.

However, should the late objections be considered by the Court, they should be rejected for the same reasons, set forth above, for rejecting the Brown Objection.

Response to *Karas* Objection

The Boyd Law Group submitted an objection purportedly on behalf of the 11 named plaintiffs in *Karas v. Allied Pilots Assocation, et al.*, Case No. 16-cv-01688-TJM-DEP, currently pending in the United States District Court for the Northern District of New York.[10] The basis of the *Karas* Objectors' objection to the proposed settlement is that it would "serve to denude USAPA and the USAPA Merger Committee of their assets and render then unable to satisfy any judgment rendered against them" in the *Karas* litigation.

Eleven individually named plaintiffs filed the *Karas* action as a putative class action on February 12, 2016. The plaintiffs are all East Pilots who worked for US Airways prior to its 2005 merger with America West Airlines. They have sued the Allied Pilots Association ("APA"), the exclusive certified bargaining representative for all pilots, including plaintiffs; the East Pilots Seniority Integration Committee ("EPSIC"), appointed by the APA to represent the interest of the East Pilots in the seniority list integration ("SLI") proceedings; American Airlines; US Airways; USAPA, which had served as plaintiffs' collective bargaining representative until

[10] To date, no Notice of Appearance by the Boyd Law Group has been filed with this Court.

September 2014 when it was decertified by the National Mediation Board and replaced by the APA; and the USAPA Merger Committee, which had represented the interests of the East Pilots until June 29, 2015 when it permanently withdrew from the SLI proceedings.

The *Karas* plaintiffs allege various statutory and contract violations allegedly committed by defendants in connection with the ongoing SLI proceedings that arose out of the merger of American Airlines and US Airways. They also allege a breach of Letter G to the APA-American Joint Collective Bargaining Agreement. The gravamen of the action is their claim that the SLI proceedings were not "fair and equitable".

The complaint contains five counts. Count I is a duty of fair representation ("DFR") claim against the APA, American Airlines, EPSIC, and the USAPA Merger Committee. Count II is a breach of contract claim regarding Letter G. While the Count II heading does not specify against whom this claim is asserted, the only defendants mentioned are the APA and American Airlines. Compl., ¶131, annexed to the *Karas* Objection. Count III is a claim for declaratory judgment concerning the SLI arbitration. Plaintiffs do not specify which defendants Count III is against. However, neither USAPA nor the USAPA Merger Committee were parties to the SLI process, including the SLI arbitration. USAPA was no longer plaintiffs' certified bargaining agent during the SLI proceedings, and the USAPA Merger Committee had permanently withdrawn from the proceedings in June 2015. The SLI arbitration was conducted from September 29, 2015 to January 15, 2016.

Plaintiffs seek injunctive relief against all defendants in Count IV. Specifically, plaintiffs seek an injunction enjoining the SLI arbitration proceeding, and vacating any award that results from it. *Id.*, at ¶156. Again, neither USAPA nor the USAPA Merger Committee were parties to the SLI arbitration. Plaintiffs also seek in Count IV "injunctive relief against American Airlines,

US Airways, and APA directing them to comply with the requirements of Section 13(a) of the Allegheny-Mohawk LPPs, and to participate with the East Pilots in resolving the seniority list integration dispute between the American and US Airways pilots under the requirements of Section 13(a) of the Allegheny-Mohawk LPPs." *Id.*, at ¶157. Plaintiffs seek attorneys' fees in Count V stating that they "have brought this action to vindicate the right of all East Pilots and [legacy US Airlines] Pilots to fair representation by APA." *Id.*, at ¶161.

On May 23, 2016, USAPA and the USAPA Merger Committee moved to dismiss the *Karas* action on several grounds, including lack of personal and subject matter jurisdiction, failure to state a claim, and that the DFR claim (which is asserted against the USAPA Merger Committee and not USAPA)[11] is untimely. Case No. 16-cv-01688-TJM-DEP, Doc. 22. On May 27, 2016, the remaining defendants moved to have the action transferred to the United States District Court for the District of Columbia pursuant to 28 U.S.C. § 1404(a). Case No. 16-cv-01688-TJM-DEP, Docs. 29, 31. The motions are pending before the Court which did not order oral argument.

Notwithstanding the fact that the *Karas* action has no merit as against USAPA and the USAPA Merger Committee, it is not a bar to a global settlement in the actions before this Court. That a settling defendant is a party in other unrelated litigation is not a legitimate ground to deny a class action settlement. Indeed, in making their objections, the *Karas* Objectors do not cite to any of the factors courts apply in deciding whether to approve a class action settlement. They do

[11] The DFR claim against the USAPA Merger Committee must be dismissed as a matter of law. The statutory DFR is a standard of conduct that belongs solely to the certified bargaining representative. *Vaca v. Sipes*, 386 U.S. 171, 177, 87 S.Ct. 903, 910 (1967). The USAPA Merger Committee is a legal fiction and was never a certified bargaining representative. No DFR claim can lie against USAPA as it was not plaintiffs' bargaining representative during the SLI proceedings. Any DFR claim against USAPA would also be untimely given that USAPA ceased being plaintiffs' bargaining representative in September 2014, and the *Karas* action was not filed until February 12, 2016. *DelCostello v. International Broth. of Teamsters*, 462 U.S. 151, 103 S.Ct. 2281 (1983) (The statute of limitations on a DFR claim is 6 months.).

not argue that the proposed global settlement is not fair, adequate, or reasonable. Moreover, the mutual release in the global settlement does not include the *Karas* action (Settlement Agreement, Doc. 115-1. ¶16), and final approval of the settlement here does not preclude those plaintiffs from litigating their action in New York. *See DeHoyos v. Allstate Corp.*, 240 F.R.D. 269, 319 (W.D.Tex. 2007) (Where there were state law claims, court overruled objectors because, *inter alia*, settlement does not preclude claims asserted in other litigation.). Nor have the *Karas* objectors pursued or sought provisional remedies against USAPA in their action despite having notice of the settlement since May, 2016. That they have failed to do so undermines their objections. The *Karas* Objections have no merit and should be overruled.

CONCLUSION

None of the filed objections are well-taken and, as a result, they present no impediment to the Court granting final approval of the global settlement reached in the multiple disputes pending between the parties. The time has come to terminate eight years of contentious litigation between the East and West Pilots and USAPA. This global settlement gives this Court the opportunity to accomplish exactly that. Accordingly, the parties jointly request that all of the objections should be overruled, and the global settlement should be approved.

Dated: August 8, 2016

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CERTIFICATE OF SERVICE

This is to certify that on this date, a true and accurate copy of the foregoing Joint Response to Objections to Settlement Agreement was electronically filed with the Clerk of Court using the CM/ECF system which will send notification of such filing to all counsel of record in this matter via e-mail through CM/ECF.

This the 8th day of August, 2016.

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