

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

LERROY "BUD" BENSEL, ET AL.,

Plaintiffs,

v.

ALLIED PILOTS ASSOCIATION, ET
AL.,

Defendants.

HONORABLE JOSEPH E. IRENAS

CIVIL ACTION NO. 02-2917 (JEI)

**ORDER DENYING MOTION TO
DECERTIFY PLAINTIFFS' CLASS
PURSUANT TO
FED.R.CIV.P. 23(c)(1)(C)
(DOCKET # 354)**

APPEARANCES:

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Counsel for Defendant

IRENAS, Senior District Judge:

1. This matter appears before the Court upon Defendant Air Line Pilots Association's Motion to Decertify Plaintiffs' Class Pursuant to Fed. R. Civ. P. 23(c)(1)(C). For the reasons set forth below, the Court will deny Defendant's motion.

2. The Court presumes familiarity with its earlier Opinions and Orders in this ongoing litigation, and will only include details relevant to the present Order. The Plaintiffs' class was first certified by this Court on February 12, 2003 after all

parties, including Defendant, had made a joint application to stipulate to class certification under Fed. R. Civ. P. 23(b) (1) & (2). On April 19, 2005, Defendant moved to bifurcate this trial into separate liability and damages phases. Plaintiffs did not oppose the motion, and the motion was granted on May 5, 2005. On September 21, 2006, Plaintiffs moved to amend the Court's class certification to certify the class under Fed. R. Civ. P. 23(b) (3). Defendant did not take issue with the amendment of the class, and on March 19, 2007, the Court granted Plaintiffs' motion to amend the class certification. In its present motion, Defendant raises again the issue of class certification.

3. Defendant argues that Plaintiffs cannot prove the fact of damages for all members of the class, an essential element of their claim, and that therefore the class cannot meet the predominance requirement of Rule 23(b) (3). The Court disagrees. A class action is maintainable under Rule 23(b) (3) if a court finds that questions of law or fact common to the members of the class predominate over questions affecting only individual members, and a class action is a superior method for fair and efficient adjudication of the dispute.

4. The Court finds that the predominance requirement of Rule 23(b) (3) has been met. In this Court's March 19, 2007 Order Granting Motion to Amend Class Certification, this Court found that "the sole remaining issue is one common to the Class -

the alleged breach of the duty of fair representation owed to the Class by [Defendant] and monetary damages arising from same.”

After analysis of the record before it, the Court finds that this is still correct.

5. “[T]he task for plaintiffs at class certification is to demonstrate that [each element of the plaintiffs’ claims] is capable of proof at trial through evidence that is common to the class rather than individual to its members.” *In re Hydrogen Peroxide Antitrust Litigation*, 552 F.3d 305, 311-12 (3d Cir. 2008). Defendant owed a duty of fair representation equally to all class members. The questions of whether that duty was violated and whether there was injury in fact is common to all class members and may proven by common evidence at trial. These issues predominates over all other issues. If it is found at the liability phase of this case that Defendant did not violate that duty, this case will be over. But if it is found at the liability phase that Defendant did in fact violate that duty, the only issue left to be determined at the liability phase is the damages due to each Plaintiff. Nothing has changed in regards to class certification between this Court’s March 19, 2007 Order Granting Motion to Amend Class Certification and now, and the Court finds that the predominance requirement of Rule 23(b)(3) is still met. Defendant’s motion will be denied.

IT IS on this 11th day of April, 2011,

ORDERED THAT:

Defendants' Motion to Decertify Plaintiffs' Class Pursuant to Fed. R. Civ. P. 23(c)(1)(C) is hereby **DENIED**.

s/ Joseph E. Irenas
JOSEPH E. IRENAS, S.U.S.D.J.