

**PEOPLE OF MICRONESIA,
INC., et al.,
vs.
CONTINENTAL AIR LINES,
INC. et al.**

**Civil Action No. 85-0002
District Court NMI**

Decided July 17, 1987

**1. Civil Procedure - Class
Actions - Certification**

Where: (1) there were approximately 1000 similarly situated individual shareholders and former shareholders throughout Micronesia and the United States; (2) law suit sought to enjoin airline from gaining control of another airline through its efforts to acquire stock via a scheme which allegedly included violations of federal law; (3) common questions of law and fact were presented; (4) plaintiff's claims were typical of the class; and (5) the plaintiffs and their attorneys have and would fairly and adequately protect the interests of the class members, initial requirements for class certification were satisfied. Fed.R.Civ.Pro. 23(a).

**2. Civil Procedure - Class
Actions - Certification**

Where court could conceive of situations in which inconsistent adjudications could result, particularly in light of the fact that aspects of the dispute were before several courts in the United States as well as in the Federated States of Micronesia, and the resolution of a single plaintiff's claim could be dispositive of non-class members interests, plaintiff's claims met the requisites of both prongs of class certification requirement rule. Fed.R.Civ.P. 23(b)(1)(A); 23(b)(1)(B).

**3. Civil Procedure - Class
Actions - Certification**

Where plaintiffs' class action suit alleges that airline has acted to the detriment of all proposed class members and the complaint asks for declaratory and injunctive relief against the airline, plaintiffs' claims met requirements of class action certification rule. Fed.R.Civ.P. 23(b)(2).

**4. Civil Procedure - Class
Actions - Notice**

Where objection to the content of class action notice based on its failure to instruct class members of the availability of opting-out of the settlement was made by a nonparty to the action, who was also not a member of the proposed class, nonparty did not have standing to object to the settlement, whether objections related to form or substance of the notice.

**5. Civil Procedure - Class
Actions - Notice**

Where rule under which class action was certified did not require that notice to potential class members include language of the availability of the opt-out provision, opt-out language is not required in the notice, and therefore objection to the notice was without merit. Fed.R.Civ.P. 23(b)(1), (2).

**6. Civil Procedure - Class
Actions - Settlement**

The universally applied standard as to whether to approve a class action settlement is whether the settlement is fundamentally fair, adequate, and reasonable and the District Court's determination is an amalgam of delicate balancing, gross approximations, and rough justice. Fed.R.Civ.P. 23(c).

**7. Civil Procedure - Class
Actions - Settlement**

Where, following years of intense negotiations, the parties in a class action suit arrived at a settlement of all claims and causes of action which would result

in compensation to individuals for their alleged injuries and leave airline on its feet ready to operate as a viable concern in Micronesia, the court deemed that the settlement of the class action was fair and in the best interests of all interested parties and the settlement would be approved. Fed.R.Civ.P. 23(c).

DISTRICT COURT FOR THE
NORTHERN MARIANA ISLANDS

1
2
3
4
5 PEOPLE OF MICRONESIA, INC.,)
et al.,)

6 Plaintiffs,)

7 vs.)

8 CONTINENTAL AIR LINES, INC.)
9 et al.,)

10 Defendants.)

CIVIL ACTION NO. 85-0002

DECISION

FILED
Clerk
District Court

JUL 17 1987

11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

For The Northern Mariana Islands

By *Graw*

(Deputy Clerk)

Plaintiffs filed this Class Action suit in January, 1985, alleging that Defendants had violated the Securities Exchange Act, the Foreign Corrupt Practices Act, and the Racketeer Influenced and Corrupt Organizations Act in their attempt to gain control of Air Micronesia, Inc. (Air Mike). Plaintiffs claimed to represent all present Air Mike and United Micronesia Development Association, Inc. (UMDA) shareholders and past shareholders of UMDA who sold shares to Defendants during specified periods. Though the original pleadings were couched in terms of a Rule 23(b)(3) class action Plaintiffs later supplemented their complaint with 23(b)(1) and 23(b)(2) language. The parties have arrived at a tentative settlement agreement disposing of all claims in this and numerous other actions here and elsewhere and now seek certification of the class and

1 approval of the settlement. For the reasons set forth below, the
2 Court finds that the class should be certified and that the
3 settlement is fair and it is hereby approved.

4
5 FACTS

6 In November, 1966, UMDA, Aloha Airlines, Inc. (Aloha),
7 and Continental Airlines, Inc. (Continental) entered into a
8 pre-incorporation agreement to form Air Mike for the purpose of
9 providing commercial air service in the Trust Territory. The
10 formation of Air Mike followed, in 1967, with great hopes for a
11 Micronesian owned and operated airline. Civil Aeronautics Board
12 (CAB) and Federal Aviation Administration (FAA) permits and
13 certificates were obtained by Continental and Air Mike and they
14 jointly began providing commercial airline service in Micronesia.

15 Air Mike alleges it never received any profits from the
16 Micronesian operations. Continental asserts that there never
17 were any profits and in fact the business has lost money. In
18 1973, the parties entered into a profit sharing agreement aimed
19 at alleviating the financial problems that had besieged Air Mike.
20 Under this agreement, Continental was to pay Air Mike fifty
21 percent of the net income before taxes derived from Trust
22 Territory operations. This agreement also failed in its proposed
23 objective and tensions between the parties became strained.
24 Rather than succumb to Air Mike's complaints Continental, in
25 Chapter 11 actions before the Houston Bankruptcy Court, chose to
26 stifle the complaints by acquiring Air Mike via a hostile

1 takeover of UMDA, Air Mike's controlling shareholder.
2 Continental attempted to use the Houston Bankruptcy proceeding as
3 a sword to eradicate resistance to its unstated objective rather
4 than as the shield as bankruptcy was intended to be. Without
5 this lawsuit, Continental may have achieved that result.

6 POM filed CV 85-0002 in this Court seeking to prevent
7 Continental from taking over UMDA and, ultimately, Air Mike.
8 After more than two years of intense litigation, the suit has
9 progressed from the complaint stage through several defaults,
0 where it now rests. Before the Court are Plaintiffs' motion to
1 certify the class as well as Plaintiffs' motion to approve the
2 settlement as being fair to all class members.

3 The settlement provides among other things that Air
4 Mike shareholders Aloha and UMDA will receive a total of
5 \$1,000,000 per year for 25 years (26 total payments). Also
6 included in the settlement is a provision for Air Mike to receive
7 an initial \$100,000 payment and one percent of annual joint
8 venture gross revenues exceeding \$100,000,000. The agreement
9 further sets out that Air Mike will be able to independently
0 apply for CAB permits and it will also retain ownership of its
1 727-100 jet liner after the lease to Continental expires in 1989.

22 ANALYSIS

23 Class Certification.

24 Rule 23(a) provides that

25 One or more members of a class may sue
26

1 or be sued as representative parties on
2 behalf of all only if

3 (1) the class is so numerous that
4 joinder of all members is impracticable,

5 (2) there are questions of law or
6 fact common to the class,

7 (3) the claims or defenses of the
8 representative parties are typical of
9 the claims or defenses of the class, and

10 (4) the representative parties will
11 fairly and adequately protect the
12 interests of the class.

13 [1] The parties estimate that there are approximately 1000
14 similarly situated individual shareholders and former
15 shareholders throughout Micronesia and the United States.
16 Clearly, this figure represents a sufficient number to invoke
17 subpart (1) of Rule 23(a). The suit seeks to enjoin Continental
18 from gaining control of Air Mike through its efforts to acquire
19 UMDA stock via a scheme which allegedly included violations of
20 federal law. These common questions of law and fact satisfy
21 23(a)(2). Since all parties are similarly situated, the
22 Plaintiffs' claims are typical of the class, satisfying 23(a)(3).
23 Finally, this Court now rules that Plaintiffs and their attorneys
24 have and will fairly and adequately protect the interests of the
25 class members and, therefore, 23(a)(4) is satisfied.

Initially, this suit was phrased in terms of a 23(b)(3)
action, however, Plaintiffs have supplemented their complaint to
incorporate the language of Rule 23(b)(1) and (2). Rule 23(b)(1)
class actions are those in which:

1 (1) the prosecution of separate actions by
2 or against individual members of the
3 class would create a risk of

4 (A) inconsistent or varying adjudica-
5 tions with respect to individual members
6 of the class which would establish
7 incompatible standards of conduct for
8 the party opposing the class, or

9 (B) adjudications with respect to
10 individual members of the class which
11 would as a practical matter be
12 dispositive of the interests of the
13 other members not parties to the
14 adjudications or substantially impair or
15 impede their ability to protect their
16 interests.

17 [2] The Court can conceive of situations in which
18 inconsistent adjudications could result, particularly in light of
19 the fact that aspects of this dispute are before several courts
20 in the United States as well as in the Federated States of
21 Micronesia. Conversely, the resolution of a single Plaintiff's
22 claim could be dispositive of non-class members interests.
23 Plaintiff's claims, therefore, meet the requisites of both
24 23(b)(1)(A) and 23(b)(1)(B) and will be certified under both.

25 Plaintiffs also have moved to certify the Class under
26 Rule 23(b)(2). Rule 23(b)(2) class actions are limited to those
situations in which:

(2) the party opposing the Class has acted
or refused to act on grounds generally
applicable to the Class, thereby making
appropriate final injunctive relief or
corresponding declaratory relief with
respect to the Class as a whole.

[3] The facts of this case indicate that certification
under Rule 23(b)(2) is also appropriate in that Plaintiffs' suit

1 alleges that Continental has acted to the detriment of all
2 proposed class members and the complaint asks for declaratory and
3 injunctive relief against Continental.

4
5 Notice to Class Members.

6 Rule 23(e) mandates that notice of a proposed
7 settlement in a class action shall be given to all members of the
8 class in such manner the court directs.

9 The parties have published the complete draft of the
10 settlement agreement for seven consecutive days in the Pacific
11 Daily News, a newspaper of general circulation throughout
12 Micronesia. The settlement was published for two consecutive
13 weeks in both the Marianas Variety, a Saipan weekly newspaper,
14 and the weekly Marshall Islands newspaper, the Marshall Islands
15 Journal. The notice of the settlement was broadcast in English
16 and the major local language three times in a one week period
17 over local radio stations on Saipan, Northern Mariana Islands;
18 Majuro, Marshall Islands; Kolonia, Pohnpei; Moen, Truk; Colonia,
19 Yap; and Koror, Palau. The notice was also posted in public
20 places on the islands set out above and was mailed to the
21 shareholders at each shareholder's address as listed in the
22 corporate records of the applicable corporation. The method of
23 dissemination was appropriate in that it utilized every available
24 means to inform every interested party of the pending settlement
25 and disposition of this action.

The content of the notice was sufficient to apprise the

1 interested parties of the settlement in that it contained the
2 entire settlement agreement in English and the parties' native
3 language. The notice defined the proposed Class and informed
4 Class members that they could object to the settlement through
5 written or oral communication with the Court and/or one of the
6 attorneys involved.

7 [4] Aloha has objected to the content of the notice in that
8 it does not instruct class members of the availability of
9 opting-out of the settlement as per Rule 23(b)(3). The Court
10 notes at the outset that Aloha is not a party to CV 85-0002 nor
11 is it a member of the proposed class and therefore, it does not
12 have standing to object to the settlement, whether the objections
13 relate to form or substance. The Court, however, will address
14 Aloha's concerns in an effort to insure that no area is
15 overlooked in the determination of the fairness question.

16 [5] Rule 23(b)(3) class actions permit potential class
17 members to opt-out of the proposed class and avoid being bound by
18 a settlement if they choose to. The rule requires that notice to
19 potential class members include language of the availability of
20 the opt out provision. Though POM's original complaint contained
21 23(b)(3) language, it has supplemented its complaint with
22 23(b)(1) and (2) language and now seeks certification under these
23 two provisions. Rule 23(b)(1) and 23(b)(2) class actions do not
24 permit class members to opt-out and consequently opt-out language
25 is not required in the notice. For this reason, Aloha's
26 objection to the notice is without merit.

1 This Court has preliminarily approved the content of
2 the notice and the proposed method of dissemination and it now
3 reaffirms its position as to both.

4
5 The Fairness of the Settlement.

6 **[6]** Rule 23(c) requires court approval of class action
7 settlements, however, it is silent respecting the standard by
8 which a proposed settlement is to be evaluated. "[T]he
9 universally applied standard is whether the settlement is
10 fundamentally fair, adequate, and reasonable." Officers for
11 Justice v. Civil Service Commission, 688 F.2d 615, 625 (9th Cir.
12 1982), cert. denied, 103 S.Ct. 1219 (1983). The District Court's
13 determination is an "amalgam of delicate balancing, gross
14 approximations, and rough justice." Id.

15 The documentary evidence introduced in these
16 proceedings and the representations of counsel have led this
17 Court to believe that since before the drafting of the
18 pre-incorporation agreement there has been a plan of a
19 Micronesian owned and operated commercial airline service in
20 Micronesia. Thus the birth of Air Mike and with it the
21 expectation of the fruition of that plan. Until now that plan
22 has not been realized and in fact Air Mike has become a paper
23 entity; form without substance. The proposed settlement
24 agreement promises to change that and convert Air Mike into a
25 full-fledged viable concern.

26 The settlement provides that all injured Air Mike

1 shareholders will be rewarded for their stubborn commitment to
2 the cause. The benefits include money to the shareholder
3 corporations and air passes to individual shareholders of UMDA.
4 The shareholders will obtain an indirect benefit of increased
5 percentage ownership of Air Mike since Continental has agreed to
6 return its Air Mike stock as treasury shares. The annual
7 payments to UMDA and Aloha will provide an appreciable rate of
8 return on the initial investment of each corporation.

9 Air Mike for the first time in its corporate life has
10 the opportunity to sustain itself with the initial receipt of
11 \$100,000 from Continental and subsequent payments of one percent
12 of the gross revenues from Micronesian operations in excess of
13 \$100,000,000. Further, Air Mike will have the opportunity to
14 spread its own wings in certain markets not presently served by
15 the joint venture. Aloha argues that the settlement is not fair
16 to Air Mike because as it alleges the benefits flow directly to
17 UMDA and Aloha. The Court reiterates its earlier position that
18 Aloha does not have standing to object to the settlement but in
19 the interests of justice it will address Aloha's concerns.
20 Though the yearly installment payments will go directly to Aloha
21 and UMDA, Air Mike will obtain other significant benefits from
22 the settlement including those set out in the paragraph above.
23 Additionally, it was Aloha that insisted throughout the
24 settlement negotiations that it receive direct payments from
25 Continental rather than indirectly through Air Mike. And
26 finally, the parties have espoused that it was Air Mike's


1 shareholders Aloha and UMDA who were injured as a result of
2 Continental's alleged misdeeds and it is they who should be
3 compensated, not Air Mike.

4 Finally, this Court has lived with this case since
5 January, 1985. The parties and the pleadings are all too
6 familiar to the Court and the respective parties as well.
7 Through its invitation by the parties to serve as the settlement
8 mediator, the Court has become knowledgeable about the principal
9 players and problems in this corporate struggle and it is the
10 observation of the Court that this settlement is the result of a
11 truly adversarial dispute resolution process. The relationships
12 are strained to the breaking point and the Court believes that
13 neither party will bend an inch. The disintegration of the
14 settlement agreement at this point would surely result in
15 protracted, lengthy, and expensive litigation that would
16 ultimately end in neither side being pleased with the final
17 outcome. It is evident from the facts as presented to the Court
18 that delaying the final disposition of this case would force
19 several of the key corporations into bankruptcy, which would only
20 prolong and further complicate matters.

21 [7] Following years of intense negotiations the parties
22 have arrived at a settlement of all claims and causes of action
23 which will result in compensation to individuals for their
24 alleged injuries and leave Air Mike on its feet ready to operate
25 as a viable concern in Micronesia. The Court deems that the
settlement is fair and in the best interests of all interested

1 parties and for this reason the settlement shall be and is hereby
2 approved.

3
4 DATED this 17th day of July, 1987.

5
6 
7

8 Judge Alfred Laureta
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26