

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

_____)	
United Pilots for Justice, Inc., et al.,)	
)	
Plaintiffs,)	10-CV-2324
)	
v.)	Judge Boasberg
)	
United Airlines Corporation, et al.,)	ORAL ARGUMENT
)	REQUESTED
Defendants.)	
_____)	

**REPLY IN SUPPORT OF DEFENDANTS' MOTION TO TRANSFER VENUE
TO THE U.S. DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS**

Craig S. Primis, P.C.
KIRKLAND & ELLIS LLP
655 15th Street N.W.
Washington, DC 20005
(202) 879-5921 (telephone)
(202) 879-5200

Mark R. Filip
Michael B. Slade (admitted *pro hac vice*)
KIRKLAND & ELLIS LLP
300 N. LaSalle
Chicago, Illinois 60654
(312) 862-2000 (telephone)
(312) 862-2200 (facsimile)

Counsel for Defendants

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INTRODUCTION

Plaintiffs ignore reality by suggesting that this is merely a straightforward ERISA case unrelated to the half-decade of litigation over the defined benefit pension plan covering United pilots (the “Pilot Plan”), the consideration the PBGC would receive from United due to Pilot Plan termination (the “PBGC Settlement Agreement”), and the termination of the Pilot Plan, confirmed by an order (the “Termination Order”) entered by the United States District Court for the Northern District of Illinois (the “NDIL”). That is clearly not the case. But even Plaintiffs concede that they cannot escape the past entirely—they admit that because their claims involve events that took place during United’s bankruptcy and relate to the NDIL’s past rulings, the NDIL “may be familiar with the background of this case.” (Pls’ Opp. 18.) To counter this problem, Plaintiffs claim (incorrectly) that they aren’t trying to contravene precedent; instead they merely “ask this Court to interpret the [NDIL and Bankruptcy Court’s] earlier rulings.” (Pls’ Opp. 2.)

That concession should end the matter: why should this Court invest the massive amount of time and resources into this case that Plaintiffs suggest is necessary, when the NDIL has already done so?¹ But there is more. Nowhere in Plaintiffs’ brief do they explain why they went out of their way to dodge the court

¹ The sheer volume of published precedent in the NDIL related to the termination of the Pilot Plan and the consideration PBGC and others received as a result of it makes one question the logic of this case proceeding anywhere else. *See, e.g., PBGC v. United Air Lines, Inc.*, 436 F. Supp. 2d 909 (N.D. Ill. 2006); *In re UAL Corp.*, 428 F.3d 677, 680 (7th Cir. 2005); Memorandum in Support of Motion to Transfer, Exhibit A (Order Approving PBGC Settlement), *aff’d Ass’n of Flight Attendants v. United Air Lines, Inc.*, 333 B.R. 436 (N.D. Ill. 2005), *aff’d* 428 F.3d 677 (7th Cir. 2005); Memorandum in Support of Motion to Transfer, Exhibit B (Order Confirming Plan of Reorganization), *aff’d In re UAL Corp.* 468 F.3d 456 (7th Cir. 2006); *United Retired Pilots Benefit Protection Ass’n v. United Airlines, Inc. (In re UAL Corp.)*, 443 F.3d 565, 572 (7th Cir. 2006).

that supervised *both* the bankruptcy proceeding in which United and the PBGC negotiated and entered into a court-approved settlement defining and limiting what PBGC would receive for the Pilot Plan's termination, *and* the PBGC's lawsuit confirming the termination of the Pilot Plan. United is a large company and under ERISA's nationwide venue provision, this case could have arguably been filed many places.² There is no real reason that the case was filed here—other than Plaintiffs' desire to forum-shop and avoid the courts that rejected many of these same Plaintiffs' arguments time and time again during United's bankruptcy case.

As described in Defendants' briefs in support of their motion to dismiss, this case is baseless—there is no legal foundation for it—and should be dismissed by whatever court hears it. Apart from being factually absurd, the case is stale, barred by multiple provisions of bankruptcy law, and it simply does not make sense under the ERISA provisions plaintiffs purport to invoke. But if this Court has any hesitation about dismissing this case, it should transfer to the NDIL, which has already decided substantially related matters and has made a significant time investment into the PBGC Settlement and the termination of the Pilot Plan. The interests of justice, along with the private interest factors considered under 28 U.S.C. §§ 1404 § 1412 strongly favor a transfer to the NDIL, no matter how Plaintiffs choose to categorize their claims. Plaintiffs cannot dodge the “water under the bridge” that bars their claims merely by filing them in a different court.

² United is not disputing that venue would be proper here; this is not a motion pursuant to Federal Rule 12(b)(3). This is a motion to transfer venue because while the case could technically proceed here, it makes little sense for it to proceed anywhere other than the NDIL.

ARGUMENT

Plaintiffs do not dispute the criteria the Court should employ to decide a transfer motion: the Court should weight the public and private interest factors and make a practical decision about where this case should be litigated. A realistic assessment of the applicable factors leaves no doubt that transfer is appropriate.

1. **The Public Interest Factors and Interests of Justice Strongly Support Transfer.**

Plaintiffs claim that this case should not be transferred to the NDIL under the public interest factors and the interests of justice for a litany of unconvincing reasons. *First*, Plaintiffs assert that the NDIL is not the appropriate place to decide if there are any preclusive effects of its previous decisions, citing precedent of what Plaintiffs call United's "home circuit." Pl. Opp. at 8 (citing *Teamsters Local 282 Pension Trust Fund v. Angelos*, 762 F.2d 522 (7th Cir. 1985)). That argument is fundamentally flawed for a host of reasons. Most obviously, *Angelos* does not stand for the position that a court may not decide the preclusive effects of its previous judgments where a second case is filed that addresses overlapping subject matters with those judgments. *Angelos* merely holds that the rendering court may not decide the preclusive effects of a judgment *at the time of issuing that judgment*. *Id.* at 525-26; *see also Midway Motor Lodge of Elk Grover v. Innkeepers' Telemanagement & Equip. Corp.*, 54 F.3d 406, 409 (7th Cir. 1995) (same); *Brown v. R.J. Reynolds Tobacco Co.*, 576 F. Supp. 2d 1328, 1339 (M.D. Fla. 2008) (same).

The law follows logic here. It is obvious that a court, in ruling on a second case, can decide the preclusive effect of a previous decision rendered by that court.

There is no reason to prevent a court from deciding the preclusive effects of its prior decisions, and such a rule would make no sense. Indeed, the court that rendered the first decision is often—and certainly is in this case—in the best position to determine whether it bars a particular subsequent case. *See, e.g., In re Chicago, Rock Island & Pac. R.R. Co.*, 865 F.2d 807, 810 (7th Cir. 1988) (“The district court is in the best position to interpret its own orders.”). Indeed, on numerous occasions—including several in this very court—Section 1404 transfer motions have been granted precisely to effectuate this well-settled principle: that the court that rendered a decision is in the best position to determine whether it precludes a subsequent lawsuit. *See, e.g., Weinberger v. Tucker*, 391 F. Supp. 2d 241, 243 (D.D.C. 2005) (citing cases) (“the Court now concludes that the interests of justice would be served by a transfer of venue to the Eastern District of Virginia because that court is best suited to determine the preclusive effect of its own judgment.”); *Reiffin v. Microsoft Corp.*, 104 F. Supp. 2d 48, 53 n. 11 (D.D.C. 2000) (transfer to court who rendered the first decision appropriate because the transferee court “knows best which points [plaintiff] raised, or was given the opportunity to raise” in the prior case).

Second, Plaintiffs attempt to avoid transfer by stating that “[w]hile the U.S. District Court for the Northern District of Illinois may be familiar with the background of this case, familiarity with legal issues is not a strong factor in a § 1404(a) analysis.” Pl. Opp. at 18 (citing *In re Principal U.S. Property Acc’t Litig.*, No. 09-9889, 2010 WL 1645042 at *6 (S.D.N.Y. Apr. 22, 2010)). But neither

Principal nor the principle (no pun intended) for which it stands are germane here. *Principal* merely noted that, because “[a]ll federal judges are presumed equally familiar with most federal law,” a particular court’s familiarity with general ERISA law would not be a major factor in determining whether to transfer the action. *Id.*³

Defendants are not claiming that the NDIL is an “expert” court (more or less than any other court) in ERISA law or bankruptcy law or any other area of the law. Rather, the reality here is that the NDIL (Judge Lefkowitz in the District Court, Judge Wedoff in the Bankruptcy Court, and many judges on the Seventh Circuit) had addressed a litany of the specific factual issues that are issues in this case in a series of cases spanning a half-decade. *See supra* n. 1 (citing some but not all of the lengthy opinions written by the NDIL and Seventh Circuit on this particular topic). The NDIL presided over the Pilot Plan termination litigation; the NDIL determined the fate of the PBGC Settlement Agreement; the NDIL confirmed United’s Plan of Reorganization. *See* Mem. in Supp. of Mot. to Transfer, Exhibits A, B, and C. The NDIL has an intimate factual knowledge of the history underlying this case that it would take this Court an extensive amount of time to replicate. As many cases have made clear, transfer to the NDIL is wholly appropriate: that court is already familiar with the substance of these claims in the context of the litigation surrounding United’s bankruptcy and the reasons for the termination of the Pilot Plan. *See, e.g., Weinberger*, 391 F. Supp. 2d at 243; *Reiffin*, 104 F. Supp. 2d at 53;

³ In fact, the *Principal* court ultimately transferred the action to the Southern District of Iowa finding that “the fact that the convenience of the parties and witnesses . . . and the locus of operative facts strongly favor transfer leads me to conclude that these cases should be transferred” *Principal*, 2010 WL 1645042 at *6.

Sapp v. FirstFitness Int'l, Inc., No. 5:09-CV-048, 2009 WL 2997624, *4 (M.D. Ga. Sept. 16, 2009).

Third, and finally, Plaintiffs' argument that there should be no "home court" presumption in favor of the NDIL because the bankruptcy court somehow lacks subject matter jurisdiction (Pls. Opp. 10) is wrong; it relies on inapposite precedent. Plaintiffs are correct that the NDIL held PBGC's complaint seeking termination of the Pilot Plan to be a "non-core" matter. *Air Line Pilots Ass'n Int'l v. PBGC (In re United Air Lines, Inc.)*, 337 B.R. 904, 910 (N.D. Ill. 2006). But this case—in which United is asking the Bankruptcy Court to enforce the terms of the PBGC Settlement Order and the Confirmation Order—clearly is "core." Both such orders explicitly reserved jurisdiction in the Bankruptcy Court to resolve issues relating to their scope. See Mem. in Supp. of Mot. to Transfer, Ex. A ¶ 8, Ex. B ¶ 5. And it is well-settled that a Bankruptcy Court has "core" jurisdiction to interpret and enforce a Plan of Reorganization (and any other order) that it confirmed and entered.⁴ In any event, transfer here would go directly to the U.S. District Court for the Northern District of Illinois. There is no doubt that the District Court and its units collectively (including the Bankruptcy Court) have jurisdiction over this dispute, and Plaintiffs do not argue the contrary.

⁴ See, e.g., *In re Conseco, Inc.*, 330 B.R. 673, 683 (Bankr. N.D. Ill. 2005) ("when the question involves a central bankruptcy right like the discharge, the [bankruptcy] court has core jurisdiction"); *Hawaiian Airlines, Inc. v. Mesa Air Group, Inc.*, 355 B.R. 214, 218 (D. Hawaii 2006) ("The law is clear that '[a] bankruptcy court retains post-confirmation jurisdiction to interpret and enforce its own orders, particularly when disputes arise over a bankruptcy plan of reorganization.'") (citing cases); *In re Envirodyne Indus., Inc.*, 206 B.R. 468, 471 (Bankr. N.D. Ill. 1997), (question of whether claim was barred by the discharge injunction is core); *In re CD Realty Partners*, 205 B.R. 651, 655 (Bankr. D. Mass. 1997) (proceeding "to enforce the Court's confirmation order . . . is a core proceeding").

In sum, Plaintiffs offer no serious rebuttal to the compelling rationale for transfer offered by Defendants. The interests of justice, all of the public interest factors, and good old common sense weigh heavily in favor of transfer to the NDIL.

2. The Private Interest Factors Weigh Heavily In Favor Of Transfer.

Plaintiffs argue that the private interest factors do not support a transfer to the NDIL because their forum choice should be given deference, because United allegedly filed false papers with the PBGC in this District, and because the PBGC currently administers the Pilot Plan in this District. These arguments lack merit.

First, Plaintiffs' choice of forum deserves no deference, even in an ERISA context, since it is clear that Plaintiffs are forum shopping to avoid the courts that rejected their arguments the first time around. *See, e.g., Bryant v. ITT Corp.*, 48 F. Supp. 2d 829, 833 (N.D. Ill. 1999) (transferring venue in an ERISA action where plaintiff's chosen forum was not the plaintiff's home district and was "not the situs of the majority of the material events"). And under well-settled case law, whatever deference typically attaches to Plaintiffs' forum choice simply does not exist here for a practical reason: "substantially less deference is granted to a Plaintiff's choice of forum if it is not the Plaintiff's home forum." *Kotan v. Pizza Outlet, Inc.*, 400 F. Supp. 2d 44, 59 (D.D.C. 2005).

Second, Plaintiffs suggest that there is a connection between this case and the District of Columbia because United purportedly filed misleading disclosure statements with PBGC in this District. (Pl. Opp. 15). But the primary case relied on by Plaintiffs, *United States ex rel. Westrick v. Second Chance Body Armor, Inc.*, No. 04-280, 2011 WL 1048183 (D.D.C. March 24, 2011), supports Defendants'

motion to transfer.⁵ The Second Chance court declined to transfer venue to the Western District of Michigan because, among other reasons, “neither [of] the parties allege that most of the relevant conduct occurred in the Western District of Michigan.” *Id.*, at *3. The Second Chance court also recognized the importance familiarity with a case has for venue purposes, declining to transfer venue because the proposed transferee court “will likely require a substantial amount of time to familiarize with the case” and because litigation of related claims in the same forum is strongly favored to conserve judicial resources. *Id.* at *2. Here, of course, the reverse is true: while this court would have to devote massive sums of time to get up to speed on the history and facts of this case, the NDIL already knows it, having spent half a decade addressing the Pilot Plan and its termination.

In any event, essentially all of the relevant conduct alleged in Plaintiffs’ complaint occurred in the NDIL as part of United’s bankruptcy case. See, e.g., Second Amended Complaint (“2AC”) ¶¶ 5, 39-40, 48. And Plaintiffs’ suggestion that United filed “misleading” documents in the District of Columbia is not even remotely true—as the documents themselves demonstrate. Indeed, the allegedly “misleading” filing occurred in the United States Bankruptcy Court for the Northern District of Illinois, as the docket entry on the top of the document should have made clear for Plaintiffs. See 2AC, Exhibit A. Plaintiffs’ complaint suggests no connection between the alleged misconduct and the District of Columbia at all.

⁵ Plaintiffs also cite *U.S. v. Stephenson*, 895 F.2d 867 (2d cir. 1990) and *U.S. v. Natelli*, 527 F.2d 311 (2d Cir. 1975), neither of which are relevant. Both cases involved arguments that venue was improper for criminal convictions and, in both, the court found that venue was proper in the place the crime was committed. *Stephenson*, 895 F.2d at 874-875; *Natelli*, 527 F.2d at 326.

Finally, Plaintiffs' argue that the motion to transfer should be denied because the Pilot Plan is currently administered in this District. (Pls. Opp. 2, 6.) This assertion overlooks the key facts here. United has had no involvement with the Plan since May 2005, when the NDIL approved the PBGC Settlement Agreement; *all* of the relevant conduct in Plaintiffs' complaint occurred prior to the PBGC Settlement, during a time period when the Pilot Plan was administered in the NDIL. Nothing about the PBGC's current administration of the Pilot Plan in this District is relevant at all to Plaintiffs' allegations or their requests for relief. Rather, the NDIL—a forum that Plaintiffs are familiar with (having litigated there for more than a half a decade on matters related to the Pilot Plan)—is the place where the facts of the case took place and where this action should be litigated.⁶

CONCLUSION

For the reasons described in detail in Defendants' Memorandum and Reply Memorandum in Support of their Motion to Dismiss, Defendants respectfully request that the Court dismiss this case, with prejudice. However, in the alternative, if the Court has any questions about the connections between this case and the decade of constant litigation in the NDIL that preceded it, Defendants respectfully request that the Court transfer the matter to the NDIL.

⁶ While Plaintiffs assert that this Court is essentially just as busy as the NDIL, the figures Plaintiffs cite tell a different story. (Pls. Opp. 18-19.) According to the Plaintiffs, actions are resolved from filing to disposition approximately 25% faster in the NDIL than in this district, and are resolved from filing to trial approximately 25% faster in the NDIL than in this district. While both courts are busy, the NDIL is in a far better place to resolve this matter as quickly and efficiently as possible.

Washington, DC
Dated: July 29, 2011

Respectfully submitted,

/s/ Craig S. Primis

Craig S. Primis, P.C.
KIRKLAND & ELLIS LLP
655 15th Street N.W.
Washington, DC 20005
(202) 879-5921 (telephone)
(202) 879-5200 (facsimile)

/s/ Michael B. Slade

Mark R. Filip
Michael B. Slade
KIRKLAND & ELLIS LLP
300 North LaSalle
Chicago, Illinois 60654
(312) 862-2000 (telephone)
(312) 862-2200 (facsimile)

Counsel for Defendants

CERTIFICATE OF SERVICE

I certify that the foregoing document and its attachments were served through the Court's electronic filing system and by overnight mail on July 29, 2011, upon:

Daniel E. Cohen
Paul D. Cullen, Sr.
David A. Cohen
The Cullen Law Firm, PLLC
1101 30th Street NW, Suite 300
Washington, DC 20007

Kevin McBride
McBride Law, PC
609 Deep Valley Drive, Suite 200
Rolling Hills Estates, CA 90274

Counsel for Plaintiffs

/s/ Craig Primis