

**UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF PENNSYLVANIA**

In the Matter of	:	In Proceedings For
PENN CENTRAL TRANSPORTATION	:	the Reorganization
COMPANY,	:	of a Railroad
	:	
Debtor	:	No. 70-347
	:	

**EMERGENCY PETITION TO STAY PROCEEDINGS PENDING RESOLUTION OF
THE PETITION OF PENN CENTRAL TRANSPORTATION COMPANY AND
AMERICAN PREMIER UNDERWRITERS, INC.
TO RESCIND LEAVE AND ENFORCE PRIOR ORDERS**

The Penn Central Transportation Company (“PCTC” or the “Debtor”) and American Premier Underwriters, Inc. (“APU” or the “Reorganized Company”) respectfully request an emergency stay of an arbitration that is proceeding in the United States District Court for the Northern District of Ohio. In 1973 and 1975, this Court approved the agreement of the parties to allow certain claims by various railroad workers (the “Claimants”) against PCTC to proceed in the Northern District of Ohio with the express caveat that “no judgment which may hereafter be entered in said civil action shall be enforced except as hereinafter authorized by this Court.” Earlier this week, on November 19, 2007, PCTC and APU filed a Petition to Rescind Leave and Enforce Prior Orders before this Court. Now, actions of the Arbitration Panel and Claimants’ counsel necessitate an emergency order staying the arbitration pending this Court’s resolution of the Petition to Rescind Leave. In support thereof, PCTC and APU aver as follows:

1. On November 19, 2007, PCTC and APU filed a Petition to Rescind Leave and Enforce Prior Orders (the “Petition to Rescind Leave”) in this Court, seeking a rescission of this Court’s leave that allowed Claimants’ claims against PCTC under the Merger Protection Agreement of 1964 (“MPA”) to proceed in arbitration in the United States District Court for the

Northern District of Ohio. PCTC and APU hereby incorporate the Petition to Rescind Leave as if fully set forth herein. A true and correct copy of the Petition is attached as Exhibit "A."

2. Later in the afternoon of November 19, 2007, PCTC filed a Motion to Stay Arbitration before the Arbitration Panel. A true and correct copy of the Motion to Stay is attached as Exhibit "B."

3. On November 20, 2007, PCTC requested that the arbitration panel rule first on the Motion to Stay, in an effort to conserve time and resources pending the resolution of the Petition to Rescind Leave before this Court. Counsel for Claimants responded that "[t]he Pennsylvania Court has no jurisdiction over this panel." A true and correct copy of the e-mail exchange of November 20, 2007 is attached as Exhibit "C."

4. Claimants' position as expressed in Exhibit C is consistent with that which PCTC and APU described in the Petition; Claimants vociferously and constantly insist that this Court has no jurisdiction over Claimants' claims despite their prior agreements, the Orders and approved Plan of this Court, and black-letter bankruptcy law. *See* Exs. A and B to Petition to Rescind Leave.

5. Earlier today, November 21, 2007, the Arbitration Panel (with one dissent) refused to stay the arbitration until this Court could rule on the Petition to Rescind Leave. A true and correct copy of the e-mail notice denying PCTC's Motion to Stay is attached as Exhibit D.

6. Petitioners respectfully submit that this Court must step in and issue an emergency stay of the arbitration proceedings to prevent the inconsistent adjudications that will surely result if the arbitration proceeds before this Court rules on the Petition to Rescind Leave.

7. The matter is properly before this Court since it involves Reorganization issues and the exclusive jurisdiction of this Court concerning such issues.

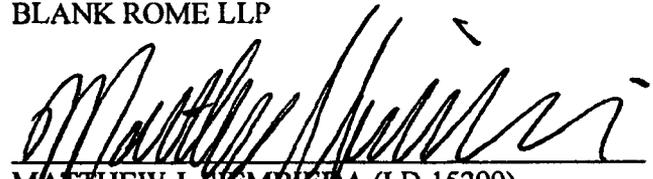
8. The matters herein are within the exclusive purview of this Court and not the United States District Court for the Northern District of Ohio.

9. The long delays in this case were not caused by Petitioners, as Claimants contend.

WHEREFORE, Petitioner respectfully requests that this Court enter an order in the form attached, granting an emergency stay pending resolution of the Petition to Rescind Leave and Enforce Prior Orders and any other and further relief this Court deems necessary.

Respectfully submitted,

BLANK ROME LLP



MATTHEW J. SIEMBIEDA (I.D. 15299)

TIMOTHY D. KATSIFF (I.D. 75490)

One Logan Square

Philadelphia, PA 19103

(215) 569-5609 (phone)

(215) 832-5609 (fax)

and

MICHAEL L. CIOFFI (I.D. 0031098)

201 East Fifth Street, 1700 PNC Center

Cincinnati, OH 45202

(513)362-8701 (phone)

(513)362-8702 (fax)

Attorneys for Petitioners,

PENN CENTRAL TRANSPORTATION COMPANY

and AMERICAN PREMIER UNDERWRITERS, INC.

Dated: November 21, 2007

CERTIFICATE OF SERVICE

I, Leigh Ann Fierro, hereby certify that on November 21, 2007, I caused a true and correct copy of the foregoing Emergency Petition to Stay Proceedings Pending the Resolution of the Petition of Penn Central Transportation Company and American Premier Underwriters, Inc. to Rescind Leave and Enforce Prior Orders to be served upon the following by e-mail and by U.S. mail, postage prepaid:

Carla M. Tricarichi
Tricarichi & Carnes, L.L.C.
620 Rockefeller Building
614 Superior Avenue, N.W.
Cleveland, Ohio 44113-1306
ctricarichi@aol.com

Randy J. Hart
Hahn, Loeser & Parks
3300 BP Tower
200 Public Square
Cleveland, Ohio 44114-2301
rjhart@hahnlaw.com

Mark Griffin
Griffin Law Firm
620 Rockefeller Building
614 Superior Avenue, N.W.
Cleveland, Ohio 44113
Mark.D.Griffin@gmail.com

Bernard S. Goldfarb
55 Public Square, Suite 1500
Cleveland, Ohio 44113


LEIGH ANN FIERRO



NY
100
100
100

Exhibit A

**UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF PENNSYLVANIA**

In the Matter of	:	In Proceedings For
PENN CENTRAL TRANSPORTATION	:	the Reorganization
COMPANY,	:	of a Railroad
	:	
Debtor	:	No. 70-347
	:	

**PETITION OF PENN CENTRAL TRANSPORTATION COMPANY AND
AMERICAN PREMIER UNDERWRITERS, INC.
TO RESCIND LEAVE AND ENFORCE PRIOR ORDERS**

The Penn Central Transportation Company ("PCTC" or the "Debtor") and American Premier Underwriters, Inc. ("APU" or the "Reorganized Company")¹ file this petition (the "Petition") seeking rescission of this Court's leave to allow claims by various railroad workers (the "Claimants") against PCTC under the Merger Protection Agreement of 1964 ("MPA") to proceed in arbitration in the United States District Court for the Northern District of Ohio.² This Petition is necessitated because, after nearly 40 years of litigation and Claimants' own agreement, Claimants now disavow the application of certain critical Orders this Court established to administer the PCTC Reorganization. For example, Claimants refuse to stipulate to the following fundamental principles, which are expressly set forth in this Court's Orders and approved Plan:

- (1) this Court has exclusive jurisdiction to enforce any judgment Claimants may obtain against the Debtor;
- (2) Claimants have asserted claims only against the Debtor for damages under the

¹ The new company that emerged from reorganization, Penn Central Company, changed its name to APU on March 25, 1994.

² These claims are now set for arbitration on December 10, 2007

- MPA and related agreements;
- (3) Claimants have not and may not assert claims against APU, the Reorganized Company that emerged from the PCTC Reorganization;
 - (4) Claimants cannot enforce any judgment Claimants may obtain with respect to the Debtor against APU, the Reorganized Company; and
 - (5) Claimants are not entitled to prejudgment interest on any of their claims.

Claimants refuse to abide by these basic, well-established principles. Instead, they intend to re-litigate all of these issues. Claimants have repeatedly refused to so stipulate because they adamantly and vociferously disagree with these principles and want to obtain decisions and rulings in other Courts that contradict these principles. For example, they have submitted expert reports in the arbitration proceedings to support a claim of more than \$10 million in interest. This Court should grant the Petition to avoid inconsistent adjudications on all of these matters, to remain consistent with the PCTC Reorganization proceedings and to assure that all parties to the Reorganization proceedings are treated as originally contemplated.

I. FACTUAL BACKGROUND

A. The Merger Protection Agreement of 1964 (“MPA”).

1. The Pennsylvania Railroad (“PRR”) and the New York Central Railroad (“NYC”) began exploring a merger of their rail lines in the early 1960s as a means to consolidate their operations in the face of precipitous declining passenger rail ridership.

2. The PRR, the NYC, and the union representing the Brotherhood of Railroad Trainmen (the “Union”) entered into the Merger Protection Agreement in 1964, which provided certain rights to railroad workers who might be adversely affected as a result of the merger.

3. On February 1, 1968, the merger of PRR and NYC created PCTC.

4. In 1969, railroad workers filed three of the four cases at issue against PCTC and

their unions in the United States District Court for the Northern District of Ohio: (1) the Knapik action, Case No. C69-722; (2) the Watjen action, Case No. C69-675; and (3) the Bundy action, Case No. C69-947 (collectively, the "Labor Claims").

5. On June 21, 1970, the Debtor filed its petition for reorganization in this Court.

B. The 38-Year Procedural History of the Labor Claims.

6. In 1971, the District Court for the Northern District of Ohio (Judge Thomas Lambros) granted summary judgment to the union and PCTC on all the Watjen and Bundy claims. The Sixth Circuit affirmed judgment as to the union but reversed as to PCTC, holding that the Claimants had not failed to exhaust their administrative remedies. See Bundy v. Penn Central Co., 455 F.2d 277 (6th Cir. 1972).

7. On March 21, 1973, the Knapik Claimants and the Trustees of the Debtor entered into a Stipulation that was approved by this Court agreeing that the Knapik Claimants could proceed with their claims against the Debtor in the United States District Court for the Northern District of Ohio, provided that "no judgment which may hereafter be entered in said civil action shall be enforced except as hereinafter authorized by this Court" (the "Knapik Stipulation," Doc. No. 5383). A true and correct copy of the Knapik Stipulation is attached as Exhibit "A."

8. In October 1974, while this Reorganization was pending and apparently without prior authorization of this Court, the 16 Sophner claimants filed their case against PCTC and their union in the Northern District of Ohio, Case No. 74-914.

9. On February 21, 1975, the Sophner Claimants and the Trustees of the Debtor entered into a Stipulation that is identical to that which was agreed to by the Knapik Claimants. The Sophner Claimants and the Trustees of the Debtor agreed that the Sophner Claimants could proceed with their claims against the Debtor in the United States District Court for the Northern District of Ohio, provided that "no judgment which may hereafter be entered in said civil action

shall be enforced except as hereinafter authorized by this Court.” The Stipulation was approved by this Court (the “Sophner Stipulation,” Doc. No. 8600). A true and correct copy of the Sophner Stipulation is attached as Exhibit “B.”

10. In 1976, Judge Thomas Lambros conducted a bifurcated trial in Knapik and directed a verdict in favor of the union.

11. In 1979, Judge Lambros dismissed all four actions, referring them to binding arbitration under the Railway Labor Act, 45 U.S.C. § 157. The Court further ordered that the same panel hear each case in order of complexity, beginning with Knapik. No party appealed this order.

12. In 1983, an arbitration decision was issued in Knapik in favor of PCTC, holding that reporting for work was a condition precedent to eligibility for benefits under the MPA. The Claimants appealed this decision.

13. Judge Lambros resumed jurisdiction and, in 1985, vacated the arbitration award based solely upon “the appearance of partiality” of the neutral chairman of the arbitration panel finding him to be “too closely lined with one side.”

14. In 1990, a new arbitration panel was established for Knapik, headed by the neutral arbitrator, Fred Blackwell. The arbitrators rendered a decision in Knapik concluding that none of the 17 claimants was entitled to benefits. The Claimants filed an appeal to the Surface Transportation Board (“STB”), the successor to the Interstate Commerce Commission.

15. In 1998, the STB issued its decision, concluding that the seven Knapik claimants who admitted never reporting to work were not eligible for benefits. The STB affirmed the panel’s decision that “the refusal of these Claimants to accept said available work...constituted a failure to comply with the Section 1(b) provision in the MPA that requires covered Employees to

accept available work in order to qualify for benefits; hence, said refusal of work resulted in the Claimants becoming ineligible for MPA benefits.”

16. However, the STB vacated the arbitrators’ decision with respect to the 10 Knapik employees who had allegedly reported for work. The STB stated that it was vacating the arbitrators’ decision but not affirmatively finding that Claimants were eligible for compensation. The STB further stated that, on remand, the parties may resolve the dispute among themselves or seek additional arbitration.

17. In 1999, the seven claimants who were determined ineligible for MPA benefits filed an appeal to the Sixth Circuit seeking review of the STB’s decision.

18. In 2000, the Sixth Circuit upheld the STB’s decision that the seven Knapik claimants who did not report for work were ineligible for benefits. These claims were, therefore, finally dismissed. The Sixth Circuit’s decision also governs claims by any other Claimants who failed to report for work. See Augustus v. Surface Transp. Board, 2000 WL 1888805, No. 99-3014 (6th Cir. Dec. 22, 2000), attached hereto as Exhibit “C.”

19. In 2004, after doing nothing for several years, Claimants moved to reinstate all four cases.

20. In 2005, Judge Solomon Oliver, Jr. of the Northern District of Ohio³ reinstated the four cases for the limited purpose of ordering the parties to arbitration.

21. Arbitration is set to begin on December 10, 2007.

C. The PCTC Reorganization, Approved Plan and Critical Orders.

22. On June 21, 1970, the Debtor filed its petition for reorganization in this Court under Section 77 of the Bankruptcy Act of 1898, as amended (Bankruptcy No. 70-347).⁴

³ Judge Lambros had since retired.

⁴ After PCTC filed for reorganization in 1970, the United States Congress enacted the Rail Passenger Service Act of

23. Section 77 of the Bankruptcy Act of 1898 provided that: “[a]ny railroad corporation may file a petition stating that the railroad corporation is insolvent or unable to meet its debts as they mature and that it desires to effect a plan of reorganization. . . . If the petition is so approved, the court in which such order approving the petition is entered *shall, during the pendency of the proceedings under this section and for the purposes thereof, have exclusive jurisdiction of the debtor* and its property wherever located. The railroad corporation shall be referred to in the proceedings as a ‘debtor.’” 11 U.S.C. § 205 (repealed) (emphasis added).

24. On August 17, 1978, after notice and hearing, this Court confirmed the Amended Plan of Reorganization of the Debtor, dated March 17, 1978 (the “Plan”).

25. The Plan contemplated payment of the claims at issue in this matter as “Section 211(h)” Claims.⁵ See Plan § 2.1; Plan, Ex. 1, “Estimated employee labor Claims.” Nothing in the language of the approved Plan provides for the recovery of interest on these claims.

26. In fact, claims of this nature are not entitled to interest pursuant to the Bankruptcy Act. Moreover, claims of this nature did not receive interest when liquidated during the PCTC Reorganization proceedings. See e.g. Memorandum and Order No. 2921 and 2922. There, this Court allowed the Trustees of the Debtor to compromise post-petition tax claims, exclusive of

1970, 45 U.S.C. §§ 501-669 (“Rail Passenger Service Act”), which created the National Railroad Passenger Corporation (“Amtrak”) to provide rail passenger services. Pursuant to the Rail Passenger Service Act, PCTC entered into an agreement with Amtrak, effective May 1971, whereby Amtrak assumed responsibility for PCTC’s inter-city passenger services and used PCTC’s physical plants, equipment, and personnel. Thereafter, the Regional Rail Reorganization Act of 1973, 45 U.S.C. §§ 701-794, as amended (“Rail Act”), provided for the transfer from PCTC to the Consolidated Rail Corporation (“Conrail”) of the facilities and equipment required by Conrail and Amtrak and included provisions whereby Amtrak could acquire ownership or leasehold interests in the Northeast Corridor for inter-city passenger service. On April 1, 1976, pursuant to the Final System Plan formulated by the United States Railway Association (“USRA”), § 743(b) of the Rail Act, and Special Orders issued by the Reorganization Court, PCTC transferred most of its trackage, equipment, real estate and personnel, and other records to Conrail. Personnel associated with commercial transportation of goods became employees of Conrail at this time and their personnel records property of Conrail. That same day, Conrail reconveyed title of PCTC’s inter-city passenger services to Amtrak. As a result of the USRA, PCTC ceased and no longer existed as an operated railroad as of April 1, 1976.

⁵ Section 211(h) of the Rail Act authorized the USRA to loan money to Conrail to pay certain of the Debtor’s accounts payable, with Conrail and/or USRA to hold the highest priority for any unpaid balances of § 211(h) advances.

interest and penalties, in light of the United States' highest priority liens and Section 211(h). A true and correct copy of the Memorandum and Order No. 2921 and 2922 is attached as Exhibit "D."

27. On August 17, 1978 this Court entered the Consummation Order and Final Decree (the "Consummation Order").

28. Importantly, the Consummation Order enjoins any suits against the Reorganized Company, APU, for any claims against the Debtor. Section 7.02 states, in pertinent part:

Injunction. All persons. . . wherever situated, located or domiciled are hereby permanently restrained and enjoined from instituting, prosecuting or pursuing, or attempting to institute, prosecute or pursue any suits or proceedings, at law or in equity or otherwise, against the Reorganized Company. . . or their successors or assigns. . . directly or indirectly, on account of or based upon any rights, claim or interest of any kind or nature whatsoever which any person. . . may have in, to or against any of the Debtors. . . and from interfering with attaching, garnishing, levying upon, enforcing liens against or upon, or in any manner whatsoever disturbing any portion of the property, real, personal or mixed, of any kind or character, on or at any time after the consummation date in the possession of the Reorganized Company. . . and from interfering with or taking steps to interfere with the Reorganized Company. . . or the operation of the properties or the conduct of the business of the Reorganized Company. . . by reason of or on account of any obligations incurred by any of the Debtors. . . except the obligations imposed on the Reorganized Company. . . by the Plans and this Order or reserved for resolution or adjudication by this Order.

29. The Consummation Order also reserves specifically the exclusive jurisdiction of this Court over matters relating to the Consummation Order and the Plan.

30. Section 7.04(c) of the Consummation Order provides that this Court has exclusive jurisdiction "[t]o consider and act in the matter of any proof of claim against any of the Debtors or claim for administration expenses against any of the Debtors or Trustees, including, without limitation, an action to deny any such claims, to adjudicate the amount or the validity thereof, to

classify such claims, to provide for the satisfaction of such claims and to approve settlements of any such claims”

31. Section 7.04(g) provides this Court with exclusive jurisdiction to “consider and act on any application for instructions with respect to the distribution of funds...in connection with this Order and the Plans, to construe this Order and the Plans as to matter which may require interpretation or construction and which are not dealt with in this Order and to consider and act upon any matter as to which jurisdiction is reserved by this Order.”

32. Section 7.04(i) states that this Court has jurisdiction to “take such further action and to enter such further orders as may be necessary to . . .put into effect and carry out this Order and the Plans and all other orders relative thereto entered by this Court and to prevent interferences herewith.”

D. Claimants’ Recent Disavowal of the Application of the Orders of this Court.

33. On October 24, 2007, counsel for all parties had a two-hour conference call to discuss the upcoming arbitration. Ninety minutes of that call was devoted to a discussion of the impact and import of the PCTC Reorganization and the Orders of this Court on the arbitration. See e-mails recapitulating the October 24, 2007 discussion and several subsequent discussions, attached as Exhibit “E.”

34. During the course of this conference call, counsel for PCTC was astonished to learn for the first time that Claimants did not agree with several fundamental principles set forth by this Court in the Consummation Order, the Plan, and Claimants’ Stipulation as well as the applicable bankruptcy laws. See Ex. E.

35. In the October 24 conference call, counsel for the Claimants (Carla Tricarichi, Mark Griffin and Randy Hart, all from different law offices in Cleveland, Ohio) vociferously and adamantly maintained that:

- a) This Court did not have exclusive jurisdiction to enter and enforce any judgment against PCTC;
- b) The Claimants could enter and enforce judgments in courts other than this Court;
- c) Despite the fact that they have never named or sued APU, the reorganized company, they could enforce and collect any judgment they obtained from the reorganized company;
- d) Prejudgment interest could be added to any judgment they obtained. Indeed during discovery in the arbitration proceeding, Claimants produced an expert report in support of their claim for more than \$10 million in interest.

36. Counsel for PCTC was astonished to hear these arguments and positions and cited counsel for the Claimants to the prior Stipulations by the Claimants, the prior Orders of the Court and black-letter bankruptcy law, all of which contradicted and undermined Claimants' arguments.

37. Counsel for PCTC went further in order to prevent the necessity of this Petition. In order to alleviate this unexpected disagreement and clarify the governing Orders relating to the arbitration, on November 1, 2007, counsel for PCTC provided Claimants with a set of proposed stipulations. See Ex. E.

38. Counsel for Claimants responded by demanding the legal basis for each stipulation, despite the fact that at least one of the legal bases is Claimants' own stipulation. See Ex. E.

39. On November 8, 2007, counsel for PCTC provided counsel for Claimants with the legal support for each of the seemingly non-controversial stipulations. See Ex. E.

40. As explained on the first page of Exhibit E, counsel for Claimants offered a number of excuses for refusing to stipulate as requested by PCTC. None of those excuses addressed the merits of the stipulation.

II. LEGAL BASIS FOR RELIEF

41. As set forth in Section C above, this Court has exclusive jurisdiction to enforce any judgment Claimants may obtain against the Debtor under Section 77 of the Bankruptcy Act, Section 7.04 of the Consummation Order, and by Claimants' own admission in the Knapik Stipulation and the Sophner Stipulation.

42. Given the current disagreement by Claimants over fundamental principles set forth by this Court in the Reorganization proceedings, this Court should rescind the leave it approved in the Knapik and Sophner Stipulations to allow Claimants to proceed in another jurisdiction and reassert jurisdiction over this matter.

43. If Claimants persist in their unsupported arguments and succeed, there will be inconsistent adjudications that fly in the face of the well-established bankruptcy principles set forth and enforced in this Court. Indeed, Claimants' claims will be placed ahead of all other creditors that were forced to participate in the Reorganization proceedings. In addition, Claimants are attempting to expand alleged liability beyond the original defendant (PCTC) to the Reorganized Company, which company was given a fresh start without any such exposure. All of this and more is inconsistent with the Reorganization Court Proceeding.

WHEREFORE, Petitioner respectfully requests that this Court enter the attached order, rescinding its leave for Claimants to proceed in another jurisdiction, and any other and further relief this Court deems necessary.

Respectfully submitted,

BLANK ROME LLP



MATTHEW J. SIEMIEDA (I.D. 15299)
TIMOTHY D. KATSIFF (I.D. 75490)
One Logan Square
Philadelphia, PA 19103
(215) 569-5609 (phone)
(215) 832-5609 (fax)

and

MICHAEL L. CIOFFI (I.D. 0031098)
201 East Fifth Street, 1700 PNC Center
Cincinnati, OH 45202
(513)362-8701 (phone)
(513)362-8702 (fax)

Attorneys for Petitioners,
PENN CENTRAL TRANSPORTATION COMPANY
and AMERICAN PREMIER UNDERWRITERS, INC.

CERTIFICATE OF SERVICE

I, Leigh Ann Fierro, hereby certify that I caused a true and correct copy of the foregoing
Petition of Penn Central Transportation Company and American Premier Underwriters, Inc. to
Rescind Leave and Enforce Prior Orders to be served upon the following by e-mail and by U.S.
mail, postage prepaid:

Carla M. Tricarichi
Tricarichi & Carnes, L.L.C.
620 Rockefeller Building
614 Superior Avenue, N.W.
Cleveland, Ohio 44113-1306
ctricarichi@aol.com

Randy J. Hart
Hahn, Loeser & Parks
3300 BP Tower
200 Public Square
Cleveland, Ohio 44114-2301
rjhart@hahnlaw.com

Mark Griffin
Griffin Law Firm
620 Rockefeller Building
614 Superior Avenue, N.W.
Cleveland, Ohio 44113
Mark.D.Griffin@gmail.com

Bernard S. Goldfarb
55 Public Square, Suite 1500
Cleveland, Ohio 44113


LEIGH ANN FIERRO

Exhibit B

BEFORE THE ARBITRATION COMMITTEE
 ESTABLISHED UNDER SECTION 1(e) OF THE
 MERGER PROTECTION AGREEMENT OF NOVEMBER 16, 1964

MICHAEL J. KNAPIK, et al., Claimants,	:	Case No. 69-722
v.	:	
PENN CENTRAL, Carrier.	:	
:		
ROBERT WATJEN, et al., Claimants,	:	Case No. 69-675
v.	:	
PENN CENTRAL, Carrier.	:	
:		
DAVID C. BUNDY, et al., Claimants,	:	Case No. 69-947
v.	:	
PENN CENTRAL, Carrier.	:	
:		
G.V. SOPHNER, et al., Claimants,	:	Case No. 74-914
v.	:	
PENN CENTRAL, Carrier.	:	PENN CENTRAL TRANSPORTATION COMPANY'S MOTION TO STAY ARBITRATION

The carrier, Penn Central Transportation Company (“Penn Central”), moves the Panel to stay the arbitration proceedings herein until the Penn Central bankruptcy court rules on whether to reassert its exclusive jurisdiction over these claims. To preclude circuitry and ensure finality, the arbitration should not proceed until such jurisdictional ruling is rendered. In support of this Motion, Penn Central states as follows:

1. These arbitration proceedings involved a single defendant, Penn Central, which was the railroad that filed for bankruptcy reorganization in 1970 as Bankruptcy No. 70-347 in the

United States District Court, Eastern District of Pennsylvania. Pursuant to Section 77 of the Bankruptcy Act of 1898, 11 U.S.C. § 205, the Reorganization Court had exclusive jurisdiction over claims against Penn Central, the debtor, including the claims herein.

2. Recognizing that exclusive jurisdiction, the Claimants filed papers with the Penn Central Reorganization for authority to pursue their claims herein. The Reorganization Court granted them limited leave in 1973 and 1975 to pursue these claims provided that the Claimants proceeded consistent with orders entered in the Reorganization including the Consummation Order and related orders approving the Reorganization Plan as well as the general rules governing bankruptcy law, which establish that (a) the Reorganization Court has exclusive jurisdiction to enforce any judgment Claimants may obtain against Penn Central, (b) Claimants have asserted claims against only Penn Central and have not and may not assert claims against the Reorganized Company that emerged from the Penn Central Reorganization, (c) Claimants cannot enforce any judgment Claimants may obtain with respect to Penn Central against the Reorganized Company, and (d) Claimants are not entitled to prejudgment interest on any of their claims.

3. Under those conditions, these cases proceeded during the ensuing thirty years as previously documented to the Panel. During the October 24, 2007 meet and confer conference call between counsel for the parties regarding discovery and preparations for the arbitration, Penn Central's counsel reminded Claimants' counsel of the conditions established by the Reorganization Court to which the Claimants had stipulated in the Penn Central Reorganization. Counsel for Penn Central was astonished to learn during the conference call that Claimants now refuse to acknowledge any of the foregoing conditions but intend to relitigate them in the arbitration and possibly elsewhere. Despite further email communication requesting that

Claimants stipulate to the conditions for purposes of these arbitration proceedings, Claimants' counsel has failed to do so, offering instead various excuses as the time before the scheduled arbitration date continues to elapse.

4. Claimants' disavowal of the conditions and failure to stipulate that the conditions govern the arbitration proceedings made it necessary for Penn Central (and the Reorganized Company) to file a petition with the bankruptcy court seeking enforcement of its prior orders. Until the Reorganization Court rules upon that petition, any further proceedings herein should be stayed to prevent a waste of time and resources.

Respectfully submitted,

/s/ Michael L. Cioffi
Michael L. Cioffi (0031098)
Thomas H. Stewart (0059246)
Jason D. Groppe (0080639)
BLANK ROME LLP
1700 PNC Center
201 E. Fifth Street
Cincinnati, OH 45202
513.362.8700 phone
513.362.8787 fax

Counsel for the Carrier,
Penn Central Transportation Company

CERTIFICATE OF SERVICE

I hereby certify that an exact copy of the foregoing Motion was sent on November 19, 2007 by email transmission (except for Mr. Goldfarb) to:

Arbitration Panel

Steven H. Steinglass
2374 Tudor Drive
Cleveland Heights, Ohio 44106
steven.steinglass@law.csuohio.com

Dennis R. Lansdowne
1900 East Ninth Street, Suite 2400
Cleveland, Ohio 44114
drl@spanglaw.com

Joseph P. Tomain
University of Cincinnati, College of Law
Clifton and Calhoun Streets
P.O. Box 210040
Cincinnati, Ohio 45221-0040
tomainjp@ucmail.edu

Counsel for Claimants

Carla M. Tricarichi
Tricarichi & Carnes, L.L.C.
620 Rockefeller Building
614 Superior Avenue, N.W.
Cleveland, Ohio 44113-1306
ctricarichi@aol.com

Randy J. Hart
Hahn, Loeser & Parks
3300 BP Tower
200 Public Square
Cleveland, Ohio 44114-2301
rjhart@hahnlaw.com

Mark Griffin
Griffin Law Firm
620 Rockefeller Building
614 Superior Avenue, N.W.
Cleveland, Ohio 44113
Mark.D.Griffin@gmail.com

Bernard S. Goldfarb
55 Public Square, Suite 1500
Cleveland, Ohio 44113

/s/ Michael L. Cioffi
Counsel for the Carrier



1
2
3
4

5



Exhibit C

-----Original Message-----

From: Randy J. Hart [mailto:rjh@hahnlaw.com]
Sent: Tuesday, November 20, 2007 12:17 PM
To: Cioffi, Michael L.; Steven H. Steinglass; Carla M. Tricarichi
Cc: Groppe, Jason; Dennis R. Lansdowne; Tomain, Joseph (tomainjp); mark.d.griffin@gmail.com
Subject: RE: Penn Central Arbitration--November 19th Motion to Stay Arbitration

Claimants disagree with this position. This is another attempt to delay. For the past several weeks the Defendants have filed numerous papers all with the intent of seeking one stay after another. Within the last month alone Defendants have filed 4 requests with the intent to delay this matter (3 motions to delay and 1 motion for recusal). Mr.

Cioffi's latest email is the 5th attempt this month to cause delay.

This panel has consistently refused to delay this matter any further.

Claimants timely filed their response to Defendants Summary Judgment Motion on Saturday, November 17. This panel allowed Mr. Cioffi until today to respond. Not having achieved the delay he had originally sought, Mr. Cioffi now comes in with a new reason for delay. If Mr.

Cioffi were so concerned about wasting time and resources, why did he wait until after Claimants had spent untold hours on a response to his summary judgment motion before raising this issue? Defendants request is aimed at preventing rulings on the critical questions that have been raised. Claimants believe that the schedule should proceed as it has already scheduled.

This panel was put in place by Judge Oliver of the US District Court for the Northern District of Ohio. It is that Court and only that Court to which it must answer. The Pennsylvania Court has no jurisdiction over this panel. Defendants have not sought an injunction to prevent this matter from going forward. Unless and until Judge Oliver were to somehow stay this proceeding, there is no reason for it to be delayed.

-----Original Message-----

From: Cioffi, Michael L. [mailto:Cioffi@BlankRome.com]
Sent: Tuesday, November 20, 2007 11:59 AM
To: Steven H. Steinglass; Carla M. Tricarichi
Cc: Groppe, Jason; Randy J. Hart; Dennis R. Lansdowne; Tomain, Joseph (tomainjp)
Subject: RE: Penn Central Arbitration--November 19th Motion to Stay Arbitration

Dean Steinglass,

As a matter of orderly procedure, I assume that we should not file any more papers directed to the merits or discovery until the Panel confers tomorrow regarding Penn Central's Motion to Modify the Arbitration Schedule and our Motion to Stay Arbitration.

As we state in our Motion to Stay, it would be an enormous waste of the Panel's time and resources, as well as those of the parties, to continue litigating in the arbitration until the Reorganization Court rules.

Michael Cioffi | Partner | Blank Rome LLP
201 East Fifth Street, 1700 PNC Center | Cincinnati, OH 45202
Phone: (513)362-8701 | Fax: (513)362-8702 | Email:
Cioffi@BlankRome.com <<mailto:Cioffi@BlankRome.com>>

-----Original Message-----

From: Steven H. Steinglass [mailto:steven.steinglass@law.csuohio.edu]
Sent: Tuesday, November 20, 2007 11:29 AM
To: Carla M. Tricarichi
Cc: Cioffi, Michael L.; Groppe, Jason; Randy Hart; Dennis R. Lansdowne; Tomain, Joseph (tomainjp)
Subject: Penn Central Arbitration--November 19th Motion to Stay Arbitration

Ms. Tricarichi,

In your response due today on the Second Motion to Modify the Arbitration Schedule, the claimants should also respond to the Motion to Stay Arbitration filed by Penn Central on November 19, 2007.

/s/

Steven H. Steinglass
Neutral Arbitrator

Message of September 15, 2007

Counsel,

The panel has reviewed Penn Central's Second Motion to Modify the Arbitration Schedule and enters the following order.

1. Penn Central will have until Tuesday, November 20, 2007, to respond to the claimants' brief in opposition to summary adjudication.

2. The claimants will have until Tuesday, November 20, 2007, to respond to the motion to modify the schedule.

3. The panel will be meeting on November 21, 2007, to discuss the pending motions.

/s/

/s/

/s/

Steven H. Steinglass Dennis R. Lansdowne Joseph Tomain
Neutral Arbitrator Party-Appointed Arbitrator Party-Appointed

Arbitrator

Steven H. Steinglass
2374 Tudor Drive
Cleveland Heights OH 44106
216-321-0718
216-687-2283 (law school office)
216-469-6619 (cell)
steven.steinglass@law.csuohio.edu



D



Exhibit D

Cioffi, Michael L.

From: Steven H. Steinglass [steven.steinglass@law.csuohio.edu]
Sent: Wednesday, November 21, 2007 1:05 PM
To: Cioffi, Michael L.; Carla M. Tricarichi; Groppe, Jason
Cc: Randy Hart; Tomain, Joseph (tomainjp); Dennis R. Lansdowne; mark.d.griffin@gmail.com
Subject: Penn Central Arbitration--Pending Motions

Counsel,

The arbitrators met today and are taking the following actions on the pending motions.

1. Penn Central's November 19th Motion to Stay Arbitration. The motion is denied. Arbitrator Tomain dissents.
2. Penn Central's Second Motion to Modify the Arbitration Schedule. With the exception of the modifications noted below, the motion is denied. Arbitrator Tomain dissents from the denial of this motion.
3. Claimants' Motion to Compel. The motion is denied.
4. Penn Central's Motion for Summary Adjudication. The motion is denied. Arbitrator Tomain dissents. The panel, however, will identify a number of legal and other issues that counsel should address in their pre-trial briefs. This will be provided no later than the morning of November 26, 2007.

Modifications of Schedule

5. The date for submission of pre-trial briefs is moved from November 28, 2007, to November 30, 2007.
6. The date for the final pretrial (telephone) conference is moved from December 3, 2007, to December 5, 2007, at a time to be determined.

/s/ Steven H. Steinglass

Steven H. Steinglass
Neutral Arbitrator

Steven H. Steinglass
2374 Tudor Drive
Cleveland Heights OH 44106
216-321-0718
216-687-2283 (law school office)
216-469-6619 (cell)
steven.steinglass@law.csuohio.edu