

EXHIBIT 2

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UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

No. 1:17-cv-11297-WGY

MAX BAZERMAN, individually and on behalf of all others
similarly situated,
Plaintiffs

vs.

AMERICAN AIRLINES, INC.,
Defendant

For Hearing Before:
Judge William G. Young

Fairness Hearing

United States District Court
District of Massachusetts (Boston)
One Courthouse Way
Boston, Massachusetts 02210
Thursday, April 4, 2019

REPORTER: RICHARD H. ROMANOW, RPR
Official Court Reporter
United States District Court
One Courthouse Way, Room 5510, Boston, MA 02210
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A P P E A R A N C E S

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1 P R O C E E D I N G S

2 (Begins, 2:00 p.m.)

3 THE CLERK: Now hearing Civil Matter 17-11297,
4 Max Bazerman versus American Airlines.

5 THE COURT: Good afternoon. Would counsel
6 identify themselves.

7 MS. DARDARIAN: Good afternoon, your Honor,
8 Linda Dardarian for the plaintiffs and with me is my
9 associate, Raymond Wendell.

10 MS. WILLIAMS: Good afternoon, your Honor,
11 Gwyn Williams for the defendant, American Airlines, and
12 with me is my colleague, Nicholas Lessin.

13 THE COURT: Good afternoon.

14 Well, this is a duly-called "fairness hearing" so
15 let me ask, as we are in open court at the time and
16 place decided, is there anyone here who wishes to raise
17 any objection to the proposed settlement?

18 (Silence.)

19 THE COURT: I hear no such objection.

20 I have -- and I believe the answers will be clear,
21 I've read these materials, but I want to hear it from
22 you.

23 Turning to the plaintiffs. You've reviewed the
24 releases that, um, are part of this settlement, which
25 will be imposed upon the class -- and nothing wrong with

1 that, that's just part of the class system, but as
2 you're officers of the court, are you satisfied that
3 these releases release the defendant, American Airlines,
4 from the matters resolved in this lawsuit, but don't
5 slide over into some general release for all activities,
6 do you represent that to the Court?

7 MR. WENDELL: Um, yes, your Honor. The
8 release only applies to individuals who were directed
9 the class notice and to our class members, according to
10 the class definition, in settlement, or to anyone who
11 filed a claim despite not being directed notice, but
12 also had a valid verified claim. So it's a -- a very
13 narrow release.

14 THE COURT: Thank you.

15 And my second question will not come as a
16 surprise. If I've read this correctly, the claims
17 administrator is or is in the process of actually
18 disbursing over \$6 million to the class members, is that
19 right?

20 MR. WENDELL: The class administrator has not
21 yet begun -- or the settlement administrator rather has
22 not yet begun disseminating the actual refunds, that
23 won't happen until after this, I think it's 60 days
24 after the final approval order and the settlement.

25 THE COURT: But assuming I approve it, how

1 much is going to be disbursed?

2 MR. WENDELL: Okay. So the most up-to-date
3 number that we have is \$6,809,178. I think that's
4 subject to a few little tweaks that are still being
5 worked out in the code. And also the fact that
6 individuals, after they receive their determination, do
7 have the right to dispute that determination. Some have
8 not yet received that determination due to continuing
9 meeting and conferring between the parties.

10 THE COURT: And that money will go to the
11 people who are now ascertained who have made claims?

12 MR. WENDELL: Correct.

13 THE COURT: All right. Now on top of that you
14 seek the \$1.9 million that you're requesting in
15 attorneys fees?

16 MR. WENDELL: Um, so I think we are seeking,
17 um, \$2.75 million in attorneys fees and costs. The \$1.9
18 million is the amount expected to be paid to the
19 settlement administrator.

20 THE COURT: Wait a minute, I'm not clear here.
21 I, um -- break this down, please.

22 The settlement administrator is, um, paid for
23 being -- for discharging his duties as settlement
24 administrator, so he gets \$1.9 million?

25 MR. WENDELL: Yes.

1 THE COURT: All right, and more than that, but
2 in that vicinity.

3 And how much are you looking for for attorneys
4 fees?

5 MR. WENDELL: It's \$2.75 million in attorneys
6 fees and costs.

7 THE COURT: Attorneys fees and costs.

8 Well --

9 (Pause.)

10 MS. WILLIAMS: To be clear, your Honor, if I
11 could? The costs, um, that they're referring to are not
12 the settlement administration costs. So there's three
13 buckets of money here, there's the money that would go
14 directly to the claimants and that's the --

15 THE COURT: And that's the 6.8 --

16 MS. WILLIAMS: -- the 6.8 and change, call it.

17 THE COURT: All right.

18 MS. WILLIAMS: Um, there's the amount of money
19 that American Airlines has been paying and will continue
20 to pay to Angeion, the claims administrator. So as they
21 do their work, they've been invoicing us for their work.
22 The estimate is that by the time all their work is done,
23 that it will add up to about 1.9. So American Airlines
24 has been paying Angeion, the claims administrator, that
25 amount of money. And then there are the attorneys fees

1 and costs that class counsel seek, which is a total of
2 \$2.75 million, but the costs that we're talking about
3 there are their -- are the law firm costs, you know,
4 deposition transcripts and the like, and I think it's
5 roughly \$50,000 or so worth of costs.

6 THE COURT: Thank you.

7 MS. DARDARIAN: And, your Honor, if I may?
8 This is Linda Dardarian.

9 I'm prepared to address the Court's questions
10 regarding attorneys fees and the incentive award to
11 plaintiff Bazerman should there be concerns about that,
12 and Mr. Wendell is prepared to address the final
13 approval of the settlement.

14 THE COURT: Well, as I make it out here, um,
15 how much -- refresh me as to how much Mr. Bazerman gets?

16 MS. DARDARIAN: On his behalf we have applied
17 for an incentive award of \$2,500.

18 THE COURT: All right.

19 Here's my -- and, Ms. Dardarian, I'll hear you.
20 Your fees are over a third of what the class itself
21 gets. I'm not accustomed to approving fees that high.
22 I don't question the good work that was done here, but
23 if it's \$6.8 million, it will come to about \$2,250,000,
24 not \$750,000.

25 MS. DARDARIAN: Um --

1 THE COURT: I'll hear you.

2 MS. DARDARIAN: Thank you, your Honor. And I
3 appreciate your kind words about the quality of
4 representation.

5 THE COURT: And they're sincerely meant, it's
6 not some sort of pro forma. I've read all this, but
7 I -- I cannot recall approving a settlement -- approving
8 attorneys fees of more than 33 percent. I'm happy to be
9 disabused of that if my memory is wrong.

10 MS. DARDARIAN: Your Honor, I have not come
11 across a decision that was yours where you have approved
12 a --

13 THE COURT: Well why should I do it here?

14 MS. DARDARIAN: Because here, um -- well
15 actually I take that back.

16 The settlement agreement in this case allows class
17 counsel to apply for an attorneys fees award under the
18 common fund approach.

19 THE COURT: I appreciate that.

20 MS. DARDARIAN: And typically a common fund
21 includes all of the settlement benefits that are being
22 provided to the class and attorneys fees are paid from
23 the settlement fund as a whole, and typically a
24 settlement fund includes four elements, and those are
25 payment of claims or refunds to the class, the costs of

1 notice and claims administration, plaintiffs' attorneys
2 fees and costs, and the incentive award to the class
3 representatives.

4 THE COURT: And if I add all those you're
5 within a third, I understand that.

6 MS. DARDARIAN: Yes, your Honor, we're
7 actually below a third.

8 THE COURT: I understand that. But here, um,
9 you're getting -- as compared to the actual members of
10 the class, you're getting well more than a third.

11 MS. DARDARIAN: So, your Honor, our position
12 is that, um, the fee should not be limited to a
13 percentage of the amount that is being paid out in
14 refunds because truly a settlement fund includes other
15 pots of money, including administration costs and
16 attorneys fees and the incentive award. And so because
17 the settlement agreement allows us to apply for fees on
18 the basis of the common fund approach, essentially what
19 we're doing is we are pooling these four different
20 pieces of money that -- or buckets of money that
21 American Airlines is paying on behalf of the class,
22 we're pooling them together to create a settlement fund
23 from which we are asking a percentage of the fund to be
24 paid to us in attorneys fees.

25 THE COURT: All right, I understand the

1 calculus.

2 MS. DARDARIAN: And the reason why the claims
3 administration is included in the calculus is because
4 claims administration provides a benefit to the class in
5 that it lets the class members know that they have the
6 right to seek refunds and it ensures that the refunds
7 are accurately calculated and actually delivered to the
8 class members, and that is a value that would otherwise
9 come out of their pockets. But it isn't here because
10 American has agreed to pay that separately.
11 Additionally, attorney fees are a benefit to the class
12 because without a payment of attorneys fees the class
13 would get a windfall.

14 THE COURT: Of course, of course it's a
15 benefit to the class, it just seems to me that a third
16 of the overall recovery to the class, what's going into
17 their pockets is, um, sufficient.

18 Let me ask American. There's no objection on
19 American were I to award this?

20 MR. LESSIN: Award one-third of the benefit?

21 THE COURT: No, award \$2,750,000.

22 MR. LESSIN: Oh, we do -- we do object, your
23 Honor.

24 THE COURT: I thought so. What if I were to
25 award \$2,250,000?

1 MR. LESSIN: Yeah, I think case law suggests
2 between 20 percent and 30 percent.

3 THE COURT: So you object to that? Well that
4 would be 33 percent.

5 MR. LESSIN: No, your Honor, we wouldn't
6 object to a third of the actual benefit --

7 THE COURT: I'm sure you wouldn't.

8 All right. You know the matter is a serious
9 matter and this is not an inconsequential amount of
10 money here that's in dispute.

11 (Pause.)

12 THE COURT: Let me say this in an effort to
13 move this along.

14 I mean what I say, Ms. Dardarian, that I think
15 plaintiffs' counsel has acted in an exemplary fashion
16 here and in a most complex area has obtained for the
17 class a fair and a just settlement. And not simply to
18 be evenhanded, but because I believe it, I think that
19 counsel for American Airlines equally has represented
20 their client in a both thoughtful and sensitive way,
21 without surrendering in any way their client's rights in
22 the circumstances, and this is a hard bargain and just
23 settlement for the class.

24 Now having said that, I will tell you I'm prepared
25 today to approve the settlement, to approve \$2,250,000

1 attorneys fees -- and by approving the settlement,
2 approve the award, approve the amount of the settlement,
3 and indeed I'm prepared to allow further briefing and
4 argument on what you claim is the remaining 500,000.
5 It's not a matter for settlement, it's a matter for the
6 Court to determine.

7 So my suggestion is, I'll go right to 33 percent
8 of the funds of the class today, I'll give you each 30
9 days to file further briefs addressed to the issue, if
10 anything further is to be said, and then I'll decide it
11 on the papers.

12 How does that suit, Ms. Dardarian?

13 MS. DARDARIAN: That suits me very well, your
14 Honor.

15 THE COURT: And American?

16 MS. WILLIAMS: I'm preempting my colleague who
17 was going to argue, but just as to this -- that question
18 of briefing, um, I think the parties actually already
19 briefed this at some length in the motion for attorneys
20 fees --

21 THE COURT: Oh, I agree.

22 MS. WILLIAMS: So I just wanted to -- if you
23 have any guidance, your Honor, about anything in
24 particular that you were hoping to hear more on, it may
25 be helpful to the parties, so you don't get duplicative

1 arguments.

2 THE COURT: That's very helpful. It's not
3 that I'm hesitant to rule --

4 MS. WILLIAMS: I didn't think so, your Honor.

5 THE COURT: -- you have thoroughly briefed it,
6 and I'm not asking for the expenditure of more money or
7 more time, but \$500,000 in dispute is a significant
8 piece of money, so I'm going to wait another 30 days.
9 If someone wants to submit something further, that's
10 fine, but I do not require it, and I certainly do not
11 expect that arguments already made will be made again.
12 It just seems the fairest outcome to give plaintiffs,
13 who have done a good job, a chance here. I'm not
14 prepared just to knock their request down by half a
15 million dollars on the preparation that I've made for
16 this hearing. That's the most honest way I can say it.
17 I may do exactly that, but I'm going to reflect on it,
18 sensitive because you have objected and I'm sensitive to
19 that.

20 So that's the order of the Court, the settlement
21 is approved in every respect and at least \$2,250,000 is
22 awarded to the plaintiffs as attorneys fees. The
23 possibility of a further award will abide a further
24 order, which will be entered no sooner than 30 days from
25 today's date. And I'll sign the document because we

1 have it here.

2 MS. DARDARIAN: Thank you very much, your
3 Honor.

4 THE COURT: Thank you.

5 (Ends, 2:20 p.m.)
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C E R T I F I C A T E

I, RICHARD H. ROMANOW, OFFICIAL COURT REPORTER,
do hereby certify that the foregoing record is a true
and accurate transcription of my stenographic notes,
before Judge William G. Young, on Thursday, April 4,
2019, to the best of my skill and ability.

/s/ Richard H. Romanow 04-09-19

RICHARD H. ROMANOW Date