

**BEFORE THE JUDICIAL PANEL ON
MULTIDISTRICT LITIGATION**

IN RE : PILOT FLYING J FUEL REBATE
CONTRACT LITIGATION

MDL Docket No. 2468

**JOINT AGREED MOTION TO DEFER CONSIDERATION OF PENDING
MOTIONS TO TRANSFER**

Plaintiffs Bruce Taylor, National Trucking Financial Reclamation Services, LLC, Paul Otto, Jerry Floyd, Edis Trucking, Inc., Mike Campbell, Townes Trucking, Inc., and R&R Transportation, Inc.,¹ (the “Settling Plaintiffs”) and Defendants Pilot Corporation and Pilot Travel Centers LLC d/b/a/ Pilot Flying J, (the “Defendants,” collectively with Settling Plaintiffs, “the Parties”) hereby jointly file this Motion to Defer Consideration of the Pending Motions to Transfer. A global, class-wide settlement of all claims pending in the actions under consideration for transfer (collectively the “Actions”) has been preliminarily approved in the United States District Court for the Eastern District of Arkansas, Case No. 4:13-cv-00250. Accordingly, pursuant to Rule 6.3 of the Rules of Procedure for the Judicial Panel on

¹ *Taylor v. Pilot Travel Centers, LLC, et al.*, S.D. Miss., No. 3:13cv244; *National Trucking Financial Reclamation Services, LLC v. Pilot Corp., et al.*, E.D. Ark., No. 4:13cv250; *Otto v. Pilot Corporation, et al.*, M.D. Tenn., No. 3:13cv531; *Floyd v. Pilot Corp., et al.*, N.D. Fla., No. 3:13cv318; *Edis Trucking, Inc. v. Pilot Corp., et al.*, N.D. Ill., No. 1:13cv3294; *Campbell, et al. v. Pilot Corp. et al.*, S.D. Miss., No. 3:13cv319; *Townes Trucking, Inc. v. Pilot Corp., et al.*, E.D. La., No. 2:13cv04988; and *R&R Transportation, Inc. et al. v. Pilot Corp. et al.*, D. Minn., No. 0:13cv01742.

Multidistrict Litigation (the “Panel”), the Parties respectfully request that consideration of the pending motions before this Court to consolidate and transfer be deferred for approximately 150 days, which would be 30 days after the Eastern District of Arkansas holds its Fairness Hearing on November 25, 2013. If the Fairness Hearing motion is granted, the Parties will report to the Panel the results of the Fairness Hearing in approximately 135 days.

I. Background of Litigation

Defendants Pilot Corporation and Pilot Travel Centers LLC, d/b/a Pilot Flying J (collectively “Pilot Flying J”), own roughly 600 truck stops throughout the United States. Plaintiffs were participants in a diesel fuel rebate or discount program with Pilot Flying J, or were leased or contracted owner-operators who bought fuel pursuant to the programs of other customers of Pilot Flying J. The Actions allege that Defendants intentionally and fraudulently withheld diesel fuel price rebates or failed to provide discounts that Pilot Flying J agreed to pay.

On May 30, 2013, an initial motion to transfer eight cases to the Northern District of Ohio was filed with the Panel. (Doc. 1). Fourteen responses were filed advocating transfer to various other venues, including the Southern District of Mississippi, the Middle District of Tennessee, the District of Utah, the Northern District of Illinois, and the Eastern District of Louisiana. Pilot Flying J filed a cross-motion to consolidate and transfer the cases in the United States District Court for the Eastern District of Tennessee. The Panel is set to hear the Motions to Transfer on July 25, 2013, in Portland, Maine. (*See* Doc. 13; Case MDL No. 2468).

In recent months, counsel for the Parties have engaged in extensive, arms-length negotiations to reach a class-wide settlement that would resolve all claims pending in these Actions against all Defendants. On July 15, 2013, a class-wide settlement was reached (the “Settlement”), and on July 16, 2013, a motion for preliminary approval of the Settlement was

filed in the United States District Court for the Eastern District of Arkansas. (*See* Motion attached as Exhibit A). The Settlement provides that all claims in these Actions against all Defendants would be resolved and released by a Settlement Class defined as:

All Persons and entities in the United States who purchased over the road diesel fuel for commercial use in Class 7 and Class 8 vehicles (as Class 7 and Class 8 are defined by the United States Department of Transportation) from Defendants Pilot Corporation and Pilot Travel Centers LLC d/b/a/ Pilot Flying J pursuant to a diesel fuel rebate or discount program (which rebate or discount program is defined as a cost-plus and/or retail-minus discount program (not to include discounts for payments made by cash, check, or major credit card at point of sale)), or both, from January 1, 2008, to July 15, 2013.

(*Id.* at ¶ 32). The Settlement provides generally that Plaintiffs and Eligible Class Members (as defined in the Settlement) who do not opt out will be paid in full any funds that are found to be owed through an investigation conducted by Defendants' Internal Auditors ("DIA"), plus interest at the rate of six percent (6%). An Independent Accountant, appointed by the Court and paid for by Defendants, will review the work performed by DIA and confirm, to a reasonable degree of certainty, that the work performed by DIA (1) properly identifies the Eligible Class Members who are entitled to compensation, and (2) accurately quantifies the amount of compensation due under the Settlement agreement. In addition, the settlement allows a procedure for Eligible Class Members to contest its audit results in the event the Eligible Class Member does not agree with the DIA results. Finally, Defendants agreed to pay for all administrative costs and legal fees. A hearing on the Parties' request for preliminary settlement approval was held before the Honorable James M. Moody on July 16, 2013, and the Court granted preliminary approval. (*See* Order attached as Exhibit BB).

II. Centralization is Not Appropriate at This Time Due to Pending Global Settlement

Title 28 U.S.C. § 1407(a) provides for the transfer of actions to one district for coordination or consolidated of pretrial proceedings where actions pending in different districts:

(1) involve one or more common questions of fact and where transfer; (2) will serve the convenience of the parties and witnesses; and (3) will promote the just and efficient conduct of such actions. “The purposes of this transfer or ‘centralization’ process are to avoid duplication of discovery, to prevent inconsistent pretrial rulings, and to conserve the resources of the parties, their counsel and the judiciary.” <http://www.jpml.uscourts.gov/panel-info/overview-panel>.

The Panel “may consider the timing of other events in the litigation in determining when to consider a transfer motion or when to issue a decision on it.” *Multidistrict Litigation Manual*, § 5:55, at 176-177 (2011). In cases like this, where settlement is imminent, the Panel has denied or deferred centralization. See *In re Power Balance, LLC, Mktg. & Sales Prac. Litig.*, 777 F. Supp. 2d 1345 (J.P.M.L. 2011); *In re Charles Schwab & Co. Best Execution Sec. Litig.*, 2000 U.S. Dist. LEXIS 5101 (J.P.M.L. 2000) (vacating the Panel’s previous conditional transfer order because a proposed class settlement had been preliminarily approved by a district court where one of the actions was pending); *In re Building Products of Canada Corp. Organic Shingles Products Liability Litig.*, 856 F. Supp. 2d 1345, 1346 (J.P.M.L. 2012) (denying motion to centralize related cases where a motion for preliminary approval of a settlement had been filed, explaining that “the benefits of centralization do not outweigh the potential disruption in settlement proceedings”); *In re Admission Tickets*, 302 F. Supp. 1339, 1340 (J.P.M.L. 1969) (centralizing the cases only after the Panel had issued a stay for a specified time to determine the state of settlement of certain claims).

The *Power Balance* decision is directly on point. In that case, numerous plaintiffs sought centralization despite ongoing class action settlement proceedings in one of the underlying actions, while the defendant and the plaintiff who had entered into the class action settlement agreement asked the Panel to defer its ruling on centralization to allow the court in their case to

consider the fairness of the settlement. *Power Balance*, 777 F. Supp. 2d at 1345. Noting that a hearing on preliminary approval of the class settlement had been set for a date certain, the Panel denied the motion for centralization, stating that if the settlement was approved, “these cases are likely on the path to resolution.” *Id.* at 1346. The Panel concluded that centralization at that time was not appropriate because it could delay the settlement proceedings and would “entail additional expense for the litigants and the courts to establish an MDL proceeding with little benefit.” *Id.*

Similarly here, the Pilot Flying J litigation is likely on the path to a global resolution of all claims for all plaintiffs in the underlying Actions. It would not serve the convenience of the parties or promote the just and efficient conduct of the litigation to centralize the cases at this juncture. Should the class-wide settlement be approved, the Motions to Transfer will become moot. If the settlement is not approved, or to the extent there are any remaining related cases after final approval of the settlement, the Panel can take up the question of centralization at that time.

III. Conclusion

For all the reasons set forth above, and to promote the just and efficient conduct of this litigation, the Parties respectfully request that the Panel defer its consideration of the pending Motions to Transfer for 150 days to permit the class-wide settlement to be finalized.

DATED: July 18, 2013

/s/ Elizabeth A. Alexander

Elizabeth A. Alexander, BPR No. 19273
Kenneth S. Byrd, BPR No. 23541
LIEFF, CABRASER, HEIMANN & BERNSTEIN, LLP
One Nashville Place
150 Fourth Avenue N., Suite 1650
Nashville, TN 37219
Telephone: 615-313-9000
Facsimile: 615-313-9965
ealexander@lchb.com

Michael W. Sobol (SBN# 194857)
LIEFF CABRASER HEIMANN & BERNSTEIN, LLP
275 Battery Street, 29th Floor
San Francisco, California 94111-3339
Telephone: (415) 956-1000
Facsimile: (415) 956-1008
msobol@lchb.com

Charles Barrett, BPR No. 020627
CHARLES BARRETT, P.C.
6519 Highway 100, Ste. 210
Nashville, TN 37205
Telephone: (615) 515-3393
Facsimile: (615) 515-3395
charles@cfbfirm.com

Counsel for Paul Otto

Don John W. Barrett
Sarah Sterling Starns
DON BARRETT, P.A.
P.O. Box 927
404 Court Square North
Lexington, MS 39095
Telephone: (662) 834-2488
Facsimile: (662) 834-2628
dbarrett@barrettlawgroup.com
sstarns@barrettlawgroup.com

Counsel for Bruce Taylor

Michael L. Roberts
Jana K. Law
Stephanie Egnor Smith
ROBERTS LAW FIRM, P.A.
P.O. Box 241790
Little Rock, AR 72223
Telephone: (501) 821-5575
Facsimile: (501) 821-4474
robertslawfirm@aristotle.net

Thomas Thrash
Marcus Neil Bozeman
THRASH LAW FIRM
1101 Garland Street
Little Rock, AR 72201
Telephone: (501) 374-2222
Facsimile: (501) 274-2222
tomthrash@sbcglobal.net
bozemanmarcus@hotmail.com

*Counsel for National Trucking Financial Reclamation
Services, LLC.*

Dewitt M. Lovelace
LOVELACE LAW FIRM, P.A.
12870 US Highway 98 West, Suite 200
Miramar Beach, FL 32550
Telephone: (850) 837-6020
Facsimile: (850) 837-4093
courtdocs@lovelacelaw.com

Counsel for Jerry Floyd

Ben Barnow
Blake Anthony Strautins
Sharon Harris
BARNOW & ASSOCIATES, P.C.
One North LaSalle Street, Suite 4600
Chicago, IL 60602
Telephone: (312) 621-2000
Facsimile: (312) 641-5504
b.barnow@barnowlaw.com
b.strautins@barnowlaw.com
s.harris@barnowlaw.com

Shpetim Ademi
John D. Blythin
ADEMI & O'REILLY, LLP
3620 East Layton Avenue
Cudahy, WI 53110
Telephone: (414) 482-8000
Facsimile: (414) 482-8001
sademi@ademilaw.com
jblythin@ademilaw.com

Richard Lyle Coffman
THE COFFMAN LAW FIRM
505 Orleans Street, Suite 505
Beaumont, TX 77701
Telephone: (409) 833-7700
Facsimile: (866) 835-8250
rcoffman@coffmanlawfirm.com

Counsel for Edis Trucking, Inc.

Richard R. Barrett
LAW OFFICES OF RICHARD R. BARRETT, PLLC
2086 Old Taylor Road, Suite 1101
Oxford, MS 38655
Telephone: (662) 380-5018
rrb@rrblawfirm.net

Counsel for Mike Campbell

Daniel E. Becnel, Jr.
BECNEL LAW FIRM, LLC
106 West Seventh Street
Reserve, LA 70084
Telephone: (985) 536-1186
dbecnel@becnellaw.com

Counsel for Townes Trucking, Inc.

Charles S. Zimmerman
J. Gordon Rudd, Jr.
Brian C. Gudmundson
ZIMMERMAN REED, PLLP
1100 IDS Center
80 South Eighth Street
Minneapolis, MN 55402
Telephone: (612) 341-0400
Facsimile: (612) 341-0844
charles.zimmerman@zimmreed.com
gordon.rudd@zimmreed.com
brian.gudmundson@zimmreed.com

Counsel for R&R Transportation, Inc.

/s/ Aubrey B. Harwell, Jr.

Aubrey B. Harwell, Jr.
Aubrey B. Harwell, III
George H. Cate III
Neal & Harwell, PLC
150 Fourth Avenue, North, Suite 2000
Nashville, TN 37219
Telephone: (615) 244-1713
Facsimile: (615) 726-0573
aharwell@nealharwell.com

Glenn M. Kurtz
Gregory M. Starner
Joshua D. Weedman
WHITE & CASE, LLP
1155 Avenue of the Americas
New York, NY 10036
Telephone: (212) 819-8200
Facsimile: (212) 354 8113
gkurtz@whitecase.com
gstarner@whitecase.com
jweedman@whitecase.com

James E. Hooper
Michael T. Williams
WHEELER TRIGG O'DONNELL LLP
370 Seventeenth Street, Suite 4500
Denver, CO 80202
Telephone: (303) 244-1800
Facsimile: (303) 244-1879
hooper@wtotrial.com

*Counsel for Pilot Corporation
and Pilot Travel Centers LLC d/b/a Pilot Flying J*