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9 **IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

10 Don ADDINGTON; John BOSTIC; Mark
BURMAN; Afshin IRANPOUR; Roger
11 VELEZ; and Steve WARGOCKI,

12 Plaintiffs,

13 vs.

14 US AIRLINE PILOTS ASSOCIATION,
US AIRWAYS, INC.,
15 Defendants,

16 Don ADDINGTON; John BOSTIC; Mark
BURMAN; Afshin IRANPOUR; Roger
17 VELEZ; and Steve WARGOCKI,

18 Plaintiffs,

19 vs.

20 Steven H. BRADFORD, Paul J. DIORIO,
Robert., A. FREAR, Mark. W. KING,
21 Douglas L. MOWERY, and John A.
STEPHAN,
22

23 Defendants.

Case No. 2:08-cv-1633-PHX-NVW
(Consolidated)

**DECLARATION OF ROBERT
DAVISON IN OPPOSITION TO
PLAINTIFFS' MOTION FOR
CLASS CERTIFICATION**

Case No. 2:08-cv-1728-PHX-NVW

1 I, ROBERT DAVISON, declare that the following is true and correct:

2
3 1. I make this declaration of my own free will, based on my personal, first-hand
4 knowledge, unless otherwise specifically indicated.

5 2. This declaration is made in support of USAPA's opposition to the plaintiffs' motion for
6 class certification.

7 3. I am currently a First Officer and have been employed by US Airways as a Pilot since
8 June 1, 1987.

9 4. I am currently a member of the USAPA Merger Committee. My duties and
10 responsibilities in this capacity include, but are not limited to, the following: contributing to
11 and supporting the development and implementation of all seniority-related positions of
12 USAPA going forward, assisting the Merger Committee Chairman in coordinating Merger
13 Committee activities with the other key committees within the USAPA structure,
14 interfacing with the Board of Pilot Representatives, and representing USAPA with US
15 Airways management on all seniority-related matters.

16 5. Attached as Exhibit A is a graph depicting the relative seniority position of the six
17 *Addington* plaintiffs within the West pilot group. I personally developed the graph by
18 extracting the six plaintiffs from the existing West pilot seniority list of pilots who were
19 active prior to the 2008 furlough. I then calculated each pilot's percentage standing relative
20 to the entire list. The graph is a visual depiction of these percentage calculations.

21 6. As indicated in Exhibit A, three of the plaintiffs – Iranpour, Wargocki and Bostic – are
22 junior first officers in the lowest tenth percentile of seniority at 92.4, 96.6, and 98.2 percent
23

1 respectively. Among other reasons, they are clearly atypical of the larger West pilot group in
2 that it is only this lowest percentile that had any vulnerability to the furloughs announced by the
3 Company in June, 2008.

4 7. The remaining three plaintiffs – Velez, Addington, and Burman – were junior captains
5 whose seniority was 39.5, 51.3, and 57.4 percent respectively. The latter two fall into a
6 relatively narrow range of junior captains who might be subject to demotion to first officer as a
7 result of the furloughs announced in June, 2008.

8 8. With the exception of Velez, all of the plaintiffs fall into the bottom half of the West pilots’
9 seniority list. Even with the inclusion of Velez, who appears to be an outlier, West pilots in the
10 top 40 percent of the seniority list are essentially unrepresented by the named plaintiffs.

11 9. The senior forty percent of the West pilot list have divergent interests from the named
12 plaintiffs and may be prejudiced by the instant litigation. This section of the West pilot list,
13 containing pilots who are nearly all captains, does not face imminent loss of employment or
14 even loss of their captaincies. Moreover, under USAPA’s proposal, their Phoenix and Las
15 Vegas-based captains’ positions are secured both against more senior East pilots and the more
16 senior pilots of possible future merger partners, e.g., United Airlines. These West captains also
17 have position preservation rights in the event of a disproportionate west staffing reduction
18 through the reduction ratio provisions of USAPA’s proposal, further separating the interests of
19 this group from those of the named plaintiffs.

20 10. As discussed at greater length in the Declaration of Arnold Gentile that has been
21 contemporaneously submitted to the Court, under ALPA, negotiations toward a single
22 collective bargaining agreement had reached an insuperable logjam over the question of
23 rejecting or modifying the Nicolau Award. Consequently, West pilots throughout the seniority

1 list have a strong interest in a reasonable compromise that would break the impasse under
2 ALPA that was barring them from wage increases, advanced flying opportunities, and other
3 contractual improvements that could be obtained via a single collective bargaining agreement.

4 11. Certain subsets of West pilots would realize immediate benefits from an accelerated
5 implementation of the existing USAPA proposal when compared to existing Separate
6 Operations. Junior West pilots would benefit from having 86 new hire East pilots placed below
7 them. Scores of senior West pilots would have sufficient seniority, under USAPA's proposal,
8 to hold a position as an international trans-oceanic wide-body captain, which is currently
9 unavailable to them.

10 12. USAPA's existing seniority integration proposal offers a way to break through the logjam
11 that existed under ALPA while at the same time providing protection to all West pilots in their
12 current positions from displacement by more senior East pilots.

13 13. I am aware that the Court has made the following remarks concerning the difficulty of
14 determining damages in the event of a determination that a particular seniority list should
15 have been implemented as of a date certain:

16 To the extent a damage class is sought . . . it looks like . . . as a damage class,
17 that there would be enormous factual issues specific to each individual class
18 member that would strip the class action of a lot of the justification and value
19 of class proceedings. We, in effect, would have hundreds of separate
lawsuits for individual pilots, all of whom have their own highly
individualistic facts, circumstances, [and] challenges of proof . . .

20 But it looks equally problematic that this would be a suitable damage class
21 because of what looks like a clear preponderance of individual fact issues
over the common issues.

22 ***

1 See, the point is every pilot has their own seniority, their own opportunities
2 or perceived opportunities that were lost, their own prospects. They are
3 going to want to look back retrospectively to see what they would have
4 achieved between October 1 and the time you win your lawsuit. It just seems
5 like the practical benefit of class treatment is lost.

6 (Dec. 15, 2008 Tr. at 8:4-25, 15:1-6). Based on my knowledge of the contracts and
7 seniority-related issues, I concur with the Court's view.

8 14. Any damages calculation would be affected by countless factors and individual pilot
9 determinations/preferences related to a seniority-based bidding process and how they relate
10 to the basic elements of domicile, equipment, position, reserve versus line, compensation
11 versus time off. Individualized decisions or situations that would impact on damages
12 would include, but not be limited to, a pilot's: a) geographic/personal preference to remain
13 at a particular domicile; b) inability to, or disinterest in, training up to the highest paying
14 piece of equipment or position that the pilot's seniority would entitle him or her to hold; c)
15 lifestyle preferences that might steer him/her to bidding for a line position rather than a
16 reserve pilot position, with the attendant impact on flying opportunities and hours flown; d)
17 lifestyle preferences and bidding issues that would lead a pilot to prefer the flexibility of a
18 senior First Officer position versus that of junior Captain, or vice versa.

19 15. For several reasons, it would not be impractical for this case to proceed as a non-class
20 action, even if there are potentially 1700 West pilot plaintiffs. First, Company-specific
21 pilot groups are generally educated, sophisticated, and connected by internet
22 communications networks. In this case, Leonidas LLC maintains a website, reportedly
23 finances this litigation, and claims to have received contributions from hundreds of West

1 pilots. In sum, it would be a relatively simple task for Leonidas to reach out to West pilots
2 who might really be interested in party status.

3 16. Second, while the plaintiffs presume a class size of 1700, composed of all West pilots,
4 their action is primarily focused on a smaller group of about 135 furloughees. Originally,
5 the Company announced its intention to furlough 175 pilots from the West operation. This
6 total has been reduced to 135 pilots due to the mitigating effect of 25 West pilots opting for
7 voluntary leaves of absence, and because 15 of the furloughees are new hire pilots, who I
8 understand to be excluded by the Plaintiffs from the class they seek to represent. It was this
9 group that plaintiffs sought to save from layoff by injunction through their now dismissed
10 Counts I and II. But even this group's size is questionable. Of the 135, well over half
11 would have benefited directly from the implementation of USAPA's proposal of September
12 2008, which would have placed all new hire East pilots below them on an integrated
13 seniority list. Thus, the maximum relevant class size should be deemed to be 49 or so pre-
14 merger West pilot furloughees (based on the exclusion of furloughees opting for voluntary
15 leave of absence, and the exclusion of those pilots who would have derived some benefit
16 from USAPA's proposal, and the further exclusion of that component of furloughees who
17 are West new hires). With respect to all furloughed West pilots, the bump/displace
18 prohibition contained in the Transition Agreement would prevent them from obtaining any
19 immediate benefit from the implementation of the Nicolau list. (Trans. Agmt. § IV.A.2
20 ("furloughed pilots may not bump/displace active pilots")). Their status could drive them
21 to advocate prolonging litigation or to a settlement that protects their more particularized
22 interests in re-employment. The inability of furloughed West pilots to obtain any
23

1 immediate benefit from the implementation of the Nicolau list may explain the basis for the
2 recent Leonidas report that the Plaintiffs' abrupt decision to abandon wage-related damages
3 caused certain class members to "suddenly feel abandoned." (Granath Decl. ¶ 14, Ex. J).

4 17. Third, it is completely inadequate to confine the analysis of numerosity simply to
5 identifying which pre-merger employer a pilot had while ignoring what *remedy* is proposed
6 for the class. Damages will require individualized assessments, especially as it relates to
7 dues collection as is now proposed by the Plaintiffs. Many West pilots may affirmatively
8 want to pay dues so that they can exercise full political rights within the Union. This
9 consideration casts into serious doubt the size of the class, making any conclusion about
10 whether Plaintiffs can satisfy the numerosity requirement at this stage merely an exercise in
11 speculation.

12 18. Fourth, joinder is facilitated by Plaintiffs being domiciled exclusively in the Company's
13 Phoenix and Las Vegas bases. Such a concentration of putative plaintiffs facilitates easy
14 joinder.

15
16
17 Further your Declarant sayeth not.

18 Pursuant to 29 USC § 1746, I declare under penalty of perjury that the foregoing is
19 true and correct.

20 Executed on: February 17, 2009

21 ***Robert Davison***

22 **Robert Davison**