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

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

12 Plaintiffs,

13 vs.

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

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

**DEFENDANT USAPA'S
MOTION FOR RECONSIDERATION
OF ORDER GRANTING
PROTECTIVE ORDER**

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

19 Plaintiffs,

20 vs.

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

23 Defendants.

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

SEHAM, SEHAM, MELTZ & PETERSEN LLP

1 **NOTICE OF MOTION**

2 PLEASE TAKE NOTICE that Defendant US Airline Pilots Association
3 (“USAPA”) will move this Court for reconsideration of the Order issued by this Court
4 on March 17, 2009 (Dkt. No. 258), which granted a protective order to plaintiffs with
5 respect to USAPA’s request to depose certain members of the class.

6 **MOTION**

7 USAPA hereby moves for reconsideration of the Court’s Order dated March 17,
8 2009 (Dkt. No. 258), which granted a protective order to plaintiffs with respect to
9 USAPA’s request to depose several members of the plaintiffs’ class who have
10 information regarding West pilots’ concerted campaign of abstaining from membership
11 or participation in USAPA, engaging in a dues boycott, and threatening or coercing
12 fellow West pilots to discourage them from becoming members of, or participating in,
13 USAPA.
14

15 In support of this motion, USAPA states as follows:

16 **MEMORANDUM OF POINTS AND**
17 **AUTHORITIES IN SUPPORT OF MOTION**

18 **I. INTRODUCTION**

19 The US Airline Pilots Association (“USAPA”) brings this Motion for
20 Reconsideration based on its conclusion that the Court’s Order in this case, dated March
21 17, 2009 (Dkt. No. 258), which granted a protective order restricting USAPA from
22 deposing specific West pilots directly implicated in an organized campaign, which
23 included: 1) a concerted effort to destroy USAPA through criminal and otherwise

1 unlawful means rather than engaging in political dialogue with USAPA, 2) a concerted,
2 and highly successful, effort to discourage West pilots from paying dues to, or
3 becoming members of, USAPA, 3) threats of physical violence and destruction of
4 property, harassment, and economic coercion directed against fellow West pilots who
5 considered participating within USAPA's political structure. After explaining
6 USAPA's interest in conducting discovery into these issues, the Court responded:

7
8 You want to look into a, quote, concerted campaign of abstaining for [sic]
9 membership, engaging in dues boycott, threatening people who want to
10 become members. I don't see what that has to do with the complaint and
11 with the seniority list.

12 * * *

13 This just looks like a very wasteful fishing expedition ... This just appears
14 to me to be not relevant to the issues, and it's a huge diversion of
15 resources when time is precious and resources are precious. ... You
16 know, there isn't much time.

17 (Mar. 16 Tr. 9:15-19; 11:4-5; 11:14-17; 12:16).

18 We agree with the Court that there isn't much time.¹ Nonetheless, USAPA
19 believes that the Court misapprehends how the Court-identified case issues require
20 USAPA to conduct the referenced depositions and, therefore, USAPA respectfully
21 requests that the Court reconsider the referenced protective order and allow USAPA to
22 take the depositions of the following West Pilots and West Pilot organization requested
23 herein and have them authenticate the documents needed by USAPA for trial: Keith

¹ Indeed, given the breadth of issues recently identified by the Court and the plaintiffs, there is not sufficient time for USAPA to conduct the necessary discovery to protect its rights.

1 Krueger, Eric Auxier, Christopher Cundari, Jack Tooke, David Braid, Robert J.
2 Narloch, Bruce A. Hannah, Ron Gabaldon, Shawn Metzker, Jurie Maree, Al Casby, Jeff
3 Abbott, Mark Doyal, Steve Trimmer, CJ Szmalski, Joe Heil, Kevin Steele, and AWAPPA
4 LLC (America West Airlines Pilots Protective Alliance LLC).

5 **II. APPLICABLE LEGAL STANDARDS**

6 LR Civ. 7.2(g)(1) provides, in pertinent part, that a motion for reconsideration
7 must be supported by a:

8 showing of manifest error or a showing of new facts or legal authority that
9 could not have been brought to [the Court's] attention earlier with
10 reasonable diligence. Any such motion shall point out with specificity
11 that matters that the movant believes were overlooked or misapprehended
12 by the Court, any new matters being brought to the Court's attention for
the first time and the reasons they were not presented earlier, and any
specific modifications being sought in the Court's Order.

13 Fed. R. Civ. P. 26(b)(1) provides, in pertinent part, the following:

14 Parties may obtain discovery regarding any nonprivileged matter that is
15 relevant to any party's claim or defense For good cause, the court
16 may order discovery of any matter relevant to the subject matter involved
17 in the action. Relevant information need not be admissible at the trial if
the discovery appears reasonably calculated to lead to discovery of
admissible evidence.

18 FRE 901 provides as follows:

19 The requirement of authentication or identification as a condition
20 precedent to admissibility is satisfied by evidence sufficient to support a
21 finding that the matter in question is what its proponent claims.
22
23

1 **III. THE COURT’S RECENT IDENTIFICATION**
2 **OF POTENTIAL TRIAL ISSUES CONFIRMS**
3 **THE RELEVANCE OF USAPA’S PROPOSED DISCOVERY**

4 Two orders issued by the Court on March 13, 2009, provide some daunting
5 insight into the issues that may arise at trial in this case. Apparently, the issues may
6 include, “if relevant and without limitation,” the following:

- 7 1. The “history of the event.” [Dkt. No. 252 at 2].
- 8 2. The “campaign to oust ALPA.” *Id.*
- 9 3. The “formation and conduct of USAPA.” *Id.*
- 10 4. The “obligation to pay union dues and fees.” *Id.*
- 11 5. The “nature of the injury to Plaintiffs.” *Id.*
- 12 6. Evidence “concerning USAPA’s pending seniority proposal.” *Id.*²
- 13 7. Other “facts relevant to the discharge of [USAPA’s] duty.” *Id.*³
- 14 8. The “extent to which USAPA has delayed negotiations.” [Dkt. No. 253 at
15 2].⁴

16
17 ² As has been previously briefed, and included within USAPA’s Petition to the Ninth
18 Circuit, USAPA rejects the Court’s jurisdiction to evaluate the DFR-compliance of a
19 pending proposal which has neither been negotiated over, ratified nor implemented. We
20 advise the Court that USAPA is undergoing internal elections which will result in a
21 change in the identity of all four national officers by the end of April, 2009.

22 ³ Plaintiffs apparently see this “issue” as giving them license to review USAPA’s
23 contract enforcement efforts, having demanded the files for grievances TA-8, TA-9, and
TA-10. Though TA-9 is closely related to the dismissed Count One of the FAC, review
of any of these grievances could consume a day or more of trial.

⁴ In view of the named-plaintiffs’ uniform disavowal of any allegation that USAPA has
delayed negotiations, USAPA is hopeful that plaintiffs’ counsel will stipulate that
USAPA has not engaged in any such delay. In the absence of such a stipulation, a

1 9. The right to “cast aside” the Nicolau Award. *Id.*

2 10. The existence of a “logjam” prior to USAPA’s formation. *Id.*⁵

3 11. Whether USAPA broke the logjam in the interest of all pilots. *Id.*

4 The self-exclusion of West pilots from USAPA’s political processes – both
5 voluntary and by coercion of their fellow pilots – is plainly relevant to issues 3, 4, 6, 7,
6 and 11.⁶ That relevance is reinforced by the fact that plaintiffs’ DFR complaint is
7 divided into two subparts, the first of which is entitled: “FAILURE TO GIVE DUE
8 CONSIDERATION.” The allegations within this subpart focus on USAPA’s alleged
9 failure to give “due consideration” to West pilots’ interests and the alleged lack of “an
10 opportunity to present arguments and evidence in favor of their interests.” (Dkt. No. 86
11 at ¶¶ 108-11). In support of these allegations, a significant focus of the plaintiffs’
12 discovery efforts has been on USAPA’s alleged exclusion of West pilots from the Board
13 of Pilot Representatives, the Negotiating Advisory Committee, the Merger Committee
14

15
16 detailed recounting of the negotiating process – which has involved scores of meetings
and exchanges of dozens of complex proposals – could consume a day or more of trial.

17 ⁵ We are hopeful that, here too, the plaintiffs’ counsel will stipulate that a “logjam”
18 existed in light of the documented conclusions of the West MEC Chairman, the East
19 MEC Chairman, and the ALPA National President that, due to the factual circumstances
20 and the provisions of ALPA Merger Policy, negotiations toward a single CBA were
indefinitely stalled. In the absence of a stipulation, the detailed recounting of the factual
21 circumstances and ALPA Merger Policy would undoubtedly consume multiple trial
days.

22 ⁶ Wholly apart from the negotiating process, the virulent hatred reflected in the relevant
23 conduct – including the willingness to jeopardize USAPA’s safety-related activities by
jamming its safety hotline – are clearly relevant to considerations of aviation safety that
impact all pilots as well as the traveling public.

1 and membership in general. The inability to engage in the proposed discovery denies
2 USAPA the ability to make its case and to defend itself against the plaintiffs’
3 allegations.

4 **IV. THE PROPOSED DISCOVERY DOES NOT**
5 **CONSTITUTE A FISHING EXPEDITION**

6 USAPA’s selection of the named individuals for deposition can hardly be
7 designated a “fishing expedition.” To the contrary, for the most part their selection is
8 based on website postings in which they are self-identified as participants in criminal or
9 otherwise unlawful activity to either destroy USAPA or coerce other individuals into
10 not joining USAPA and/or participating within USAPA’s political structure. These
11 unlawful efforts were so intense that institutional self-preservation dictated the initiation
12 of a lawsuit to prevent the realization of the defendants’ goal of USAPA’s financial and
13 operational destruction.⁷

14 The relevant actions, described in further detail in the attached complaint
15 (Exhibit A), and reflected in the exhibits attached to the Declaration of Scott Theuer,
16 dated June 19, 2008,⁸ included:

19
20 ⁷ *USAPA v. AWAPPA LLC, et al.*, W.D.N.C. Case no. 08-cv-246. A copy of the First
21 Amended Complaint is attached hereto as Exhibit A.

22 ⁸ The Theuer declaration and exhibits were filed in support of USAPA’s motion for
23 temporary restraining order and preliminary injunction in *USAPA v. AWAPPA LLC, et al.* Plaintiffs’ counsel has refused to stipulate to the admissibility of the Theuer
declaration and exhibits in this action. Thus, depositions of the defendants in *USAPA v.*
AWAPPA LLC, et al. are necessary to authenticate those documents.

- 1 • An organized website campaign to disrupt USAPA’s operations and impose
2 financial harm by making thousands of frivolous calls to USAPA’s hotline –
3 including one defendant who described the financial harm he had imposed
4 and concluded by stating: “If we all did this...holy crap!”
- 5 • A website posting by a self-identified individual encouraging West pilots to
6 make hundreds of calls to a fellow West pilot’s home number to discourage
7 him from serving as a USAPA representative.
- 8 • A website posting by a self-identified individual proposing that a West pilot
9 who was considering service as a USAPA representative should be subject to
10 a group beating referred to as a “blanket party.”
- 11 • The economic coercion involved in placing a West pilot, who had been
12 considering service as a USAPA representative, on a no-fly list in order to
13 severely limit or eliminate his work opportunities.
- 14 • Website postings promoting the policy – to great effect – that all 1800 West
15 pilots decline to pay dues or join USAPA, including one individual who
16 exhorted fellow West pilots: “Let them bleed, death by 1800 cuts.”
- 17 • Website postings discussing the strategy of getting pilots from other airlines
18 to deny East pilots jump seat access on the grounds that they are “scabs” and
19 in order to deprive them of the ability to commute to work.
- 20 • Website postings describing “Eastholes” and the “pariahs of the industry” and
21 that it would be “unsafe” to have them in the same cockpit.

22 Far from being a “fishing expedition,” these relevant statements can be tied to
23 specific individuals. USAPA should be entitled to an opportunity to depose these
individuals in order to authenticate the relevant documents, confirm the related conduct,
and explore the full scope of such conduct.

1 **CONCLUSION**

2 In view of the plaintiffs’ pleadings, discovery conduct, and the Court’s
3 identification of potentially relevant trial issues (including USAPA’s post-certification
4 political and negotiating conduct), due process requires that USAPA be permitted to
5 proceed with the depositions of the identified individuals. Under the existing protective
6 order, USAPA will go into trial with its arms firmly tied behind its back.

7 Respectfully Submitted,

8 Dated: March 22, 2009

9 By: **/s/ Nicholas Paul Granath, Esq.**
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ATTORNEYS FOR DEFENDANT
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1 **CERTIFICATE OF SERVICE**

2 This is to certify that on the date indicated herein below a true and accurate copy
3 of the foregoing pleading, *to wit*,

- 4 • Defendant USAPA’s Motion for Reconsideration of Order Granting Protective
5 Order;
• Certificate of Service

6 were electronically filed with the Clerk of Court using the CM/ECF system, which will
7 send notification of such filing to the following:

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20 Who are admitted counsel for Defendant US Airways, Inc. in this matter.

21 And further that paper hard copies were provided to The Honorable Neil V. Wake,
22 District Court Judge, 401 W. Washington Street, SPC 52, Phoenix, AZ 85003.
23

1 On March 22, 2009, by:

2 */s/ Lucas K. Middlebrook*

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