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

10 Don ADDINGTON, *et al.*,

11 Plaintiffs,

12 vs.

13 US AIRLINE PILOTS ASSN., *et al.*,

14 Defendants.

CASE NO. 2:08-CV-1633-PHX-NVW

(Consolidated)

**MOTION IN LIMINE #2:
TO EXCLUDE EVIDENCE &
ARGUMENT THAT WOULD BE USED
ONLY TO DECIDE THE MERITS OF
DIFFERENT VIEWS ON SENIORITY
INTEGRATION**

15 Don ADDINGTON, *et al.*,

16 Plaintiffs,

17 vs.

18 Steven H. BRADFORD, *et al.*,

19 Defendants.

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

21 The Court should exclude any evidence that allows USAPA to propose
22 or litigate different views on seniority integration in an airline merger. This
23 Motion is supported by a separately filed Memorandum that supports all of
24 Plaintiffs' motions *in limine* and by the Memorandum of Points and
25 Authorities that follows.
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. This case is not to choose between competing views of seniority**
3 **integration policy.**

4 Seniority integration policy is not on trial. The Court, therefore,
5 properly observed as follows:

6 I'm not here to decide to choose between competing notions of wise
7 labor policy and different views of seniority policy. That's not the
8 Court's responsibility. There are different views on that. You have
9 articulated yours. ALPA has theirs. I would have to have a
fundamental transformation of my notion of the case to charge
myself with having to decide what is good seniority policy.

10 (RT. 163:23-164:5 (Oct. 29, 2008).) What matters here is what these pilots
11 agreed to do, not about what these pilots ought to have agreed to do. It does
12 not matter, therefore, what other pilots have agreed to in other mergers or
13 what other labor groups have agreed to in the merger between America
14 West and US Airways. Indeed, it is not even about what these pilots have
15 agreed to in past mergers—although that would show how they ought to
16 have understood their agreement here.

17 **II. USAPA plans to introduce evidence of other seniority integrations.**

18 Regardless that it is not part of Plaintiffs' case-in-chief, USAPA is
19 poised to introduce the subject of other seniority integrations into this trial.
20 For example, Defendant regards as material that other groups of workers in
21 this merger agreed or will have to integrate seniority by date-of-hire.
22 (*USAPA Draft Proposed Pretrial Order*, 4 ¶¶ 16-17 (Mar 31, 2009)).
23 Defendant also lists a number of exhibits that are relevant only to such
24 subject matter. These include Exhibits 1007 (AFA-DOH Policy for flight
25 attendants), 1008 (Letter of Agreement - Final TA: IAM Mechanics and
26 Stock Clerks), 1009 (Decision by Bloch TWU Arbitration), 1027 (Eischen
27 Award. Arbitration Proceedings) and 1029 (Seniority Integration
28 Precedent). Whether other pilots or other workers integrated by date-of-

1 hire has no relevance to whether the East Pilots have improperly used
2 USAPA to disregard the Nicolau Award. These exhibits, any exhibits
3 included in the attached Exhibit A , and any others of a similar nature have
4 no relevance to Plaintiffs' case-in-chief.

5 Likewise, USAPA's continued argument that strict date-of-hire
6 seniority is a time-honored and revered principle of labor law is irrelevant
7 and misleading, in addition to being a complete waste of time. USAPA
8 intends to offer testimony about prior ALPA policies regarding date of hire,
9 as well as changes to ALPA policies in effect at the time of this merger.
10 USAPA hopes to argue that its own date of hire policy can therefore be
11 found reasonable because of the classic defense that "everyone else does it."
12 This kind of time-wasting mischief by USAPA should not be permitted.

13 **III. CONCLUSION**

14 Plaintiffs ask the Court to order, *in limine*, that USAPA may not
15 present evidence and may not make arguments in regard to any exhibits
16 identified in the attached Exhibit A or any other exhibits that only reflect
17 other seniority integrations, or any argument that such evidence could
18 establish a defense to USAPA's liability.

19
20 Dated this 7th day of April, 2009.

21 POLSINELLI SHUGHART PC

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CERTIFICATE OF SERVICE

I hereby certify that on the 7th day of April, 2009, I electronically transmitted the foregoing document to the U.S. District Court Clerk's Office by using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to the following CM/ECF registrant(s).

I further certify that on April 7, 2009 I delivered a paper courtesy copy of the foregoing document and the Notice of Electronic Filing to the assigned Judge:

s/ **KATHERINE V. BROWN**

EXHIBIT A

**Exclude Evidence & Argument That Would be Used
Only to Decide the Merits of Different Views on
Seniority Integration**

Exhibit No.

1007

1008

1009

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