

1 Marty Harper (#003416)
mharper@polsinelli.com
2 Kelly J. Flood (#019772)
kflood@polsinelli.com
3 Andrew S. Jacob (#022516)
ajacob@polsinelli.com
4 **POLSINELLI SHUGHART PC**
Security Title Plaza
5 3636 N. Central Ave., Suite 1200
Phoenix, AZ 85012
6 Phone: (602) 650-2000
Fax: (602) 264-7033
7 *Attorneys for Plaintiffs*

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 #3:
TO EXCLUDE EVIDENCE &
ARGUMENT THAT WOULD BE USED
ONLY TO FIND FAULT WITH ALPA OR
ALPA MERGER POLICY**

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

20
21 The Court should exclude evidence and argument about ALPA's
22 conduct in administrating the transition agreement, ALPA merger policy, or
23 the supervision, review and approval of the Nicolau Award. ALPA and
24 ALPA Merger Policy are not on trial. USAPA has suggested, in questions by
25 its lawyers, that Plaintiffs have sued the wrong bargaining agent, and that
26 it was ALPA who delayed negotiations and ALPA who failed to follow its
27 own policies and procedures. Such evidence is of no consequence to the
28 issue of USAPA's DFR liability and cannot establish an affirmative defense.

1 This Motion is supported by a separately filed Memorandum that supports
2 all of Plaintiffs' motions *in limine* and by the Memorandum of Points and
3 Authorities that follows.

4 **MEMORANDUM OF POINTS AND AUTHORITIES**

5 **I. This case is not about comparing USAPA's fault to that of ALPA.**

6 Neither ALPA nor ALPA Merger Policy are on trial. The Court has
7 rightly recognized that this is not what this case is about:

8 I'm not here to decide to choose between competing notions of wise
9 labor policy and different views of seniority policy. That's not the
10 Court's responsibility. There are different views on that. You have
11 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.

12 (RT. 163:23-164:5 (Oct. 29, 2008).) What matters here is what USAPA has
13 done. ALPA is not a party to this litigation. It does not matter, therefore,
14 how ALPA is governed, whether ALPA Merger Policy changed 18 years ago,
15 or whether ALPA has fault under any legal theory.

16 **II. USAPA Plans to Introduce Evidence and to Argue that ALPA is at
Fault.**

17 USAPA intends to introduce a substantial amount of evidence (and
18 argument) on the subject of whether ALPA breached its duty of fair
19 representation and whether an 18-year-old version of ALPA Merger Policy
20 was superior to the version in effect at the time of the Nicolau Arbitration.

21 For example, Defendant regards as material that, prior to 1991, "ALPA
22 Merger Policy provided as a preface to [its integration] criteria: 'Merger
23 representatives should, whenever possible, use Conditions and Restrictions
24 so as to accomplish seniority list integration based on date of hire, keeping
25 in mind the following primary goals:'" (*USAPA Draft Proposed Pretrial*
26 *Order*, 6 ¶ 31 (Mar 31, 2009). Any exhibits relating to potential liability of
27 ALPA, including those Exhibits identified in the attached Exhibit A have no
28

1 relevance to USAPA's DFR liability or any possible defense. Whether
2 ALPA's 1991 merger policy was better than its current policy, whether
3 ALPA reviewed the Nicolau Award, and whether ALPA delayed in
4 presenting the Award to the Company are not relevant to whether USAPA
5 improperly disregarded the Award in its formation, campaign, or after its
6 certification.

7 In addition, USAPA has made it clear that it intends to offer testimony
8 and evidence that the real reason that USAPA was formed was because of
9 decades of unhappiness with ALPA's handling of negotiations, giving away
10 too much in prior negotiations, costing too much, and doing nothing to
11 protect the pilots. Such evidence is irrelevant and immaterial because the
12 undisputed fact is that ALPA was the bargaining agent, ALPA allowed the
13 pilots to resolve their differences of opinion regarding seniority in an
14 arbitration that everyone agreed was final and binding, and ALPA
15 submitting that final and binding award to the Airline for its approval,
16 which it obtained.

17 It should be clear that this evidence is nothing more than an irrelevant
18 smoke screen USAPA hopes will divert the jury's attention away from the
19 fact that within a few days of the Nicolau Award being released,
20 "thousands" of East Pilots protested the Award (not ALPA) and the
21 organizers of USAPA sought legal counsel to avoid ever being bound by the
22 Nicolau Award. After-the-fact and choreographed excuses for forming
23 USAPA should be recognized for what they are and precluded.

24 **III. CONCLUSION**

25 Due to the limited scope of this trial and the narrow time constraints, it
26 is important that the Court exclude evidence that is of no consequence to
27 Plaintiffs' case-in-chief or to any valid affirmative defenses. Plaintiffs,
28 therefore, ask the Court to order, *in limine*, that USAPA not present any

1 exhibits identified in Exhibit A or any similar evidence or make any
2 arguments that question the merits of ALPA Merger Policy or instead shift
3 fault to ALPA.

4 Dated this 7th day of April, 2009.

5 POLSINELLI SHUGHART PC

6
7 KATIE V. BROWN

8 By:

9 Katie V. Brown
10 Security Title Plaza
11 3636 N. Central Ave., Suite 1200
12 Phoenix, AZ 85012

13 **CERTIFICATE OF SERVICE**

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

18 I further certify that on April 7, 2009, I served a paper copy of the
19 foregoing document by electronic delivery on those who are registered
20 participant(s) of the CM/ECF System.

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

24 s/ Katie V. Brown
25
26
27
28

EXHIBIT A

**Argument That Would be Used Only to Find Fault
With ALPA or ALPA Merger Policy**

**Exhibit
No.**

1003
1005
1010
1025
1033
1036
1250
1251
1252
1253
1273
1285
1507
1516