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

10 Don ADDINGTON, <i>et al.</i> , 11 Plaintiffs, 12 vs. 13 US AIRLINE PILOTS ASSN., <i>et al.</i> , 14 Defendants.	CASE NO. 2:08-CV-1633-PHX-NVW (Consolidated) <b>MOTION IN LIMINE #6: TO EXCLUDE EVIDENCE &amp; ARGUMENT THAT WEST PILOT "BAD ACTS" EXCUSE USAPA'S UNFAIR REPRESENTATION</b>
15 Don ADDINGTON, <i>et al.</i> , 16 Plaintiffs, 17 vs. 18 Steven H. BRADFORD, <i>et al.</i> , 19 Defendants.	Case No. 2:08-CV-1728-PHX-NVW

20 USAPA intends to offer testimony and evidence that when the East Pilots  
21 rejected Nicolau and formed USAPA, certain West Pilots engaged in certain  
22 conduct and communications that were hostile, threatening, disruptive or  
23 just rude. The Court should exclude this evidence and argument because  
24 USAPA must fairly represent all workers without regard to the bad acts of a  
25 few. Such evidence is, therefore, of no relevance to the DFR claim to be  
26 tried and cannot establish an affirmative defense. This Motion is supported  
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28

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

3 Memorandum of Points and Authorities

4 **I. This case is not about balancing the bad acts of the two pilots**  
5 **groups.**

6 The duty of fair representation is not a matter of balancing equities. It is a  
7 statutory duty that requires the utmost good faith and honest dealing. As  
8 such, there are no equitable defenses to liability. USAPA, therefore, cannot  
9 use evidence of bad acts by some West Pilots as a defense.<sup>1</sup>

10 **II. USAPA plans to introduce "bad acts" by some West Pilots.**

11 USAPA intends to introduce a substantial amount of evidence of "bad acts"  
12 by a handful of West Pilots. The evidence is not relevant under Rule 401,  
13 and any possible probative value is outweighed by significant prejudice to  
14 the vast majority of West Pilots in the Plaintiff class who did nothing wrong.

15 There are several aspects of this defense by USAPA.

16 1. RICO conduct: USAPA's Exhibits 1370-1394 were previously introduced  
17 in this case to argue that bad acts by some West Pilots were somehow  
18 relevant to class discovery. USAPA previously sued a number of pilots for  
19 criminal conduct, RICO claims and other alleged misconduct. None of that  
20 evidence is relevant to the Plaintiffs' duty of fair representation claims. No  
21 judgment in favor of USAPA was obtained.

22 2. AWAPPA: This is a separate support organization for America West  
23 Pilots that had every right to exist and exercise free speech. USAPA has  
24 marked a number of Exhibits consisting of AWAPPA newsletters, web-  
25 boards or communications that were "hostile" to USAPA's election campaign  
26 and organizational purpose to deprive the West Pilots of the benefit of their

27  
28 <sup>1</sup> This argument is supported with ample authority in Plaintiffs'  
separate Memorandum filed concurrently.

1 bargain. USAPA indicates that it considers material that "AWAPPA -- a  
2 corporation formed to promote West pilots' interests -- commenced a  
3 campaign to 'destroy USAPA." (*USAPA Proposed Pretrial Order*, 9 ¶¶ 54-56  
4 (Mar 31, 2009).) Such conduct, even if proven, does not constitute a defense  
5 to USAPA's unfair representation. Whether some West Pilots behaved  
6 badly or not has no relevance to whether USAPA has improperly  
7 disregarded the Nicolau Award or otherwise breached its duty of fair  
8 representation.

9 3. Leonidas: This organization was formed to provide a funding  
10 vehicle for the class action. In pleadings and arguments, USAPA has  
11 argued that the class action is being directed and controlled by outside  
12 agitators. Aside from the utter lack of evidence to support this argument, it  
13 has no bearing or relevance to the contested issues of fact regarding  
14 USAPA's DFR viability.

15 Due to the limited scope of this trial and the narrow time constraints, it is  
16 important that the Court exclude evidence that is of no consequence to  
17 Plaintiffs' case-in-chief or to any valid affirmative defenses. Plaintiffs,  
18 therefore, ask the Court to order, *in limine*, that USAPA not present  
19 Exhibits 1370-1394, any other exhibits identified in the attached Exhibit A  
20 or any other evidence of bad acts by West Pilots or any argument that such  
21 acts excuse USAPA's unfair representation. Such evidence is not relevant  
22 and should be excluded under Rule 403.

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Dated this 7<sup>th</sup> day of April, 2009

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**CERTIFICATE OF SERVICE**

I hereby certify that on April 7, 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 served a paper copy of the foregoing document by electronic delivery on those persons registered participant(s) of the CM/ECF System:

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/ KATIE V. BROWN

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**EXHIBIT A**

**Exclude Evidence & Argument That West Pilot "Bad Acts"  
Excuse USAPA's Unfair Representation**

<b>Exhibit No.</b>	<b>Exhibit No.</b>	<b>Exhibit No.</b>
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