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

11 Don ADDINGTON, *et al.*,  
12 Plaintiffs,  
13 vs.  
14 US AIRLINE PILOTS ASSN., *et al.*,  
15 Defendants.

CASE NO. 2:08-CV-1633-PHX-NVW  
(Consolidated)  
**MOTION IN LIMINE #9: STATUS OF  
CURRENT NEGOTIATIONS WITH THE  
AIRLINE ON OTHER SECTIONS OF  
THE COLLECTIVE BARGAINING  
AGREEMENT**

16 Don ADDINGTON, *et al.*,  
17 Plaintiffs,  
18 vs.  
19 Steven H. BRADFORD, *et al.*,  
20 Defendants.

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

21 USAPA has listed over 1000 pages of documents consisting of  
22 bargaining proposals and summaries of the status of negotiations between  
23 USAPA and US Airways (USAPA Exhibits 1180-1249). USAPA intends to  
24 call the USAPA Negotiating Advisory Committee Chairman, Paul DiOrio, to  
25 testify about how hard USAPA has been working on all sections of the single  
26 collective bargaining agreement, including the sections completely unrelated  
27 to a pilot's seniority. None of that information is relevant or admissible.  
28

1 First, Plaintiffs do not contend that USAPA has failed to negotiate the  
2 other sections of the CBA. Plaintiffs only contend that USAPA has caused  
3 delay by allowing itself to be formed to thwart the use of the Nicolau Award,  
4 by campaigning on promises to prevent the Nicolau Award to ever see the  
5 light of day and simply die on the shelf, and by having to wait until it was  
6 certified as the bargaining agent on April 18, 2009 to commence  
7 negotiations with the Company. It is undisputed that the USAPA seniority  
8 proposal, instead of the Nicolau Award, was presented to the Company in  
9 September 2008.

10 USAPA has also reopened portions of the collective bargaining  
11 agreement that had been tentatively agreed to by the parties to the  
12 negotiation in July 2007. Mr. Al Hemenway, Vice-President for Labor  
13 Relations for US Airways was recently deposed on April 3, 2009. He testified  
14 that before Nicolau Award was released, the parties had tentatively agreed  
15 on 12 of the approximately 28 items for discussion. (Depo p.134 line 2)  
16 USAPA withdrew some of those items that had previously been tentatively  
17 agreed to in order to renegotiate a better deal. At the present time,  
18 according to Mr. Hemenway, only 4 items have been tentatively agreed to.  
19 (Depo p. 133, lines 21-23)

20 USAPA has submitted its DOH seniority proposal with conditions and  
21 restrictions rather than the Nicolau List established in the contested  
22 Nicolau Arbitration. Thus, USAPA is directly responsible for delay in  
23 negotiations towards a collective bargaining agreement as part of a  
24 continuing effort to block implementation of the Nicolau Award.

25 USAPA should be precluded from offering evidence of its current  
26 conduct with respect to current negotiations because such conduct, rather  
27 than the substance of or the rationale for the conduct, is irrelevant,  
28 immaterial, protected in part by the confidential status of the negotiations,

1 and not an affirmative defense to the DFR. It is particularly inappropriate  
2 to allow USAPA to offer evidence of "good" conduct in negotiations when the  
3 only item that East Pilots and USAPA organizers ever cared about, and the  
4 only item that USAPA was willing to commit a DFR to protect, is even on  
5 the negotiating table.

6 Plaintiffs, therefore, ask the Court to order, *in limine*, that USAPA not  
7 present any other exhibits identified in the attached Exhibit A or any other  
8 evidence of current negotiations for a single collective bargaining  
9 agreement.

10  
11 Dated this 7<sup>th</sup> day of April, 2009

12 POLSINELLI SHUGHART PC

13  
14 KATHERINE V. BROWN

15 By: \_\_\_\_\_

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20  
21  
22 **CERTIFICATE OF SERVICE**

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

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

s/ KATHERINE V. BROWN \_\_\_\_\_

**EXHIBIT A**

**Status of Current Negotiations With the Airline on  
Other Sections of the Collective Bargaining  
Agreement**

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