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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Don Addington; John Bostic; Mark)
Burman; Afshin Iranpour; Roger Velez;)
Steve Wargoeki,

Plaintiffs,

vs.

US Airline Pilots Association; US)
Airways, Inc.,

Defendants.

No. CV 08-1633-PHX-NVW
(consolidated)

ORDER

Don Addington; John Bostic; Mark)
Burman; Afshin Iranpour; Roger Velez;)
Steve Wargoeki, et al.,

Plaintiffs,

vs.

Steven Bradford; Paul Diorio; Robert)
Frear; Mark King; Douglas Mowery; John)
Stephan, et al.,

Defendants.


CV08-1728-PHX-NVW

Defendants' Motion in Limine # 21 seeks exclusion of Plaintiffs' Trial Exhibit No. 14 as a privileged attorney-client communication. The Court has considered the document and related documents submitted by Plaintiffs. Defendants contend that the disclosure must have been inadvertent and that the privilege should be treated as preserved. The test for waiver or retention of privilege even for inadvertent waiver is stated in various cases,

1 including *United States v. Jara*, 973 F.2d 746, 749-50 (9th Cir. 1992), and *Weil v.*
2 *Investment/Indicators, Research and Management, Inc.*, 647 F.2d 18, 25 (9th Cir. 1981). *See*
3 *Parra v. Basha's Inc.*, 2005 WL 6182338, *5 (D.Ariz. 2005), *rev'd on other grounds*, 536
4 F.3d 975 (9th Cir. 2008). Applying those factors, Defendants have failed to meet their burden
5 of proving they made efforts reasonably designed to protect and preserve the privilege, what
6 time was taken to rectify the error of inadvertent disclosure, and that they pursued all
7 reasonable means of preserving confidentiality of the privileged matter. Nothing is shown
8 beyond the statement "confidential" on the document. The document was akin to other
9 documents widely disseminated by Defendants and their colleagues as a part of the union
10 campaign that discussed the same general attorney communications. There is nothing but
11 speculation behind the idea that a wrongdoer obtained and published the document. Failure
12 to adequately protect against further dissemination by addressees is a more likely cause of
13 the document's circulation and ultimate publication. Deciding this matter on the burden of
14 proof, Defendants' motion fails.

15 IT IS THEREFORE ORDERED that Defendants' Motion in Limine # 21 is denied.

16 DATED this 23rd day of April, 2009.

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Neil V. Wake
United States District Judge