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

10 Don ADDINGTON; John BOSTIC; Mark  
BURMAN; Afshin IRANPOUR; Roger  
VELEZ; and Steve WARGOCKI,

11 Plaintiffs,

12 vs.

13 US AIRLINE PILOTS ASSOCIATION,  
US AIRWAYS, INC.,

14 Defendants,

Case No. 2:08-cv-1633-PHX-NVW  
(Consolidated)

**DEFENDANT’S RESPONSE IN  
OPPOSITION TO  
“PLAINTIFFS’ SUPPLEMENTAL  
REPLY RE: PLAINTIFFS’ MOTIONS  
IN LIMINE #1, #2 AND #7”**

15 Don ADDINGTON; John BOSTIC; Mark  
BURMAN; Afshin IRANPOUR; Roger  
VELEZ; and Steve WARGOCKI,

17 Plaintiffs,

18 vs.

19 Steven H. BRADFORD, Paul J. DIORIO,  
Robert A. FREAR, Mark. W. KING,  
Douglas L. MOWERY, and John A.  
20 STEPHAN,

21 Defendants.

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

1 Defendant submits this response in opposition to “Plaintiffs’ Supplemental Reply  
2 Re: Plaintiffs’ Motions In Limine #1, #2 And #7” (Doc. # 384). In this, Plaintiffs  
3 demand that the Court strike evidence of:

- 4 • USAPA Trial Exhibits 1599 through 1638
- 5 • The revised submission delivered to the Court on April 23

6 It is undisputed that all of these exhibits are authored by Defendant’s witness  
7 Robert Davison.

8 As a threshold matter, Plaintiffs’ motion is almost all argument directed to the  
9 *weight* of the evidence they seek to exclude rather than to reasons to exclude it. There  
10 are two reasons offered and both are wrong:

11 First, the motion inaccurately asserts that the evidence will be offered to  
12 relitigate the Nicolau award. Rather, the evidence will be offered to show how the  
13 Nicolau award relates to USAPA’s actions and intent in developing and proposing a  
14 seniority integration contract proposal to the company in collective bargaining, after  
15 USAPA was certified. This Court has ruled such evidence is allowed. In response to  
16 Plaintiff’s motion in limine No. 1 the Court stated:

17 This motion is too abstract to be ruled on in advance of trial. No evidence  
18 will be admitted to challenge the process, procedure, or decision of the  
19 Nicolau Award. *However, USAPA may still introduce evidence concerning the content of the Nicolau Award as that relates to USAPA’s representation decisions.* [emphasis added]

20 The Court has further explained this ruling on the record in the Pre-Trial  
21 conference, and the Court’s ruling is clear. Were this motion granted, Defendant would  
22

1 be precluded from explaining to the jury its representational decisions, resulting in  
2 unfair prejudice on a scale that would deprive Defendant of a fair trial.

3 Second, Plaintiffs' complaint about the timing of disclosure is misplaced: they  
4 admit that these Trial Exhibits were disclosed by the deadline set by the Court, April 1.  
5 There is no rule and no order that prohibits production of supplemental discovery on  
6 April 1. That these Exhibits were not produced until April 1 is because they were not  
7 available until then. These exhibits were not available until then because, as  
8 Defendant's Counsel has already advised the Court on the record during the Pre-Trial  
9 Conference, they *were prepared as illustrative of fact testimony to be use at trial*. They  
10 are demonstrative evidence in lieu of Mr. Davison having to draw the same information  
11 on a blackboard.

12 It took Mr. Davison some weeks to prepare these once he was informed of the  
13 trial date, and the time between the setting of the trial date and April 1 was less than  
14 four weeks.

15 In addition, Plaintiffs' motion misconstrues the author of this evidence, Davison,  
16 to be an expert but he is merely a fact witness and was always disclosed and deposed as  
17 a fact witness. That has not changed.

1 Respectfully Submitted,

2 Dated: April 23, 2009

By: /s/ Nicholas P. Granath, Esq.

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14 *Attorneys for Defendant*  
15 *US Airline Pilots Association,*  
16 *And Witnesses, Stephen Bradford, Robert*  
*Davison, and Doug Mowery.*

**CERTIFICATE OF SERVICE**

This is to certify that on the date indicated herein below true and accurate copies of the foregoing documents and their attachments, *to wit*,

- Defendant’s Response In Opposition To “Plaintiffs’ Supplemental Reply Re: Plaintiffs’ Motions In Limine #1, #2 And #7”
- Certificate of Service

were electronically filed with the Clerk of Court using the CM/ECF system, which will send notification of such filing to all admitted counsel who have registered with the ECF system, including but not limited, to:

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Further, I certify that paper hard copies shall be provided to The Honorable Neil V. Wake, District Court Judge, 401 W. Washington Street, SPC 52, Phoenix, AZ 85003.

On April 23, 2009, by:

**/s/ Nicholas Paul Granath, Esq.**