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7  
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)  
**PLAINTIFFS' RESPONSE TO**  
***DEFENDANT'S MOTION TO***  
***REDACT PLAINTIFFS' TRIAL***  
***EXHIBIT NO. 14.***

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 Plaintiffs respond in opposition to *Defendant's Motion To Redact*  
21 *Plaintiffs' Trial Exhibit No. 14* (doc. 395).

22 In trial exhibit No. 14, Mr. Bradford reports he was advised that, to  
23 avoid DFR liability, USAPA must avoid leaving evidence that it was  
24 created for the purpose of abrogating West Pilot rights arising from the  
25 Nicolau Award. This exhibit, therefore, logically demonstrates three  
26 things—that Mr. Bradford: (1) had improper intention; (2) knew such  
27  
28

1 intention was improper; and (3) planned to hide this intention. That is  
2 surely relevant evidence of bad faith.

3 Defendant, having failed to exclude trial exhibit No. 14 directly,  
4 seeks to redact nearly its entire contents. If that happened, the jury  
5 would know only that someone was:

6 cautioned, the language you use in setting up your new union  
7 and how you go about talking and writing about your solutions  
8 to this award can be used against you. You need to stress the  
9 positives of the new union and not dwell on the award. Don't  
10 give the other side a large body of evidence that the sole reason  
for the new union is to abrogate an arbitration, the Nicolau  
award, that in the opinions of most judges, should be allowed to  
stand.

11 (Trial exhibit #14.) With everything else redacted, the jury would lack  
12 context. Lacking context, it might fail to draw the logical inferences  
13 enumerated above. Moreover, such redaction would violate the principle  
14 that "the public ... has a right to every man's evidence." *United States v.*  
15 *Bryan*, 339 U.S. 323, 331 (1950). "Exceptions 'to the demand for every  
16 man's evidence are not lightly created nor expansively construed, for they  
17 are in derogation of the search for the truth.'" *Exxon Shipping Co. v. U.S.*  
18 *Dept. of Interior*, 34 F.3d 774, 779 (9th Cir. 1994) (*quoting United States*  
19 *v. Nixon*, 418 U.S. 683, 710 (1974)). It must not be allowed here.

20 In general, only confidential or privileged material can be considered  
21 for redaction. *See Skinner v. Uphoff*, 2005 WL 4089333, 4 (D. Wyo. 2005)  
22 ("Defendants shall only redact information which is confidential or  
23 privileged pursuant to state and federal law."). Defendant, therefore, has  
24 no right to redact parts of trial exhibit #14 because no parts of the exhibit  
25 are confidential or privileged. *See United States v. de la Jara*, 973 F.2d  
26 746, 749 (9th Cir. 1992); *Weil v. Investment/Indicators, Research and*

1 *Management, Inc.*, 647 F.2d 18, 23 -24 (9th Cir. 1981). There is surely no  
2 basis to redact nearly the entire exhibit.

3 Plaintiffs, therefore, respectfully ask the Court to deny Defendant's  
4 *Motion To Redact Plaintiffs' Trial Exhibit No. 14.*

5 Dated this 26th day of April, 2009

6 POLSINELLI SHUGHART PC

7 By: *s/*

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14 **CERTIFICATE OF SERVICE**

15 I hereby certify that on April 26, 2009, I electronically transmitted  
16 the foregoing document to the U.S. District Court Clerk's Office by using  
17 the CM/ECF System for filing and transmittal of a Notice of Electronic  
18 Filing.

19 *s/ Andrew S. Jacob*  
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