

1 LEE SEHAM, Esq. *pro hac vice*  
LUCAS K. MIDDLEBROOK, Esq. *pro hac vice*  
2 NICHOLAS P. GRANATH, Esq., *pro hac vice*  
STANLEY J. SILVERSTONE, Esq., *pro hac vice*  
3 SEHAM, SEHAM, MELTZ & PETERSEN, LLP  
445 Hamilton Avenue, Suite 1204  
4 White Plains, NY 10601  
Tel: 914 997-1346; Fax: 914 997-7125

5 NICHOLAS J. ENOCH, Esq., State Bar No. 016473  
LUBIN & ENOCH, P.C.  
6 349 North 4th Avenue  
Phoenix, AZ 85003-1505  
7 Tel: 602 234-0008; Fax: 602 626 3586

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

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

12 Plaintiffs,

13 vs.

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

15 Defendants,

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

18 Plaintiffs,

19 vs.

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

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

**DEFENDANT USAPA’S NOTICE OF  
MOTION, AND SECOND MOTION  
PURSUANT TO RULE 50  
AND RENEWED MOTION FOR  
LEAVE TO FILE RULE 56 MOTION,  
BOTH ON THE GROUNDS OF  
INSUFFICIENT EVIDENCE**

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

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2 TO : Plaintiffs, all parties, and their attorneys of record.

3 **NOTICE.**

4 PLEASE TAKE NOTICE that Defendant US Airline Pilots Association  
5 (“USAPA”) will move this Court, to be heard in trial now in progress, for an order:

6 1) Under Rule 50 of the Federal Rules of Civil Procedure, granting judgment as a  
7 matter of law in a jury trial in favor of Defendant on the grounds that a reasonable jury  
8 would not have a legally sufficient evidentiary basis to find for the Plaintiffs on their  
9 duty of fair representation claim, and, in the alternative;

10 2) Under Rule 56, granting Defendant’s renewed motion for leave to file  
11 summary judgment (Doc. # 215), and its motion for summary judgment (made in the  
12 alternative to its motion to dismiss, Doc. # 35), on the grounds that there are no genuine  
13 issues as to any material fact, and USAPA is entitled to judgment as a matter of law,  
14 dismissing plaintiffs’ duty of fair representation claim.

15 **MOTION.**

16 COMES NOW Defendant to move this Court, *intra* trial, for an order:

17 1) Granting in favor of Defendant, pursuant to Rule 50(a)(1)(B), judgment as a  
18 matter of law in a jury trial on the grounds that a reasonable jury would not have a  
19 legally sufficient evidentiary basis to find for the Plaintiffs on their duty of fair  
20 representation claim, and for an order;

21 2) Granting Defendant’s renewed 2) motion for leave to file a motion for summary  
22

1 judgment (Doc. # 215) and for summary judgment (Doc. # 35), pursuant to Rule 56, on  
2 the grounds that there are no genuine issues as to any material fact, and USAPA is  
3 entitled to judgment as a matter of law, dismissing plaintiffs' duty of fair representation  
4 claim.

5       Upon the Court's request, USAPA will provide the law and facts supporting this  
6 motion by memorandum or oral argument.

7       WHEREFORE, USAPA submits that judgment as a matter of law should  
8 be entered in its favor, dismissing Plaintiffs' duty of fair representation claim in  
9 Count III of their Amended Complaint.

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1 Respectfully Submitted,

2 Dated: May 4, 2009

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

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3 Nicholas P. Granath, Esq. (*pro hac vice*)  
4 ngranath@ssmplaw.com  
5 SEHAM, SEHAM, MELTZ & PETERSEN, LLP  
6 2915 Wayzata Blvd.  
7 Minneapolis, MN 55405

8 Lee Seham, Esq. (*pro hac vice*)  
9 Stanley J. Silverstone, Esq. (*pro hac vice*)  
10 Lucas K. Middlebrook, Esq. (*pro hac vice*)  
11 Theresa Murphy, Esq. (*pro hac vice*)  
12 SEHAM, SEHAM, MELTZ & PETERSEN, LLP  
13 445 Hamilton Avenue, Suite 1204  
14 White Plains, NY 10601

15 James K. Brengle, Esq. (*pro hac vice*)  
16 Duane Morris, LLP  
17 30 South 17<sup>th</sup> Street  
18 Philadelphia, PA 19103-4196

19 Nicholas Enoch, Esq. State Bar No. 016473  
20 stan@lubinandenoch.com  
21 LUBIN & ENOCH, PC  
22 349 North 4th Avenue  
Phoenix, AZ 85003-1505

*Attorneys for Defendant*  
*US Airline Pilots Association*

1 **CERTIFICATE OF SERVICE**

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

- 4 • Defendant USAPA’S Notice of Motion, and Second Motion Pursuant to Rule 50 and  
5 Renewed Motion for Leave to File Rule 56 Motion, Both on the Grounds of  
6 Insufficient Evidence;  
7 • Certificate of Service

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

11 Marty Harper	Don Stevens	Andrew S. Jacob
MHarper@Polsinelli.com	DStevens@Polsinelli.com	AJacob@Polsinelli.com
Kelly J. Flood	Katie Brown	
<a href="mailto:KFlood@Polsinelli.com">KFlood@Polsinelli.com</a>	KVBrown@Polsinelli.com	

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

14 On May 4, 2009, by:

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