

1 Marty Harper (#003416)
 mharper@polsinelli.com
 2 Kelly J. Flood (#019772)
 kflood@polsinelli.com
 3 Andrew S. Jacob (#022516)
 ajacob@polsinelli.com
 4 **POLSINELLI SHUGHART PC**
 3636 N. Central Ave., Suite 1200
 5 Phoenix, AZ 85012
 Phone: (602) 650-2000
 6 Fax: (602) 264-7033
Attorneys for Plaintiffs

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

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

CASE NOS.
 2:08-CV-1633-PHX-NVW
 2:08-CV-1728-PHX-NVW
 (Consolidated)
**PLAINTIFFS' MEMORANDUM RE;
 DAMAGE EXPERT DISCLOSURE
 AND DISCOVERY**

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

19
 20 Plaintiffs have proposed simultaneous disclosure of experts, expert reports and
 21 damage discovery. This proposal minimizes the risk of USAPA engaging in the kind
 22 of discovery abuses that have already occurred in this case.

23
 24 In the liability phase, USAPA waited until the last possible moment to disclose
 25 its liability experts and all trial exhibits on April 1, 2009. USAPA produced complex
 26 graphs and charts with no index or other explanations. USAPA produced hundreds
 27 documents purporting to represent the work of the experts, but did so in such
 28

1 fragmentary fashion that made it impossible for Plaintiffs (or even the author Bob
2 Davison) to make any sense of the production. USAPA failed to provide timely
3 disclosure of any expert reports, despite having at least two experts, Mr. Davison and
4 Mr. Salamat, on the payroll for almost one year prior to the disclosure. This practice
5 may be consistent with how labor law is practiced before other tribunals, but it has no
6 place here. Trial by ambush is inconsistent with due process and fair play.
7

8 By requiring simultaneous disclosure of experts, each side has a fair
9 opportunity to understand what claims or defenses will be presented by the other
10 party on the issues to be tried. Each side can then determine if additional experts will
11 be required to meet or rebut the opinions of the other side's experts. Simultaneous
12 disclosure of expert reports allows each party's expert(s) to take into account the
13 opinions and methodologies used by other expert(s). Depositions will be more
14 efficient because each side will have a reasonably fair opportunity to understand the
15 basis for the opposing expert's opinions. Neither side will have any tactical
16 advantage to delay disclosure until the other side has committed to a specific position
17 without any opportunity for further supplementation or disclosure. Plaintiffs'
18 proposal is therefore more efficient and reasonable, and avoids the risk of wasteful
19 and prejudicial disclosure without any undue expense or burden to the other party.
20
21
22

23 Respectfully submitted this 28th day of May, 2009.

24
25 POLSINELLI SHUGHART PC

26 By: /s/ *Don Stevens*
27 Don Stevens
28 3636 N. Central Ave., Suite 1200
Phoenix, AZ 85012

CERTIFICATE OF SERVICE

I hereby certify that on May 28th , 2009, I electronically transmitted the foregoing document to the U.S. District Court Clerk's Office by using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing.

s/ Don Stevens

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28