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10 **IN THE UNITED STATES DISTRICT COURT**  
11 **FOR THE DISTRICT OF ARIZONA**

12 Don ADDINGTON; John BOSTIC; Mark  
13 BURMAN; Afshin IRANPOUR; Roger  
14 VELEZ; and Steve WARGOCKI,

15 Plaintiffs,

16 vs.

17 US AIRLINE PILOTS ASSOCIATION,  
18 US AIRWAYS, INC.,

19 Defendants.

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

**THIRD JOINT WRITTEN  
SUMMARY OF  
DISCOVERY DISPUTE  
BY DEFENDANT  
IN DAMAGES TRIAL**

20 Don ADDINGTON; John BOSTIC; Mark  
21 BURMAN; Afshin IRANPOUR; Roger  
22 VELEZ; and Steve WARGOCKI,

23 Plaintiffs,

24 vs.

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

28 Defendants.

CV08-1728-PHX-NVW

**ISSUE:**

Whether, pursuant to Rule 26(c)(1)(D), Defendant should be granted a Protective Order forbidding Plaintiffs from any discovery inquiry into the matter of statements made or publications authored which discuss the Addington trial on liability for breach of the duty of fair representation; Or in the *alternative*, whether Defendant should be granted leave to file a written motion to argue for the same remedy?

**MOVANT'S (DEFENDANT'S) POSITION:**

Plaintiffs' Rule 26(a)(1) damage-trial disclosures indicate that an individual they name as a likely to have discoverable information, Mike Cleary, is relevant in his role as President of USAPA for his knowledge of "statements made or publications authored which discuss the Addington trial on liability for breach of the duty of fair representation" ("Plaintiffs' Supplemental Disclosure Statement For Damage Trial" June 15, 2009, § A. 2. ¶ 4). Plaintiffs seek to depose the President. Such inquiry exceeds the scope of discovery allowed under Fed. R. Civ. P. 26(b)(1). Statements, discussions or publications about liability following the jury trial on liability have nothing to do with the issue in the damages trial, i.e. money damages for six named plaintiffs. In particular, the president of USAPA has a union-constitutional duty to address matters of concern to his members, including past and pending litigation involving USAPA. Inquiry into this subject is not reasonably calculated to lead to admissible evidence but will serve to harass or needlessly increase the cost of litigation and expand the scope of the trial.

**RESPONDING PARTY'S (PLAINTIFFS') POSITION:**

Plaintiffs' damages will continue to accrue so long as West Pilots are on furlough. While the Airline is in separate operations, West Pilots currently on furlough will likely remain on furlough. A highly relevant factor in determining damages, therefore, will be the length of time that the Airline will remain in separate operations. Plaintiffs have evidence that USAPA is presently planning to delay or even prevent the Airline from integrating operations. For example, USAPA is making statements to its membership that are highly critical of this Court's conduct of the trial. USAPA states that the Court erred, the jury erred, and Plaintiffs erred, and that USAPA will never rest until this "injustice" is corrected. USAPA's evident purpose is to encourage its membership to resist complying with the spirit of the Court's order. Plaintiffs seek to discover additional evidence along similar lines. Plaintiffs will ask the jury to take this evidence into consideration when it determines when the Airline is likely to integrate pilot operations using the Nicolau Award. The Court, therefore, should deny the protective order sought here by USAPA.

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**JOINT CERTIFICATION**

Pursuant to LRCiv 7.29(j), the parties jointly agree and state that both have made sincere efforts through consultation to resolve this dispute and have now reached impasse.

For Moving Party:

For Responding Party:

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

**/s/ Don Stevens, Esq.**

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DEFENDANT

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PLAINTIFFS

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Respectfully submitted on:

Dated: June 30, 2009

By: /s/ Nicholas P. Granath

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**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*,

- THIRD JOINT WRITTEN SUMMARY OF DISCOVERY DISPUTE BY DEFENDANT IN DAMAGES TRIAL
- 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 June 22, 2009, by:

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