

1 Nicholas P. Granath, Esq. (*pro hac vice*)  
 2 ngranath@ssmplaw.com  
 3 Lucas K. Middlebrook, Esq. (*pro hac vice*)  
 4 lmiddlebrook@ssmplaw.com  
 5 SEHAM, SEHAM, MELTZ & PETERSEN, LLP  
 6 2915 Wayzata Blvd.  
 7 Minneapolis, MN 55405  
 8 Tel. (612) 210-8460

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

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

14 Plaintiffs,

15 vs.

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

18 Defendants.

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

21 **FOURTH JOINT WRITTEN**  
 22 **SUMMARY OF**  
 23 **DISCOVERY DISPUTE**  
 24 **BY DEFENDANT**  
 25 **IN DAMAGES TRIAL**

26 Don ADDINGTON; John BOSTIC; Mark  
 27 BURMAN; Afshin IRANPOUR; Roger  
 28 VELEZ; and Steve WARGOCKI,

Plaintiffs,

vs.

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

Defendants.

CV08-1728-PHX-NVW

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**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 actions taken by ALPA and ALPA officers and agents to put Council 41 in trusteeship; 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 they identify 3 persons that Plaintiffs say are relevant for their knowledge of “actions taken by ALPA and ALPA officers and agents to put Council 41 in trusteeship” (“Plaintiffs’ Supplemental Disclosure Statement For Damage Trial” June 15, 2009, § A. 2.). Plaintiffs seek discovery into this matter but such inquiry exceeds the scope of discovery allowed under Fed. R. Civ. P. 26(b)(1). USAPA is not liable for any damages caused by ALPA, its officers, employees or agents, or any of its political subdivisions. It is undisputed that Council 41 was an ALPA subdivision and that the trusteeship occurred before USAPA was certified (and the trusteeship was for conflict of interest reasons removed from the seniority integration issue). USAPA is not liable for any conduct prior to its certification date. (Doc. # 361, p. 3:21). No individual pilot, whether or not they were an early USAPA supporter, or in any capacity, has been found, or is, liable. Discovery inquiry into what ALPA did prior to USAPA certification is not reasonably calculated to lead to admissible evidence that goes to any issue in the damages trial, which concerns the extent of any money-damages for the six named plaintiffs that can be legally attributed to post-certification conduct that USAPA was found liable for. Moreover, such discovery has the potential to vastly expand the burden in discovery and trial and harass individual non-party pilots.

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

ALPA put Council 41 into trusteeship as a response to East Pilot misconduct that was intended to prevent the Airline’s integration of pilot operation using the Nicolau Award. This misconduct was part of the acting in concert that supports USAPA’s joint and several liability. Evidence of this misconduct is found in ALPA’s investigation of Council 41 and in the trusteeship proceedings themselves. For all the reasons set out in Plaintiffs’ response to the first discovery dispute, the Court should deny USAPA request for a protective order that would prevent discovery of this evidence. In addition, this evidence will be used to prove that ALPA had the means and will to ensure that the Airline would timely integrate pilot operations using the Nicolau Award. Such evidence will allow the jury to find that, had there been no wrongful acts in furtherance of a common design to prevent implementation of integrated operation using the Nicolau Award, the Airline would have integrated pilot operations using the Nicolau Award before the furloughs began in October 2008. 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.**

Nicholas P. Granath, Esq. (*pro hac vice*)  
ngranath@ssmplaw.com  
Lucas K. Middlebrook, Esq. (*pro hac vice*)  
lmiddlebrook@ssmplaw.com  
SEHAM, SEHAM, MELTZ & PETERSEN  
2915 Wayzata Blvd.  
Minneapolis, MN 55405  
Tel 612 341-9080

Don Stevens, Esq.  
DStevens@Polsinelli.com  
POLSINELLI SHUGART, P.C.  
Security Title Plaza  
3636 N. Central Ave., Suite 1200  
Phoenix, AZ 85012  
Tel. 602 650-2000

ATTORNEYS FOR  
DEFENDANT

ATTORNEYS FOR  
PLAINTIFFS

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Respectfully submitted on:

Dated: June 30, 2009

By: /s/ Nicholas P. Granath

Nicholas P. Granath, Esq. (*pro hac vice*)  
ngranath@ssmplaw.com  
SEHAM, SEHAM, MELTZ & PETERSEN, LLP  
2915 Wayzata Blvd.  
Minneapolis, MN 55405  
Tel. (612) 210-8460

Lee Seham, Esq. (*pro hac vice*)  
Lucas K. Middlebrook, Esq. (*pro hac vice*)  
Stanley J. Silverstone, Esq. (*pro hac vice*)  
445 Hamilton Ave., Suite 1204  
White Plains, NY 10601  
Tel. 914 997-1346

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

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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*,

- FOURTH 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:

Marty Harper	Don Stevens	Andrew S. Jacob
MHarper@Polsinelli.com	DStevens@Polsinelli.com	AJacob@Polsinelli.com
Kelly J. Flood	Katie Brown	
KFlood@Polsinelli.com	KVBrown@Polsinelli.com	

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.*