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

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| <p>Don ADDINGTON; John BOSTIC; Mark BURMAN; Afshin IRANPOUR; Roger VELEZ; and Steve WARGOCKI,</p> <p style="text-align: center;">Plaintiffs,</p> <p>vs.</p> <p>US AIRLINE PILOTS ASSOCIATION, US AIRWAYS, INC.,</p> <p style="text-align: center;">Defendants.</p>   | <p>Case No. 2:08-cv-1633-PHX-NVW (consolidated)</p> <p style="text-align: center;"><b>FIFTH JOINT WRITTEN SUMMARY OF DISCOVERY DISPUTE BY DEFENDANT IN DAMAGES TRIAL</b></p> |
| <p>Don ADDINGTON; John BOSTIC; Mark BURMAN; Afshin IRANPOUR; Roger VELEZ; and Steve WARGOCKI,</p> <p style="text-align: center;">Plaintiffs,</p> <p>vs.</p> <p>Steven Bradford; Paul Diorio; Robert Frear; Mark King; Douglas Mowery; John Stephan, et al.,</p> <p style="text-align: center;">Defendants.</p> | <p>CV08-1728-PHX-NVW</p>   |

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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 withdrawal of East pilots from the Joint Negotiating Committee under ALPA; 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 8 persons, party and non-party witnesses, that Plaintiffs say are relevant for their knowledge of “the withdrawal of the East Pilots from the Joint Negotiating Committee engaging negotiations towards a single collective bargaining agreement” including “involvement in the East MEC” (“Plaintiffs’ Supplemental Disclosure Statement For Damage Trial” June 15, 2009, § A. 2.). Plaintiffs seek discovery into this matter, having noticed depositions, but such inquiry exceeds the scope of discovery allowed under Fed. R. Civ. P. 26(b)(1). No damages can result of actions by non-parties, and no damages can result from any actions by Defendant prior to USAPA’s certification date. “Pre-certification conduct cannot be the basis for liability.” (Doc. # 361, p. 3:21). The “East pilots” were dismissed in the state suit. The East MEC is a creature of ALPA, which is not on trial and has not been found liable. Not only have Plaintiffs stipulated that USAPA did not delay any section of the contract, it is beyond dispute that USAPA did not control ALPA’s East MEC. These are legal limits, not fact issues having to do with causation by USAPA or quantification of damages. Pursuit of this subject matter is wildly speculative, a re-hash of the liability jury trial, and has all the potential for enormous unnecessary cost on all parties and a waste of this Court’s time at trial (Plaintiffs list 86 total potential witness).

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

The primary cause for the Airline not integrating pilot operations using the Nicolau Award on or before October 2008 was that the East MEC withdrew its representatives from the JNC. Plaintiffs will prove that causal link. Plaintiffs will also prove that the East MEC withdrew its JNC representatives in furtherance of a common design that USAPA joined and ratified and in which USAPA participated. For the reasons set out in Plaintiffs response to the first discovery dispute, discovery into the events and motives related to the withdrawal of the East MEC representatives is highly relative to proving that USAPA is jointly and severally liable for Plaintiffs’ damages. 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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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*,

- FIFTH 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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| Kelly J. Flood         | Katie Brown             |                       |
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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.*