

1 Lee Seham, Esq., *pro hac vice*  
lseham@ssmplaw.com  
2 Nicholas Granath, Esq., *pro hac vice*  
ngranath@ssmplaw.com  
3 Lucas K. Middlebrook, Esq. *pro hac vice*  
lmiddlebrook@ssmplaw.com  
4 SEHAM, SEHAM, MELTZ & PETERSEN, LLP  
445 Hamilton Avenue, Suite 1204  
5 White Plains, NY 10601  
Tel: 914 997-1346; Fax: 914 997-7125

6 Nicholas J. Enoch, Esq., State Bar No. 016473  
nick@lubinandenoch.com  
7 LUBIN & ENOCH, PC  
8 349 North 4th Avenue  
Phoenix, AZ 85003-1505  
9 Tel: 602 234-0008; Fax: 602 626 3586

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

12  
13 US Airways, Inc., a Delaware Corporation,  
14 Plaintiff,

15 vs.

16 Don Addington, an individual, *et al*

17 and

18 US Airline Pilots Association,

19 Defendants.  
20  
21  
22  
23

Case No. 2:10-CV-01570-PHX-ROS

**DEFENDANT USAPA'S  
NOTICE OF MOTION  
AND RULE 12(b)  
MOTION TO DISMISS**

**Oral Argument Requested**

1 TO : PLAINTIFFS, ALL PARTIES, AND THEIR ATTORNEYS OF RECORD.

2 **NOTICE OF MOTION.**

3 PLEASE TAKE NOTICE that Defendant, the US Airline Pilots Association  
4 (“USAPA”), will move this Court to be heard as soon as can be heard before the  
5 Honorable Roslyn O. Silver, United States District Judge, in the Sandra Day O'Connor  
6 U.S. Courthouse, 401 W. Washington Street, SPC 52, Phoenix, AZ 85003, pursuant to  
7 Rule 12(b) of the Federal Rules of Civil Procedure, to dismiss all counts of Plaintiff’s  
8 Complaint for declaratory judgment.  
9

10 Pursuant to Local Rule 7.2(f), oral argument is requested.

11 **MOTION.**

12 COMES NOW the Defendant, US Airline Pilots Association, and hereby  
13 respectfully moves the Court, pursuant to Rule 12(b) of the Federal Rules of Civil  
14 Procedure, to dismiss all counts of Plaintiff’s Complaint for declaratory judgment. In  
15 support of its motion USAPA states the following grounds:

16 First, because the Complaint fails to meet Article III constitutional prerequisites  
17 for subject matter jurisdiction because of: i) lack of case or controversy, ii) lack of  
18 ripeness, and iii) lack of a basis for subject matter jurisdiction independent of the  
19 Declaratory Judgment Act, 28 U.S.C. § 2201, 2202, therefore dismissal is required  
20 pursuant to Rule 12(b)(1);  
21  
22  
23

1        Second, because the Declaratory Judgment Act, 28 U.S.C. § 2201, 2202 allows the  
2 Court discretion to dismiss for prudential concerns alone, and because circumstances here  
3 warrant such discretion should be exercised, dismissal is required;

4        Third, because the Complaint fails to adequately allege facts sufficient to state a  
5 claim under the Railway Labor Act, 45 U.S.C. § 152 (First), dismissal is required  
6 pursuant to Rule 12(b)(6);

7        Fourth, because the Complaint fails to adequately allege facts sufficient to state a  
8 claim for violation of the Duty of Fair Representation, dismissal is required pursuant to  
9 Rule 12(b)(6);

10        Fifth, because plaintiffs have failed to join necessary parties under Rule 19  
11 dismissal is required, or is appropriate, under Rule 12(b)(7);

12        Sixth, because venue is improper dismissal is required, or is appropriate, under  
13 Rule 12(b)(3).  
14

15        The grounds, support, and argument for this motion are set forth in greater detail  
16 in Defendant's separately filed, "Memorandum Of Law In Support Of USAPA's Rule  
17 12(b) Motion To Dismiss" together with its supporting Declarations and their  
18 attachments.

19        This motion is based on the pleadings, the undisputed material facts in the record,  
20 and, if necessary, evidence admitted in a hearing held pursuant to this motion, as well as  
21 such other evidence, facts, or materials as the Court may deem appropriate.  
22

23        WHEREFORE, defendant USAPA respectfully moves that its motion to dismiss  
be GRANTED, and that the Complaint be dismissed with prejudice.

1 Respectfully Submitted,

2 Dated: September 7, 2010

3 By: /s/ Lee Seham

4 Lee Seham, Esq. (*pro hac vice*)  
5 Lucas K. Middlebrook, Esq. (*pro hac vice*)  
6 Stanley J. Silverstone, Esq. (*pro hac vice*)  
7 SEHAM, SEHAM, MELTZ & PETERSEN, LLP  
8 445 Hamilton Avenue, Suite 1204  
9 White Plains, NY 10601  
10 Tel. (914) 997-1346; Fax (914) 997-7125

11 Nicholas P. Granath, Esq. (*pro hac vice*)  
12 ngranath@ssmplaw.com  
13 SEHAM, SEHAM, MELTZ & PETERSEN, LLP  
14 2915 Wayzata Blvd.  
15 Minneapolis, MN 55405  
16 Tel. 612 341-9080; Fax 612 341-9079

17 Nicholas J. Enoch, State Bar No. 016473  
18 nick@lubinandenoch.com  
19 Lubin & Enoch, PC  
20 349 North 4<sup>th</sup> Avenue  
21 Phoenix, AZ 85003-1505

22 **CERTIFICATE OF SERVICE**

23 Case No. 2:10-CV-01570-PHX-ROS

I hereby certify that on this day of September 7, 2010, I electronically transmitted the foregoing document to the U.S District Court Clerk's Office using the ECF System for filing and transmittal.

By: /s/ Nicholas Paul Granath, Esq.