

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

US Airways, Inc., a Delaware Corporation,

Plaintiff,

vs.

Don Addington, an individual, *et al*

and

US Airline Pilots Association,

Defendants.

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

**DECLARATION OF
NICHOLAS PAUL GRANATH
IN SUPPORT OF
REPLY BRIEF
IN SUPPORT OF
DEFENDANT USAPA’S
AMENDED RULE 11 MOTION FOR
SANCTIONS AGAINST
THE ADDINGTON DEFENDANTS
AND THEIR COUNSEL FOR
FAILURE TO WITHDRAW THEIR
CROSS CLAIM**

I, Nicholas Paul Granath, Esq., declare as follows:

1. I make this Declaration of my own free will and based on my personal, first-hand knowledge, unless otherwise specifically indicated. I am counsel of record for the US Airline Pilots Association (“USAPA”) in the above cited matter, and in all related litigation.

2. This Declaration is in support of USAPA’s “Reply Brief In Support Of Defendant USAPA’s Amended Rule 11 Motion For Sanctions Against The Addington Defendants And Their Counsel For Failure To Withdraw Their Cross-claim.”

3. Attached, marked, and labeled Exhibit G is a true and correct copy of an extract of the transcript of the hearing held on July 7, 2009 in front of the Hon. Neil V. Wake in the now dismissed *Addington* litigation.

1 4. Attached, marked, and labeled Exhibit H is a true and correct copy of a an
2 extract of the transcript of the hearing held on October 12, 2010 in front of the Hon. Neil
3 V. Wake in the now dismissed *Addington* litigation.

4 Further your Declarant sayeth not.

5 Pursuant to 29 U.S.C. § 1746, I declare under penalty of perjury that the foregoing
6 is true and correct.

7 Executed on: December 20, 2010

8
9 ***/s/ Nicholas Paul Granath***

10 _____
11 Nicholas Paul Granath

July 7, 2009 - Motion Hearing

1 and I haven't found any, but then I haven't done an exhaustive
2 research on my own.

3 Do you have any cases on these kinds of facts where
4 you have, again, for purposes of discussion, let us assume,
5 clear dual unionism or direct conspiracy between the upstart 14:41:22
6 union and the existing union officials to defeat negotiations,
7 to create opportunities for a different policy of the new union
8 in the future? Do you have any cases with those facts?

9 MR. SILVERSTONE: Your Honor, this is Stanley
10 Silverstone. 14:41:46

11 I haven't seen cases of that nature, and certainly the
12 plaintiffs haven't cited any. And, in fact, when you look at
13 their cases that they are citing to support their joint and
14 several liability theories, none of those cases support their
15 theory either. Their theory is that there's joint and several 14:42:01
16 liability between the union and individual union members or
17 union officers. And none of the cases that they cite have
18 anything to do with joint and several liability between a union
19 and individuals.

20 Most of the labor law cases that talk about joint and 14:42:21
21 several liability have to do with joint and several liability
22 between a union and a company, most often in the case of hybrid
23 DFR cases.

24 But plaintiffs' cases don't -- they just don't support
25 the theory that they are making. The only support they claim 14:42:39

July 7, 2009 - Motion Hearing

1 to have is in the Restatement of Torts, and I don't have any
2 authority that says that that has any application under the
3 Railway Labor Act.

4 THE COURT: All right. Let me hear from Mr. Jacob
5 then. 14:42:57

6 MR. JACOB: Thank you, Your Honor.

7 I can assure you this is not the first time I have
8 been asked if I have any cases on point, and I don't. I'm not
9 keeping anything from the Court.

10 We agree that there's two issues. There's a factual 14:43:11
11 issue of what is the but-for causation. There's a legal issue
12 of whether USAPA should be jointly liable for the harm that was
13 caused by others, perhaps, with USAPA's help prior to April
14 2008.

15 We also agree that we feel like we've been 14:43:37
16 shadowboxing that we haven't gotten opposition on the legal
17 issue from the other side. We have tried our best to brief it.

18 We believe that the evidence that we have now is
19 enough to say that it's a factual issue as far as the causation
20 goes, but it certainly is premature to rule that there isn't a 14:44:02
21 factual issue before there's been more discovery on that issue.

22 Just to frame how the legal issue defines the factual
23 issue, USAPA's position is, as we understand it, is that the
24 issue is whether plaintiffs would be in a better position today
25 if USAPA had included the Nicolau Award in their bargaining 14:44:31

July 7, 2009 - Motion Hearing

1 position after April 2008. That's not the issue.

2 The issue, from our viewpoint, and we believe that the
3 law supports us on this, is whether plaintiffs would be in a
4 better position today if none of the wrongful acts committed by
5 those with whom USAPA acted in concert, encouraged, ratified, 14:44:57
6 and/or supported, had occurred and if USAPA had done what they
7 said properly supported the Nicolau after they came on board in
8 April 2008.

9 What's our evidence that by October 2008, the
10 integration would have been completed? We have, before there 14:45:23
11 was any controversy, we have opinions from two sources that are
12 knowledgeable, who ought to know about these things. We have
13 Mr. Cleary and, I believe, Mr. Ciabattoni who were in the East
14 merger committee several years before this merger came about,
15 and they estimated in a publication to the East pilots that it 14:45:52
16 would take two to three years to go through a process like
17 this.

18 Mr. Hemenway said two to three years. We have Mr.
19 Dotter's testimony who was saying up until May of 2007, things
20 were making progress. There was a time that it was slow and 14:46:11
21 then there was a jump. It was starting to make progress.

22 We have statements made by East pilots before the
23 Nicolau Award came out where they were enthusiastic about
24 moving ahead, about getting a new contract. Their goal was
25 parity with the West. The Hemenway offer acceded parity with 14:46:33

1 MR. JACOB: That's right. Yes.

2 THE COURT: But that's not our case.

3 MR. JACOB: No. But it has been used to reopen a
4 judgment that was based on a determination of circumstances at
5 the time the judgment and action were taken. 10:09:13

6 THE COURT: Do you have any cases that involve closely
7 analogous factual and procedural circumstances, that is, that
8 the ruling of this Court now, pursuant to the mandate, is that
9 there's no ripeness and the case is dismissed? So do any of
10 your precedents involve cases where ripeness has been found 10:09:37
11 lacking, judgment entered, and then later circumstances are
12 argued to create ripeness different from the circumstances that
13 led to the original judgment finding no ripeness and
14 dismissing? I'm looking for facts, cases with that procedural
15 context. Because looking through your cases, you cite a lot of 10:10:07
16 cases. I appreciate that. But I didn't really think I found
17 any that had -- that were horses of that same color and spots.

18 MR. JACOB: You are right. And I'm not hiding the
19 ball. I didn't have any such cases.

20 THE COURT: Go ahead. 10:10:25

21 MR. JACOB: But the situation that the Court is in, we
22 believe, is that if we were to file the claim anew now, under
23 the context of the US Airways case, we have filed it as a
24 counterclaim. It is ripe. So the question --

25 THE COURT: And you filed a cross claim too? 10:10:56