

THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF NORTH CAROLINA  
CHARLOTTE DIVISION

CIVIL ACTION NO.: 3:14-CV-577-RJC-DCK

US AIRLINE PILOTS ASSOCIATION, )  
)  
Plaintiff, )  
)  
vs. )  
)  
ROGER VELEZ, on behalf of himself and )  
all similarly situated former America West )  
Pilots, and LEONIDAS, LLC, )  
)  
Defendants. )

**BRIEF IN SUPPORT OF  
PLAINTIFF'S MOTION  
TO CONSOLIDATE**

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Pursuant to Fed.R.Civ.P 42(a) and Local Rule 7.1(c), plaintiff US Airline Pilots Association (“USAPA”), by and through its attorneys, submits this Brief in Support of its Motion to Consolidate the present matter with the case of *Bollmeier v. Hummel, et al.*, currently pending before the Court as case no. 3:15-cv-00111, for all purposes.

**STATEMENT OF RELEVANT FACTS<sup>1</sup>**

USAPA commenced this action on September 16, 2014, in the Superior Court of North Carolina, Mecklenburg County, seeking a declaration as to the validity of certain actions taken by the National Officers of USAPA pursuant to their constitutional authority as provided for in USAPA’s Constitution and Bylaws.

Following US Airways’ merger with American Airlines and the subsequent decertification of USAPA as the certified bargaining representative of the US Airways pilots, the

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<sup>1</sup> Plaintiff respectfully refers the Court to the complaint and its briefs submitted in support of its motion to remand (Doc. 20), in opposition to the motions to dismiss (Doc. 21), in support of its cross-motion for jurisdictional discovery (Doc. 21), and in support of its motion for leave to file an amended complaint (Doc. 33) for a full recitation of the relevant facts.

duly elected National Officers of USAPA deferred commencement of the dissolution date and deferred distribution of USAPA's assets. Doc. 1-1, ¶¶81, 88. These actions were consistent with the dissolution provisions of USAPA's Constitution and Bylaws. *Id.* The bases for these actions included the National Officers' determination that existing circumstances present, or may present in the future, the need for collective legal action on behalf of the US Airways pilots, including seniority integration proceedings. *Id.*, ¶66. Under the terms of the Seniority Integration Protocol Agreement entered into by USAPA, the APA, US Airways, and American, the USAPA Merger Committee continues to exist notwithstanding USAPA's decertification, and both USAPA and the USAPA Merger Committee continue to be involved in seniority integration proceedings. *Id.*, ¶¶70-72. There are also various ongoing legal proceedings in which USAPA is either a named party on behalf of US Airways pilots, including the *Addington* litigation in which USAPA is a defendant,<sup>2</sup> or otherwise represents the interests of US Airways pilots. *Id.*, ¶¶69, 73-74; Doc. 1-1, Exhibit "C" to Compl. USAPA also has outstanding obligations to vendors, service providers, and creditors incurred and/or entered into in the normal course of business. *Id.*

Declaratory relief as to the validity of these actions was sought because of USAPA's concern with the imminent threat of legal action relating to the deferral decisions (among other determinations), which concern was realized and justified by the fact of the commencement of *Bollmeier v. Hummel, et al.*, Case No. 3:15-cv-00111 (hereinafter the "*Bollmeier Action*"), the case with which consolidation is sought by the instant motion.

As more fully discussed in the complaint in this action (and in the proposed amended complaint), there is a long history of contentious litigation resulting from the 2005 US Airways/America West merger that to date has not been resolved. Doc. 1-1, ¶14. A group of

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<sup>2</sup> Currently on appeal with the Ninth Circuit. *Addington, et al. v. US Airline Pilots Association, et al.*, Dkts. 14-15757, 14-15874, 14-15892.

dissident US Airways pilots who had formerly been employed by America West filed two class action lawsuits, both dismissed, alleging that USAPA breached its duty of fair representation to its members. *Id.*

In June, 2014, defendant Leonidas threatened another lawsuit against USAPA in the event USAPA was decertified as the certified bargaining representative of the US Airways pilots. *Id.*, ¶16. That threat was followed by a September, 2014 letter written by defendant Velez, writing on behalf of himself and the class of former America West pilots. These pilots refer to themselves as the “West Pilots”, and include the plaintiffs in the *Bollmeier* Action. Leonidas was created in 2007 by certain West Pilots principally to fund litigation against USAPA.

The letter demanded of USAPA its immediate dissolution, and immediate distribution of USAPA’s assets. *Id.*, ¶15; Doc. 1-1, Ex. A to the Compl. These threats necessitated the filing of this action in order to resolve the uncertainty and potential liability arising from the National Officers’ actions. Because of the threat of legal action by Velez and Leonidas, plaintiff also sought injunctive relief, enjoining the West Pilots and Leonidas from instituting legal actions challenging the deferral of dissolution and distribution of assets and the continued existence of USAPA on the grounds that interests of justice in the orderly adjudication of all issues arising out of the determination to defer dissolution were best served by resolving all such concerns within the confines of one proceeding rather than piecemeal in different cases and potentially in different forums.<sup>3</sup> Doc. 1-1, ¶¶82, 89.

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<sup>3</sup> Clearly defendants Velez and Leonidas disagree as they have not only multiplied the proceedings by doing everything in their power from preventing the Court from reaching the merits of this action (e.g. moving to dismiss for lack of personal jurisdiction, opposing the motion to amend the complaint to add the matters that form the basis for the *Bollmeier* Action, and even opposing the motion for oral argument) and then commencing a separate action that addresses the very matters that are raised in the complaint in this action and the proposed amended complaint that they opposed. Thus, the concerted actions by Velez and Leonidas and the *Bollmeier* plaintiffs, with whom they are allied, regarding unnecessary expenses is an irony lost on no one but themselves.

On October 23, 2014, defendants moved to dismiss this action for lack of personal jurisdiction. Docs. 7, 8. Defendant Leonidas also moved to dismiss for failure to state a claim. Doc. 8. On November 17, 2014, plaintiff moved to remand this action back to the Superior Court of North Carolina on the grounds that none of the alleged grounds for removal are present. Doc. 19. On November 24, 2014, plaintiff cross-moved for jurisdictional discovery. Doc. 22. On February 11, 2015, plaintiff moved for leave to amend the complaint, or in the alternative, to supplement the complaint. Doc. 33. Plaintiff also filed a Request for Hearing on all the motions pending at that time. Doc. 34.

On April 2, 2015, Magistrate Judge. Keesler issued a Memorandum and Recommendation and Order on all the pending motions. Doc. 39. The Magistrate Judge granted plaintiff's motions for jurisdictional discovery and for leave to amend the complaint.<sup>4</sup> The Court denied without prejudice plaintiff's motion to remand. Plaintiff's request for a hearing on the pending motions was also denied as moot. The Court recommended that defendants' motions to dismiss be likewise denied as moot without prejudice.

Subsequent to USAPA's filing of the complaint, there were additional demands made to USAPA and/or its National Officers by the West Pilots and/or their counsel concerning the use of USAPA funds. Specifically, West Pilots demanded that USAPA cease using West Pilot dues to fund or support the majority of USAPA members (referred to by Velez and the *Bollmeier* plaintiffs as the "East Pilots") in seniority integration proceedings; the immediate distribution of USAPA's assets; payment of West Pilots' expenses related to the seniority list integration proceedings; and an accounting of the monies that were paid into the USAPA treasury by or on

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<sup>4</sup> The motion for leave to amend the complaint was granted with the modification that an amended complaint shall be filed after the completion of jurisdictional discovery. Doc., 39, at 7.

behalf of West Pilots by virtue of the 0.5% dues increase and distribution of such funds to the West Pilots. Doc. 33-1, ¶79 and Exhibits D and E.

West Pilots additionally objected to USAPA's use of its assets for payment of expenses relating to ongoing litigation, including the appeal in *Addington*<sup>5</sup>, other pending litigation against USAPA, and payment of the expenses of the USAPA Merger Committee. Doc. 33-1, ¶79. In light of these additional demands (all of which are challenged in the *Bollmeier* Action), USAPA moved on February 11, 2015, for leave to amend the complaint. Doc. 33. In its proposed amended complaint, it alleges two additional claims for relief. USAPA's proposed third claim for relief seeks a declaration "that USAPA's funding of the expenses related to the USAPA Merger Committee and its refusal to fund the expenses of any other merger committee is a proper, valid, and enforceable interpretation and application of the USAPA Constitution and Bylaws." Doc. 33-1, ¶97. USAPA's proposed fourth claim for relief seeks a declaration "that denying distribution to the West Pilots and/or the West Merger Committee of any money relating to the 0.5% dues increase in the event of a merger . . . was a proper, valid and enforceable interpretation and application of the USAPA Constitution and Bylaws." *Id.*, ¶104. USAPA also seeks injunctive relief enjoining West Pilots and Leonidas from instituting legal action with respect to the matters as to which declaratory judgment is sought, including the decision by USAPA to fund the expenses of the USAPA Merger Committee only and its decision denying distribution to the West Pilots and/or the West Pilot Merger Committee of any money relating to the 0.5% dues increase. *Id.*, ¶¶98, 105.

### **THE BOLLMEIER ACTION**

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<sup>5</sup> Notwithstanding the fact that one of the West Pilots' claims in that case – and on appeal – seeks a multi-million dollar award of attorneys' fees from the USAPA treasury.

On February 23, 2015, twelve days after USAPA moved for leave to file an amended complaint in this action, West Pilots Eddie Bollmeier, Bill Tracey, and Simon Parrott filed an *ex parte* Application for Leave to Bring Verified Complaint Under Title V of the Labor Management Reporting and Disclosure Act against fifteen current and former officers of USAPA, sued in their individual capacities. 3:15-mc-00035-MOC-DCK, Doc. 1. The March 30 Leonidas Update leaves no doubt that Leonidas controls or at least has an interest in this action. See [www.cactuspilot.com](http://www.cactuspilot.com).<sup>6</sup> All defendants are current and former US Airways pilots, or “East Pilots”. Notwithstanding the fact that the *Bollmeier* Action arises from identical operative facts as this matter, the plaintiffs in *Bollmeier* did not in their application disclose this action as a related matter and did not seek to have its application referred to the judicial officers assigned to this action.. The *Bollmeier* plaintiffs were granted leave by Judge Cogburn to commence their lawsuit by order dated March 5, 2015. *Bollmeier* Action, Doc. 2. On March 6, 2015, after the filing and assignment in the *Bollmeier* Action, defendant Velez filed a Notice of Related Action in this action. Doc. 37. The *Bollmeier* Action was transferred to the judicial officers assigned to this matter on March 9, 2015. The action is still at the beginning stages of litigation with responses to the complaint from the seven defendants who have been served to date due on April 15<sup>th</sup>. To date there has been no discovery.

The two lawsuits are mirror images, with identical facts but seeking opposite relief. The *Bollmeier* plaintiffs challenge the same actions taken by the National Officers following the September 16, 2014 decertification of USAPA that USAPA raises in the complaint

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<sup>6</sup> For example, the Leonidas update provides that, “Judge Cogburn ruled on March 6th that **our** case was actionable under the LMRDA”; “most likely **our** complaint will need to be amended”; [o]n March 27th, **our** counsel filed a Motion for Temporary Restraining Order . . . “. It is submitted the repeated use of possessory pronouns accurately reflects the reality of the interests motivating, funding, and controlling this litigation, irrespective of the nominal parties.

and proposed amended complaint in this action. Thus, the *Bollmeier* plaintiffs challenge the National Officers' decisions to: (1) defer the commencement date of USAPA's dissolution; (2) defer an interim distribution of monies to USAPA members; (3) authorize the use of USAPA funds to advance USAPA's position before the Preliminary Arbitration Board that the West Pilots should be denied separate representation in the seniority integration process; and (4) authorize the use of USAPA funds to pay legal and expert fees, and to pay flight pay loss and expenses of the members of the "East Pilots Merger Committee." *Bollmeier* Action, Doc. 1, ¶¶27, 31, 32.

The relief the *Bollmeier* plaintiffs seek is, *inter alia*, for the Court to (1) order an accounting of USAPA's treasury from the date of its dissolution to the present; (2) order defendants to pay restitution of the funds plaintiffs allege were wrongfully expelled; (3) preliminarily and permanently enjoin defendants from further expending any USAPA monies in furtherance of the seniority integration process; and (4) order defendants to disburse immediately to USAPA members all funds remaining in its treasury as of its decertification except such funds reasonably necessary for the collective action on behalf of the pilot group and ordinary expenses of winding down. *Bollmeier* Action, Doc. 1, at 15.

Although the *Bollmeier* plaintiffs sued individual officers in their individual capacities, it is clear that USAPA is the real party in interest. All of the challenged actions of the National Officers were on behalf of USAPA, and within their authority pursuant to USAPA's Constitution and Bylaws. Moreover, the bulk of the relief sought in the *Bollmeier* Action can only be effectuated by USAPA, not by the individual officers.<sup>7</sup> Thus, it is readily seen that the individual defendants in their *individual* capacities lack the authority and or ability to comply with the

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<sup>7</sup> The inability of the officers to provide the relief requested is underscored by the fact that they are sued in their individual, as opposed to their representative capacities.

following items of relief in the event the *Bollmeier* plaintiffs prevail: (1) perform an accounting of USAPA's treasury (2) stopping USAPA from expending any USAPA monies in furtherance of the seniority integration process; and (3) causing USAPA to disburse immediately to USAPA members all funds remaining in its treasury as of its decertification except such funds reasonably necessary for the collective action on behalf of the pilot group and ordinary expenses of winding down. It is only by acting in their duly elected positions representing the institution within the confines of the USAPA Constitution and Bylaws that they have the legal authority to act. That the *Bollmeier* complaint fashions relief in terms of actions that can only be performed or provided by USAPA is not accidental: it is proof positive that USAPA is the real party in interest and the action has been drafted as an LMRDA claim for collateral and strategic purposes.

### **ARGUMENT**

Under Rule 42(a) “[i]f actions . . . involve a common question of law or fact, the court may:

- (1) join for hearing or trial any or all matters at issue in the actions;
- (2) consolidate the actions; or
- (3) issue any other orders to avoid unnecessary cost or delay.

Fed.R.Civ.P. 42(a). Whether to grant a motion to consolidate that meets the threshold requirement of a common question of law or fact is one of judicial discretion, in which several factors should be considered, including:

- (1) the possibility of inconsistent adjudication of common factual and legal issues; (2) unnecessary burden on parties and witnesses created by separate cases; (3) judicial economy; and (4) additional time requirements and expenses resulting from separate trials.

*Pariseau v. Anodyne Healthcare Management, Inc.*, 2006 WL 325379, at \*2 (W.D.N.C. Feb. 9, 2006).

Cases should not be consolidated if it would result in “(1) prejudice to parties; (2) juror confusion; and (3) additional time requirements and expenses resulting from consolidation.” *Id.*, citing *Arnold v. Eastern Air Lines*, 681 F.2d 186 (4<sup>th</sup> Cir. 1982).

The threshold requirement of a common question of law or fact is clearly met. Both cases require a judicial determination as to the validity of decisions made and actions taken by the National Officers following USAPA’s decertification, including: (1) deferring the commencement date of USAPA’s dissolution; (2) deferring an interim distribution of USAPA’s assets; (3) authorizing the funding of expenses related to the USAPA Merger Committee and no other merger committee; and (4) denying distribution to the West Pilots and/or the West Merger Committee of any money relating to the 0.5% dues increase. As to these actions, USAPA seeks a declaration as to their validity; the *Bollmeier* plaintiffs seek the opposite -, an immediate distribution of USAPA’s assets, and an injunction preventing any USAPA funds from being expended in seniority integration proceedings.

The two cases should be consolidated. Both arise out of the same operative facts. Consolidation would allow the cases to be decided together, and avoid the possibility of inconsistent adjudications. Moreover, the burden on the parties, witnesses, and judicial resources of two separate lawsuits, and the length of time required to try two separate lawsuits versus a single suit, and the relative expense required for two separate lawsuits versus a single suit favor consolidation. *See Conbraco Industries, Inc. v. Elmco & Associates, Inc.*, 2010 WL 2775633, at \*2 (W.D.N.C. July 13, 2010). It is likely the same witnesses will testify in both cases, and the discovery sought will be similar if not identical. Consolidation will avoid repetition and will conserve judicial and the parties’ resources. *Id.* Consolidation is appropriate and USAPA’s motion should be granted.

**CONCLUSION**

For the reasons set forth above, USAPA's motion to consolidate the present matter with the case of *Bollmeier v. Hummel, et al.*, currently pending before Your Honor as case no 3:15-cv-00111, should be granted in its entirety.

Respectfully submitted this 10<sup>th</sup> day of April, 2015.

TIN FULTON WALKER & OWEN

s/ John Gresham

John Gresham  
N.C. State Bar No. 6647  
301 East Park Avenue  
Charlotte, NC 28203  
(704) 338-1220

O'DWYER & BERNSTIEN, LLP  
Brian O'Dwyer (admitted *pro hac vice*)  
Joy K. Mele (admitted *pro hac vice*)  
Zachary Harkin (admitted *pro hac vice*)  
52 Duane Street, 5<sup>th</sup> Floor  
New York, NY 10007  
(212) 571-7100

**CERTIFICATE OF SERVICE**

I hereby certify that I electronically filed the foregoing BRIEF IN SUPPORT OF PLAINTIFF'S MOTION TO CONSOLIDATE with the Clerk of the Court using the CM/ECF system, and that notification pursuant to the CM/ECF system will be sent to:

C. Grainger Pierce, Jr.  
NEXSEN PRUET, PLLC  
227 West Trade Street, Suite 1550  
Charlotte, NC 28202

Marty Harper  
Kelly J. Flood  
ASU ALUMNI LAW GROUP  
2 N. Central Avenue Suite 1600  
Phoenix, AZ 85004

This the 10th day of April, 2015.

s/ John W. Gresham  
John W. Gresham, N.C. Bar No. 6647  
301 East Park Avenue  
Charlotte, NC 28203  
(704) 338-1220