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

CIVIL ACTION NO.: 3:14-CV-577-RJC-DCK
CIVIL ACTION NO.: 3:15-CV-00111-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.

EDDIE BOLLMEIER, BILL TRACEY and, SIMON PARROTT,

Plaintiffs,

vs.

GARY HUMMEL, STEPHEN BRADFORD, ROB STREBLE, STEVE SMYSER, ROBERT FREAR, COURTNEY BORMAN, and JANE DOE BORMAN, RONALD NELSON, PAUL DIORIO PAUL MUSIC, JOHN TAYLOR, JOE STEIN, PETE DUGSTAD, JAY MILKEY, and STEPHEN NATHAN,

Defendants.

STATEMENT OF PLAINTIFF US AIRLINE PILOTS ASSOCIATION ("USAPA") AND DEFENDANTS GARY HUMMEL, STEPHEN BRADFORD, ROB STREBLE, STEVE SMYSER, JOHN TAYLOR, JOE STEIN, PETE DUGSTAD, JAY MILKEY AND STEPHEN NATHAN WITH RESPECT TO RESTRAINTS PROPOUNDED BY *BOLLMEIER* PLAINTIFFS

Plaintiff US Airline Pilots Association ("USAPA") and defendants GARY HUMMEL, STEPHEN BRADFORD, ROB STREBLE, STEVE SMYSER, JOHN TAYLOR, JOE STEIN, PETE DUGSTAD, JAY MILKEY and STEPHEN NATHAN (collectively "the USAPA parties") submit this statement with respect to the restraints propounded by the plaintiffs in the *Bollmeier* action ("*Bollmeier* plaintiffs") pursuant to the Court's directive issued at the June 30, 2015 hearing.

The parties met and conferred concerning proposed temporary restraints and were able to agree to only one of four restraints that were propounded by the *Bollmeier* plaintiffs.[1] The specific responses and objections to these proposals will be addressed separately below. Before doing so, however, some general comments and observations are in order.

First, this is an application for a temporary restraining order in the LMRDA Section 501 case, not in any other action, most notably the 2013 *Addington* case.[2] Nevertheless, as shown below in response to specific restraints sought by the *Bollmeier* plaintiffs, it is clear they are attempting to use the Ninth Circuit's opinion in *Addington*[3] as justification for disadvantaging 3,566 former US Airways pilots ("East Pilots") in the McCaskill-Bond seniority list integration ("SLI") process and would have this Court act in place of, or ancillary to, the *Addington* proceedings in the Ninth Circuit and/or the District Court for the District of Arizona. By design, the relief they now seek has little to do with their claims against current and former officers of

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[1] The *Bollmeier* plaintiffs' proposed restraints are annexed as Exhibit "A" and the response of the USAPA parties with an addition to include the phrase "by and through its National Officers," in proposed restraint #4 is annexed as Exhibit "B".

[2] *Addington v. US Airline Pilots Ass'n.*, 2:13-cv-00471 ROS.

[3] *Addington v. US Airline Pilots Ass'n.*, ___ F.3d ___, 2015 WL 3916665 (9th Cir. June 26, 2015).

USAPA, sued in their individual capacities, in the LMRDA 501 action, but more to do with giving the West Pilots an improper advantage in the McCaskill-Bond SLI process, undermining, among other things, the McCaskill-Bond mandate of a "fair and equitable" process. These restraints substantiate the USAPA parties' motion that the March 5, 2015 *ex parte* order granting the *Bollmeier* plaintiffs leave to commence the Section 501 action was improvidently granted and should be vacated because the action is not for the benefit of the labor organization as is required under Section 501. 29 U.S.C. §501(b).

Second, in response to the Ninth Circuit's ruling in *Addington*, USAPA has disbanded its Merger Committee and withdrawn from the McCaskill- Bond SLI process. USAPA has taken that action as a consequence of the Ninth Circuit's opinion, notwithstanding (a) no mandate has issued and no injunction has yet been issued by the District Court, and (b) on July 10, 2015, USAPA filed a petition for rehearing and rehearing *en banc* with respect to the *Addington* panel's majority opinion. USAPA's decision to withdraw from the McCaskill-Bond process means that no more money will be spent by USAPA on merger-seniority related matters incurred after June 30, 2015 (except for expenses incurred as of that date and so as not to do an injustice to third parties who have rendered services to USAPA prior to its withdrawal from the McCaskill-Bond process), which was the relief sought by the *Bollmeier* plaintiffs by way of the TRO, as made clear by the *Bollmeier* plaintiffs in a filing shortly before the June 30, 2015 hearing.[4]

However, USAPA's willingness to enter into this restraint is without waiver of its

[4] Declaration of Eric Ferguson, dated June 18, 2015, where he stated, *inter alia*, "The [Bollmeier plaintiffs] seek a limited TRO: they seek one that enjoins Defendants from authorizing USAPA to spend any more money from its treasury on the entire seniority integration process since such spending is not in support of collective legal action on behalf of the pilot group." Doc. 53-1, at 1.

position that the *Bollmeier* plaintiffs have failed to establish their entitlement to the extraordinary relief of a TRO as fully briefed in the USAPA parties' Motion to Vacate the Order Dated March 5, 2015, or, in the alternative, to Dismiss the Verified Complaint (Doc. 22 – 22-6) and Memorandum of Law in Opposition to Plaintiffs' Motion for a Temporary Restraining Order or Preliminary Injunction (Doc. 24), all of which show there is no likelihood of success in that the complaint must be dismissed as a matter of law for numerous compelling reasons, including that the *Bollmeier* plaintiffs' claims do not implicate the fiduciary duties enumerated in Section 501(a).

Third, it is relevant to note the 180 degree turn in the position of the *Bollmeier* plaintiffs with respect to one of the key claims in their LMRDA case, the September 16, 2014 decision to defer dissolution and distribution. On June 29, 2015, counsel for the *Bollmeier* plaintiffs issued a notice to USAPA, among others, that the West Pilots had a claim for $4 million as and for attorneys' fees in the *Addington* case and cautioned USAPA from taking actions, including dissolving and distributing money, that was inconsistent with the *Addington* Ninth Circuit ruling with respect to attorneys' fees. In making that demand, the *Bollmeier* plaintiffs wholly undermined the claim in the *Bollmeier* complaint that the National Officers breached their LMRDA 501 duties by, *inter alia*, failing to dissolve on September 16, 2014, and failing to make an interim distribution of funds as of that date (*see e.g.*, Doc. 1, at 4 (¶8), 15 (Prayer for Relief, ¶4). What the *Bollmeier* plaintiffs **now** seek would have been impossible if their demands had been acceded to and is one of the contingencies the then USAPA National Officers took into consideration in deciding to defer dissolution and distribution, as set forth in their statement accompanying the decision to defer (Doc. 27-1). This reversal by the *Bollmeier* plaintiffs is a

complete vindication of the correctness of the deferral decision by the (then) National Officers and removes any doubt as to the rational basis for and prudence of their decision in this regard.

USAPA Parties' Responses to the Specific Proposed Restraints

Bollmeier Plaintiffs' Proposed Introduction:

> At the hearing on June 30, 2015, the Court ordered the Parties to submit a joint stipulated set of conditions regarding the permitted and prohibited expenditure of USAPA funds. Pursuant to that Order, all of the Parties to the consolidated litigation have jointly agreed upon the following:

USAPA Parties' Response to the Proposed Introduction:

The USAPA parties do not agree with this formulation, in that it provides or at least implies that USAPA is prevented from taking actions unless permitted by the Court. USAPA respectfully submits that sort of omnibus restraint is beyond the Court's powers on application for TRO, contrary to the limited TRO the *Bollmeier* plaintiffs said they were seeking and wholly unjustified on the facts and law.

Accordingly, the USAPA parties have proposed a more neutral introduction, as follows:

> At the hearing on June 30, 2015, the Court directed the Parties to submit a joint proposal with respect to Plaintiffs' request for a temporary restraining order. Pursuant to that directive, all of the Parties to the consolidated litigation have jointly agreed upon the following:

Bollmeier Plaintiffs' Proposed Restraint #1:

> USAPA and the individual Defendants in the LMRDA action (originally filed as 3:15-cv-00111-RJC-DCK)("LMRDA Defendants") agree that the LMRDA Defendants will not authorize, permit or cause USAPA to spend any USAPA treasury monies after June 30, 2015, whether directly or indirectly, to support any group of former East Pilots, whether in the form of the "former" USAPA Merger Committee (which has now been disbanded), any "new" East Pilot Merger

> Committee, which the Allied Pilots Association (APA) is attempting to form or any other group or committee of former East Pilots who might seek now or later to participate in the current SLI process, and who will argue for the use of anything other than the seniority list contained in the Award of Arbitrator George Nicolau (the "Nicolau Award") as regards the seniority relationship between former America West pilots ("West Pilots"), former US Airways pilots ("East Pilots") and pilots hired by US Airways between May 12, 2005 and December 9, 2013 ("Third List Pilots") in the McCaskill-Bond Seniority List Integration process (the "SLI process") resulting from the merger of American Airlines and US Airways.

USAPA Parties' Response to Proposed Restraint #1

The USAPA parties agree with the foregoing proposal in part, and would add language permitting the payment of incurred, but as of yet, unpaid expenses, as follows:

> It is agreed that USAPA will not authorize, permit or cause USAPA to spend any USAPA treasury monies for expense incurred in relation to merger/seniority related matters after June 30, 2015, whether directly or indirectly, except that USAPA shall be permitted to pay such expenses incurred through June 30, 2015 in an amount estimated to be $500,000, as and for flight pay loss to the Company (in the approximate sum of $175,000); subject matter experts, reimbursement to members of the Merger Committee for travel, accommodation, and similar expenses, and attorneys' fees.

The USAPA parties are prepared to agree to the critical part of the *Bollmeier* plaintiffs' request for TRO, that USAPA not spend any more money on merger/seniority related matters. This is the relief they sought before the *Addington* ruling came down and thus, was not freighted with the objectives of advancing the West's position in *Addington* and the McCaskill-Bond SLI process at the expense of the East Pilots.

As set out above, USAPA should be allowed to make payments to third-parties who have advanced services and/or expenses in reliance on a state of facts prior to the *Addington* ruling and USAPA's withdrawal from the McCaskill-Bond SLI process effective June 30, 2015. Chief amongst these claims is the claim of US Airways as and for flight pay loss, which is the system whereby pilots (in this case the pilots who comprised the USAPA Merger Committee) are relieved from their piloting duties but remain on pay from the Company, which is then reimbursed. Additional incurred, but, as of yet unpaid expenses, are those for an expert who had been providing services to the USAPA Merger Committee (and who was preparing to be involved in the hearings that were scheduled to begin on June 29th), the Merger Committee attorneys, and ordinary expenses incurred by the Merger Committee, which heretofore were reimbursed to them by USAPA, as provided for in the USAPA Constitution and Bylaws, Article VII, Section 1 (Doc. 1-2, at 27). In all of these cases, it would be inequitable and unjust to leave these parties in the lurch as a result of the *Addington* ruling and USAPA's decision to withdraw from the McCaskill-Bond SLI process.

In an email sent yesterday to counsel for the USAPA parties, the *Bollmeier* plaintiffs demanded that USAPA apply to the Allied Pilots Association ("APA") for it to release a portion of the $1.3 million to which the USAPA Merger Committee was entitled so that USAPA can pay these incurred but, as of yet, merger-related unpaid expenses. It is anticipated the *Bollmeier* plaintiffs will press that point in its filing and ask this Court to order the USAPA parties to do the same. By way of background, under the MOU, as reinforced by the Protocol Agreement, the "Merger Representatives" contemplated thereunder are to divide equally a $4 million payment from the Company (i.e., $1.3 million to the extent there are three representatives) to defray

merger expenses. USAPA never drew upon that money to pay merger expenses and paid all expenses from its treasury.

The *Bollmeier* plaintiffs' demand is untenable for two reasons. First, USAPA did not draw upon those monies prior to USAPA's withdrawal from the McCaskill-Bond SLI process. And, now that USAPA has withdrawn and disbanded its Merger Committee, it is unsettled as to whether USAPA has any claim upon that money. What is certain is that this money will, in all likelihood, be subject to competing claims, including any party that may be recognized to represent the interests of the 3,566 East Pilots formerly represented by the USAPA Merger Committee in the McCaskill-Bond SLI proceedings.[5] A dispute concerning the party entitled to this money implicates the MOU, which contains a dispute resolution procedure for all claims arising thereunder. (MOU, Doc. 1-3, at 11 (¶20))

Second, the TRO sought by the *Bollmeier* plaintiffs pertained only to the USAPA treasury, not money from any other source. (*See*, Doc. 16-5, seeking restraint from "authorizing expenditure of USAPA funds obtained from the collection of dues and assessments of US Airways pilots during the period that USAPA was the exclusive bargaining agent . . . "). Any request by the *Bollmeier* plaintiffs requiring the USAPA parties to seek monies from a non-party is outside the scope of this litigation and the relief plaintiffs seek.

One further point of contention reflected in the two versions above s to proposed restraint #1, relates to the party or parties that need to be bound to this provision. USAPA is the proper party for this undertaking: USAPA is the entity to which the payment of these funds was made,

[5] In this regard it should be noted that on July 5, 2015, the McCaskill-Bond Arbitration Panel issued a Procedural Award finding that the APA should engage in its best efforts to establish a new merger committee to represent the legacy U.S. Airways East Pilots in the McCaskill-Bond SLI process. Upon information and belief, the APA is in the process of appointing such a committee.

it is the bank account holder, and it is the entity that disburses funds or does not disburse funds.[6] No individual acting outside of his or her duties as defined and granted by USAPA has the authority to bind USAPA or to pay or not pay any money from the USAPA treasury. A restraint as to USAPA provides the *Bollmeier* plaintiffs with all of the relief the plaintiffs sought and is reasonably related to the allegations in the complaint.

Bollmeier Plaintiffs' Proposed Restraint #2

The *Bollmeier* plaintiffs' second proposal illustrates their attempt to use the TRO in this action to advance their objectives in the McCaskill Bond proceeding:

> USAPA and the LMRDA Defendants agree that the LMRDA Defendants will not authorize, permit or cause USAPA to transfer or allow to be used in any way, any tangible asset of USAPA, or the former USAPA Merger Committee, by any new East Merger Committee, or any other group or committee of former East Pilots, to argue for a seniority list in the SLI process other than the Nicolau Award. Tangible assets include, but are not limited to, computers, software, any type of personal digital device such as a cell/smart phone, tablet, or the like, office supplies and/or furnishings, commercial leases and/or rented office space, and any and all work product produced by experts, attorneys, and/or consultants.

USAPA Parties' Response to Proposed Restraint #2:

This proposed restraint is objected to in its entirety and without counter-proposal. This proposed restraint attempts to prejudice the rights of 3,566 East pilots – an overwhelming

[6]The USAPA Constitution and Bylaws provides in Article VII, Section 2: "All bills payable, notes, checks or other negotiable instruments of the Association shall be made in the name of USAPA and shall be signed by one of the following [National Officers]. . . . No officer, agent, or employee of USAPA acting singly or jointly with others shall have the power to make any bills payable, notes, checks, drafts, warrants, or negotiable instruments of any description or nature or endorse the same in the name of USAPA or contract or cause to be contracted any debt or liability in the name of or on behalf of USAPA **except as expressly prescribed and provided in this Constitution and Bylaws.**" Doc. 1-2, at 27 (emphasis added).

majority of the former US Airways pilots (about 70%) -- in the McCaskill-Bond proceedings and is objectionable and unwarranted for a number of reasons.

First, the proposed restraint is outside the scope of this litigation. LMRDA Section 501 actions are permitted under extremely narrow circumstances, indeed, so narrow that LMRDA Section 501(b) protects union officials from vexatious and harassing suits and contains provisions – including a good cause to maintain an action provision -- designed to protect unions and their officers from harassing, vexatious litigation. *Phillips v. Osborne*, 403 F.2d 826, 830 (9th Cir. 1968). Proposed restraint #2 is an example of the harassing and vexatious use of LMRDA Section 501 claim.

There is no basis within the context of an LMRDA claim for a restraint that would affect the rights of 3,566 pilots in the McCaskill-Bond SLI process. There is no allegation in this case relating to the sharing of information or that doing so would violate LMRDA Section 501. Thus, there is no basis for a restraint that is unrelated to the claims in this action. The *Bollmeier* plaintiffs should not be permitted to piggyback on the Ninth Circuit opinion and obtain relief from this Court that is unrelated to their claims in order to advance their interests in Addington or before the McCaskill-Bond Arbitration panel. To the extent the *Bollmeier* plaintiffs seek this restraint as a result of the Ninth Circuit's ruling, their recourse does not lie in this Court. And, as they can seek relief in an appropriate forum (if that ruling stands), there is no harm that needs to be remedied by this Court.

Second, this proposed restraint is an attempt by the West Pilots to prejudice the East Pilots and gain an improper advantage (in violation of LMRDA Section 501) over 3,566 East pilots whose rights would be affected in McCaskill-Bond SLI process by denying the East Pilots any voice in the SLI process. The SLI process is governed by McCaskill-Bond Amendment to

the Federal Aviation Act, 49 U.S.C. § 42112, Note 117, which establishes a binding federal process for integrating seniority lists in the event of airline mergers subject to the Railway Labor Act. McCaskill-Bond provides that, absent agreement between the pilot groups to arrive at a merged seniority list (which is the case here), the dispute will be submitted to binding impartial arbitration to determine an integrated seniority list that is "fair and equitable". The *Bollmeier* plaintiffs want to hamstring the East Pilots in the McCaskill-Bond SLI process by preventing them from being able to make an effective presentation in support of their list and depriving them of any funding. This tactic also has the effect of undermining the Procedural Award issued by the McCaskill-Bond Arbitration Panel which found that APA should establish a committee to represent the East Pilots, and the APA, to the extent it acts consistent with this Award (which, as noted, it is in the process of doing). In these and other respects, the *Bollmeier* plaintiffs seek to enlist the Court's aid in obstructing the Arbitration Panel's Award, the APA's independent judgment as the bargaining agent of the East Pilots as well as the West Pilots to appoint a separate East Pilot committee and the letter and spirit of the McCaskill-Bond requiring a "fair and equitable" seniority list. For present purposes it is irrelevant whether this is the intent or effect of the restraint proposed by the *Bollmeier* plaintiffs; either way it is unwarranted and improper and no restraint should issue that advances its causes in this regard.

Third, this proposed restraint would make the USAPA parties answerable for the acts of persons who are not within its control. Material potentially within the sweep of this restraint has already been made public, including the seniority list and supporting documentation, as the parties to the McCaskill-Bond SLI process made filings in advance of the June 29th start date of the McCaskill-Bond hearings. Moreover, it is possible that information encompassed within this proposed restraint is in the possession of parties that are not within the control of the USAPA

parties, which would render such a restraint both ineffectual and inequitable to the extent penalties could be imposed upon the USAPA parties for the acts and conduct of persons not under their control.

Fourth, this proposed restraint tramples on the First Amendment rights of East pilots. It is overbroad and unlawful because it would prohibit individual East pilots from advocating for any list they want. Thus, while in *Addington* the Ninth Circuit ruled that USAPA must advocate for the Nicolau list if it participates in the SLI process, the Ninth Circuit did not extend that ruling to the 3,566 East Pilots or to any merger committee appointed by the APA to represent their interests (see, footnote 5, above), which is the objective the *Bollmeier* plaintiffs seek here. However, as the *Addington* panel specifically noted in footnote 12 of its opinion, it was not deciding whether and to what extent its opinion applied to third parties. It is clearly improper for the *Bollmeier* plaintiffs to seek an injunction in the context of the LMRDA Section 501 claim to extend, add onto, or bootstrap the *Addington* opinion.

Bollmeier Plaintiffs' Proposed Restraint #3

The *Bollmeier* Plaintiffs' third proposal is as follows:

> The Parties to this consolidated case agree that USAPA and the LMRDA Defendants will promptly select a neutral qualified professional or firm to perform an accounting of USAPA's books and records for the period January 1, 2013 to the present. The cost of this accounting will be borne by USAPA. The Parties agree that the accounting should be completed as quickly as possible, but in no event any later than August ____, 2015. The Parties also agree that two representatives of the West Pilots appointed by the LMRDA Plaintiffs in CV3:15-cv-00111-RJC-DCK shall have total access to either the individual or firm that USAPA retains to perform the accounting. The West Pilot representatives will be appointed by July 24, 2015.

USAPA Parties' Response to Proposed Restraint #3:

This proposed restraint is objectionable on a number of grounds and the USAPA parties do not have a counter-proposal for the reasons enumerated below.

First, the demand for accounting is patently not a temporary restraint; it does not maintain the *status quo*. Nor does this proposed restraint preserve the object of the litigation so that ultimate relief is not rendered ineffectual. The demand for accounting is one of the demands for final relief sought by the *Bollmeier* plaintiffs in this action and should not be imposed on a temporary basis, especially in view of the USAPA parties' argument that a request for an accounting is not proper under Section 501, which does not require an accounting.

Second, the proposed restraint is unnecessary and duplicative. As part of the expedited discovery ordered by this Court, USAPA answered interrogatories concerning, *inter alia*, the amount of money spent on merger related activities for various periods of time and provided the documents – spreadsheets, bank statements, etc. -- underlying its answers.

Moreover, "neutral accountings" of USAPA's books and records have already been performed through the annual *audits* performed by Elliott, Davis, Decosimo, CPAs, USAPA's auditors for the relevant period of time. These yearly audits are performed in accordance with Generally Accepted Auditing Standards ("GAAP") consistent with Department of Labor standards and the requirements for the filing of LM2 forms, yearly reports of financial transactions that all labor unions are required to file and which are publicly available. USAPA will make the audits for fiscal years 2012 (April 1, 2012 to March 31, 2013) and 2013 (April 1, 2013 to March 31, 2013) available immediately and the audit for FY 2014 (April 1, 2014 to March 31, 2015) available as soon as it is finalized by Elliot, Davis, Decosimo, CPAs (which is anticipated to be completed within 30 days).

In their complaint the *Bollmeier* plaintiffs sought "an accounting of USAPA's treasury from September 16, 2014, to the present, including a full itemization of the value of the treasury as of September 16, 2014 (including any special assessment funds); monies paid in furtherance of any USAPA legal action since September 16, 2014; USAPA's indebtedness as of September 16, 2014 (and any subsequently accrued debts); and an itemization of any funds reasonably necessary to wind down the affairs of USAPA as a labor organization." Doc. 1, at 15. The audits, which by their nature are neutral, will provide the *Bollmeier* plaintiffs with all the information they sought.

Third, in conferring over the terms of the proposed restraints, counsel for the *Bollmeier* plaintiffs indicated that accounting was sought because there were questions concerning the dues that had been assessed by USAPA as and for the merger dues increase, which went into effect in April 2013. An accounting of dues assessments is not part of the *Bollmeier* plaintiffs' claims, nor has such relief ever been plead or briefed. Moreover, while USAPA was collecting dues and assessments (which ceased as of September 16, 2014) there were procedures in place for bargaining unit members to challenge their dues assessments and for USAPA to reconcile any dues assessments based on projected income. Examination of dues for 5,000 plus pilots is not properly the subject of this action, let alone a temporary restraint. Moreover, even if this issue was in dispute, USAPA had established procedures and controls, including but not limited to a reconciliation process, to ensure that any percentage-based dues and assessments were not overpaid by bargaining unit members.

Bollmeier Plaintiffs' Proposed Restraint #4

The parties have reached agreement on the following language:

USAPA agrees, by and through its National Officers, that it will not dissolve USAPA without prior written notice to the Plaintiffs in CV3:15-cv-00111-RJC-DCK and approval by the Court.

Bollmeier Parties' Proposed Restraint Relating to Attorneys' Fees in *Addington*

It is anticipated that the *Bollmeier* plaintiffs will seek a restraint preventing USAPA from using the treasury to pay for further proceedings in *Addington*, including expenditures for the petition for rehearing and rehearing *en banc*, which was filed on July 10, 2015 (and writ of *certiorari,* if necessary) and proceedings in the District Court after remand, including responding to West Pilots' attorneys' fee application if the *Addington* panel's ruling stands.[7]

In opposing this extraordinary request the USAPA parties repeat the arguments set forth above, particularly that this restraint advances interests that are outside of the subject matter of this litigation and, therefore, should be obtained, if at all, by a court with jurisdiction over that matter. This restraint, if requested, should be denied because it is outside the scope of a Section 501 action. The proposed restraint highlights the disingenuous of the *Bollmeier* plaintiffs' Section 501 action. *Bollmeier* plaintiffs' claim the individual defendants, *in their individual capacities*, acted improperly by deferring dissolution and not distributing assets. However, this restraint seems to do precisely what Section 501 prohibits – failing "to hold the union's money and property solely for the benefit of the union and its members and to manage, invest, and expend the same in accordance with the union's constitution and bylaws." 29 U.S.C. § 501(a). This restraint leave no doubt that the Section 501 suit is only brought on behalf of the West Pilots, and not the entire membership as required under Section 501.

[7] Although this restraint was not propounded as a proposed stipulation by the *Bollmeier* plaintiffs in their proposed joint stipulation annexed as Exhibit "A", their communications indicate they may ask the Court for such a restraint.

Such a request should also be denied because it is contrary to the interests of 3,566 East Pilot members (approximately 70% of the former US Airways pilot group) to whom USAPA still owes a duty under its Constitution and Bylaws and North Carolina law as a not for profit association. It would be wholly inequitable to deprive USAPA and this majority of USAPA members of their legal rights to seek review and redress of a ruling that affects them so profoundly. Moreover, the logical consequence of the *Bollmeier* plaintiffs' position is that USAPA, the entity against which the West Pilots state they will seek an attorneys' fee award of $4 million, cannot even protect itself against an improper fee award from being entered. West Pilots would have USAPA simply roll over and mount no opposition or defense as to **any** amount of money sought by the West Pilots' attorneys (the same attorneys as represent the *Bollmeier* plaintiffs) in the hopes the court will just rubber stamp their fee request. To the contrary, the USAPA parties have fiduciary duties to USAPA members to assure that an unwarranted fee award does not result. In this regard too, the *Bollmeier* plaintiffs' position on restraining USAPA from pursuing appeals and defending itself in *Addington* leads to an inequitable and unwarranted conclusion and must be rejected.

CONCLUSION

For the foregoing reasons, USAPA submits the Court should reject the restraints proposed by the *Bollmeier* plaintiffs and enter those propounded by the USAPA parties as provided for in the Exhibit" B" to this Statement.

Dated: July 14, 2015

Respectfully submitted,

TIN FULTON WALKER & OWEN

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CERTIFICATE OF SERVICE

I hereby certify that I served the foregoing **STATEMENT OF PLAINTIFF US AIRLINE PILOTS ASSOCIATION ("USAPA") AND DEFENDANTS GARY HUMMEL, STEPHEN BRADFORD, ROB STREBLE, STEVE SMYSER, JOHN TAYLOR, JOE STEIN, PETE DUGSTAD, JAY MILKEY AND STEPHEN NATHAN WITH RESPECT TO RESTRAINTS PROPOUNDED BY BOLLMEIER PLAINTIFFS** with the Clerk of the Court using the CM/ECF system, and that notification pursuant to the CM/ECF system will be sent to:

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This the 14th day of July, 2015.

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