

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,)

v.)

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.)

**DECLARATION OF JOHN
GRESHAM IN SUPPORT OF
MOTION TO WITHDRAW AS
COUNSEL**

John Gresham declares as follows under penalty of perjury pursuant to 28 U.S.C. § 1746:

1. I am a member of the firm of Tin Fulton Walker and Owen, LLP, counsel for defendants Gary Hummel, Stephen Bradford, Rob Streble, Steve Smyser, John Taylor, Joe Stein,

Pete Dugstad, Jay Milkey and Stephen Nathan¹ (collectively the “defendants”), in the *Bollmeier* Action.

2. I submit this declaration in support of the motion to withdraw as counsel made by the Firm and myself who have appeared in the action, and I am familiar with the facts and circumstances of this matter and the Firm’s representation of defendants.

3. The Firm was first retained by USAPA in or around April 2011.

4. Since its retention, the Firm has served as counsel to USAPA. The Firm has also represented USAPA in several lawsuits, including but not limited to an action before this Court (*US Airways, Inc. v. USAPA and Cleary*, Case No. 2:11-cv-371-RJC-DCK) and two actions maintained in the Superior Court of Mecklenburg County (*Christopher Lazear v. US Airline Pilots Assoc., et al 12-CV-4036* and *Cleary v. U.S. Airline Pilots Association*, Case No. 14-cvs-9783).

5. The Firm has also represented individual USAPA officers, sued in their official capacities, in actions where USAPA’s interests and the officer’s interests were aligned. *See Lazear v. US Airline Pilots Association, et al.*, Case No. 3:12-cv-00210-FDW-DSC, Western District of North Carolina, Charlotte Division.

6. On February 23, 2015, rather than join issue in the first filed declaratory judgment action, *USAPA v. Velez, et al.*, Case No. 14-cv-00577-RJC-DCK, Doc. 1-1 (the “Declaratory Judgment Action”), also currently before this Court, three former West Pilots commenced an action under Section 501 of the Labor Management Reporting and Disclosure Act (“LMRDA”) against USAPA current and former officers and Board of Pilot Representatives in their individual capacities regarding the same actions that are the subject of the Declaratory Judgment Action. *Bollmeier v. Hummel, et al.*, Case No. 15-cv-00111-RJC-DCK.

¹ No appearances were entered in this action by this Firm for defendants Robert Frear, Courtney Borman, Ronald Nelson, Paul DiOrio, and Paul Music as they had not been served.

7. Because the challenged acts of the *Bollmeier* defendants were undertaken in good faith in their capacities as representatives of USAPA, and USAPA's interests in the litigation were aligned with defendants' and thus there existed no conflict of interest, the Firm, with the consent of USAPA, agreed to represent defendants in the *Bollmeier* Action. The Firm agreed to represent defendants for as long as defendants wanted the Firm's representation to continue, or until such time, if ever, a conflict arose between the Firm's representation of USAPA and the *Bollmeier* defendants. The representation was undertaken with the understanding that should a conflict arise, the Firm would seek to withdraw from representing the individual defendants and continue to represent USAPA.

8. On March 27, 2015, the *Bollmeier* plaintiffs moved for a temporary restraining order or preliminary injunction (Doc. 48), which was granted in part and denied in part by Order dated August 27, 2015. Doc. 75. In so ruling, the Court concluded preliminarily that plaintiffs demonstrated a likelihood of success on the merits of the LMRDA claim. Doc. 75 at 14.

9. In light of this conclusion, the potential for conflict between USAPA and the *Bollmeier* defendants now exists and requires this Firm to seek to withdraw as counsel for *Bollmeier* defendants.

10. The law firm of Seham, Seham, Meltz & Petersen, LLP ("SSMP") has represented that they are in the process of being retained by the individual defendants currently represented by this Firm in this action and will be able to file an answer to the *Bollmeier* complaint by December 31, 2015, on behalf of those individuals who retain SSMP. The current deadline to answer the complaint was November 13, 2015. And the Motion to Withdraw and the Declaration of Gary Silverman was filed on November 13th.

11. Counsel for *Bollmeier* plaintiffs consents to the Firms' motion to withdraw as counsel and further consents to extend the deadline for filing the answers to the complaint as per the Court's order of October 14, 2015 (text only) to December 31, 2015.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 14th day of November, 2015.

/s/ John Gresham
John Gresham

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing DECLARATION OF JOHN GRESHAM IN SUPPORT OF MOTION TO WITHDRAW AS COUNSEL with the Clerk of the Court using the CM/ECF system, with notification pursuant to the CM/ECF system sent to the following counsel for plaintiffs:

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

Marty Harper
Kelly J. Flood
ASU ALUMNI LAW GROUP
Two North Central, Suite 600
Phoenix, AZ 85004

Jeffrey Freund
Zachary Ista
BREDHOFF & KAISER, PLLC
805 15 Street N.W.
Washington, DC 20005

This the 14th day of November, 2015.

/S/John Gresham
John W. Gresham, NC Bar No.: 6647
Tin, Fulton, Walker & Owen, P.L.L.C.
301 E. Park Avenue
Charlotte, NC 28203
Telephone: (704) 338-1220
Fax: (704) 338-1312
jgresham@tinfulton.com