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2 US AIRLINE PILOTS ASSOCIATION v. VELEZ, ET AL

3 3:14-CV-577

4 6/30/15 MOTION HEARING - JUDGE CONRAD

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1 THE COURT: Good afternoon, everyone.

2 THE COURTROOM AUDIENCE: Good afternoon.

3 THE COURT: Let's go ahead. If the attorneys would
4 just for the record introduce yourselves and tell the Court
5 who you're representing.

6 MR HARPER: Right, Your Honor. My name is Marty
7 Harper. I'm from Phoenix, Arizona. And in the LMRDA suit, I
8 represent the three named plaintiffs; and then in the dec
9 action filed by USAPA, I represent the two named defendants
10 in that action, Your Honor.

11 THE COURT: Did you bring the Arizona weather with
12 you when you came this way?

13 MR HARPER: No. But we did have a big rainstorm
14 last night, so -- but we're beginning to feel like you're
15 feeling like.

16 MR. PIERCE: Good morning, Your Honor.

17 THE COURT: Good morning.

18 MR. PIERCE: I mean, afternoon, Your Honor. I'm
19 Grainger Pierce from Nexsen Preut. I'm local counsel for
20 Mr. Harper's clients.

21 THE COURT: Good to have you with us.

22 MR. PIERCE: Thank you, Your Honor.

23 MR. ITSA: Zachary Itsa with Bredhoff & Kaiser from
24 Washington, DC, on behalf of Mr. Harper's clients as well.

25 MR HARPER: Your Honor, we have two pilots here.

1 We have Eddie Bollmeier, who is one of named plaintiffs in
2 the LMRDA action, and we have Eric Ferguson, who has been
3 involved in the stress between the east pilots and the west
4 pilots ever since 2007.

5 THE COURT: Thank you. Mr. Gresham.

6 MR. GRESHAM: Your Honor, John Gresham, and I'm
7 here representing the plaintiff, the U.S. Airlines Pilots
8 Association in the dec action and the named defendants that
9 have been served in the Bollmeier action.

10 THE COURT: Thank you.

11 MR. SILVERMAN: Good afternoon, Your Honor. My
12 name is Gary Silverman, law firm of O'Dwyer and Bernstein in
13 New York City, also represent the plaintiff USAPA in the
14 declaratory judgment action and the certain defendants in the
15 LMRDA action.

16 THE COURT: Thank you and welcome.

17 So let's get into it, Mr. Harper. I'd be glad to
18 hear from you on the motion for injunctive relief.

19 MR HARPER: Your Honor.-

20 THE COURT: Before you start, this has an odd
21 procedural history, and I'm -- I was just curious as I
22 prepared for this hearing why that is so. Why wouldn't you
23 have just answered the declaratory action and counterclaim on
24 the injunctive relief?

25 MR HARPER: Because we -- we made the strategic

1 decision that we thought we wanted to have the matter here in
2 federal court. So we took the action first to --

3 THE COURT: Oh, that's right. The first action was
4 filed in state court.

5 MR HARPER: In state court. To bring it here and
6 then we had to wait for certain events to transpire before we
7 could actually get into the LMRDA claim, and I can explain
8 the timing of that if you want.

9 THE COURT: Sure.

10 MR HARPER: Okay. Just to bring you current, I'll
11 start with September 16, 2014, and come current. And then
12 the past 96 hours there have been some events that I think
13 the Court would want to hear about.

14 But September 16, 2014, is a critical day at least
15 in the LMRDA claim because on September 16, the national
16 mediation board decertified USAPA as the exclusive bargaining
17 representative.

18 THE COURT: Put it in APA? Is that --

19 MR HARPER: Pardon me? And replaced it with the
20 Allied Pilots Association. The APA we call it. So there was
21 a transformation that took place on that date.

22 THE COURT: I thought the federal government had
23 more acronyms than any other litigant. I'm not sure now.

24 MR HARPER: I have an added handicap. I
25 mispronounce them all. So I don't do it on purpose, but it's

1 a bad habit I have.

2 Anyway, the decertification on September 16, 2004,
3 triggered a provision under the USAPA Constitution Article 1,
4 section 3, subsection C. The decertification triggered the
5 opportunity for or maybe the requirement for dissolution of
6 USAPA, because after that they were no longer the exclusive
7 bargaining representative of the former US Airways pilots.

8 Now, there's a provision under the constitution
9 that says if the four national officers: The president, vice
10 president, secretary and treasurer -- and who's the other
11 one?

12 UNIDENTIFIED SPEAKER: Executive vice president.

13 MR HARPER: Executive vice president, have the
14 option to make a decision to defer dissolution.

15 THE COURT: The majority of them would have to
16 decide.

17 MR HARPER: A majority of them. But in essence,
18 all four decided to do that and they put out a bulletin or an
19 announcement on September 16 that they had elected to defer.
20 And when they made the election to defer, then the parameters
21 that are in the USAPA constitution at the section that I
22 cited it to you, and I'm not going to read it all, but it
23 says within three business days of either the NMB decision or
24 membership vote triggering dissolution, the national officers
25 shall make a determination as to whether existing

1 circumstances present or may present in the future the need
2 for a collective legal action on behalf of the pilot group,
3 including, but not limited to, seniority representation.

4 So the gravamen of the LMRDA suit is that at that
5 particular point in time, the officers if they elected to
6 defer, which they did, they were then limited in what they
7 could spend USAPA's money for thereafter.

8 And one of the things that the constitution says is
9 you can go forward and spend money for legitimate wind up
10 things that need to be taken care of, terminating employees,
11 payment of benefits, termination of leases, whatever the case
12 may be. And at no time during this litigation have the named
13 plaintiffs or anybody else on the west side said that they
14 should stop doing that. We agree that it needs to be done.
15 We've got some questions now based upon some recent discovery
16 how they could have spent so much money doing that, and I'll
17 get to that.

18 But as a benchmark and in some recent discovery we
19 got, and we submitted it the Court. I'm going to try to
20 summarize it here for you in part, Your Honor, so you don't
21 have to go through it.

22 But on September 16, 2014, USAPA had \$12,723,787 on
23 hand. And what then they were supposed to do is use that
24 money only to wind up the affairs of USAPA and for collective
25 legal action on behalf of the entire pilot group. And those

1 words, the word "collective" in its ordinary meaning and
2 behalf of the entire pilot group are the parameters of what
3 they can do. They can do something that benefits the entire
4 membership of \$5,000 if in their judgment that needs to be
5 done.

6 Cash available on hand on June 15, 2015,
7 \$9,372,691. So they spent in that six or seven month period
8 of time, \$3,351,096.

9 Now, from what we have been able to ascertain --
10 well, from the documents that were produced to us, that since
11 between the point in time from September 16, 2014 through
12 June 15, 2015, they spent about \$750,275 on seniority
13 integration issue. Three quarters of a million dollars.
14 Every dime of that was spent to support the U.S. -- the USAPA
15 merger committee, which is a committee comprised of east
16 pilots and which has been advocating in the ongoing seniority
17 integration process to advance a seniority data list that is
18 advantageous only to the east pilots and something that the
19 west pilots have been fighting since September of 2008. So
20 spending that three quarters of a million dollars on
21 seniority integration that is to advantage only the east
22 pilots --

23 THE COURT: I guess -- I guess before
24 September 16th of 2014, they were spending money for that
25 proposition as well?

1 MR HARPER: I -- I can give you that number.
2 Before that time, they spent about \$2.5 million.

3 THE COURT: So, I mean, there's no -- there's no
4 all of a sudden they're spending money in a different way
5 than they had previously spent. They were just not certified
6 after September.

7 MR HARPER: That's why I start with the
8 September 16 date, because it is a game changer. In the
9 period of time before that, Your Honor, with all candor, they
10 were spending money to support on a full-time basis the U.S.
11 merger committee that was formed by president Hummel, and
12 he's in the back of the room right here, on or about April of
13 2013. And from that day or maybe that was 12. From that day
14 on, they spent money supporting the merger committee. Our
15 pilots at the board of pilot representatives objected to that
16 saying that if you're going to spend money for the east that
17 wants to do a date of hire, you at least ought to be sending
18 some money our way so we can do it. And we were voted down
19 all of the time. Well, we're not complaining about that
20 money in the past because of the way it was done. Our -- our
21 complaint starts on September 16 going forward.

22 Now, anticipating they were going to do this, Roger
23 Velez, one of the west pilots, sent a letter to the national
24 officers on September 12, 2014, saying anticipating that
25 you're going to be decertified, don't spend USAPA money going

1 forward for the purpose of advancing only the east merger
2 committee's date of hire list. That's not going to be
3 permitted under the constitution.

4 THE COURT: So as I understand your complaint, as a
5 result of that spending, that change in status, you're asking
6 for an accounting, restitution, injunction, disbursement, and
7 attorney's fees?

8 MR HARPER: That's right.

9 THE COURT: So --

10 MR HARPER: So what we're asking for --

11 THE COURT: -- if I pick those things a part a
12 little bit, why wouldn't at a minimum, why wouldn't
13 restitution and disbursements not be the kind of things you
14 would get at the end of litigation, not in the middle or of
15 of it or at the beginning of it?

16 MR HARPER: Well, for today's motion we're not
17 asking for that to occur. We're just asking them to stop
18 spending the money --

19 THE COURT: Right.

20 MR HARPER: -- now. Hopefully we'll be able to
21 move on with the rest of the litigation. Yet whatever issues
22 we can't --

23 THE COURT: So -- so today's issue doesn't have to
24 deal with the accounting, the restitution, the disbursement
25 or the attorney's fees. We're just talking about injunctive

1 relief for future expenses?

2 MR HARPER: Yes, but we've had -- John and I have
3 had some conversations that we may want to talk about in
4 front of where we might move this forward. Perhaps we can't.
5 Yes, we want it stopped.

6 Now --

7 THE COURT: And so I hate to keep interrupting you.

8 MR HARPER: That's fine.

9 THE COURT: I'm going to let you say whatever you
10 want to say, but my questions are really highlighted for you
11 where I stand, and you can try to move me off of that
12 position or move me into a direction you want to move me
13 into. But if we're narrowed in our focus today to the
14 injunctive relief for future expenses, why wouldn't we just
15 get this discovery done that needs to be done and take this
16 up for ultimate resolution?

17 MR HARPER: Let me bring you current because a
18 couple of things have happened in the last 96 hours that I
19 think you do need to know about and it needs to go into your
20 calculus on where we are going forward.

21 With respect to the seniority litigation process
22 that is currently ongoing in DC, yes, at the hearing -- at
23 the initial conference in front of the arbitrators, the USAPA
24 merger committee withdrew from the process going forward, and
25 both the plaintiffs and the defendants submitted the us

1 merger committee's, USAPA's merger committee letter of
2 withdrawal and is part of the record.

3 So what they did yesterday, the USAPA merger
4 committee is saying we can't go forward anymore, and part and
5 if not in whole, because of what the Ninth Circuit did last
6 Friday. So they have withdrawn from the process going
7 forward. That's causing complications because people now in
8 D.C. are trying to figure out what has to be done, if
9 anything, now that USAPA has withdrawn from the battlefield
10 and doesn't have a merger committee there.

11 So, Your Honor, going forward from yesterday into
12 the future, taken at their word, at least in the context of
13 the seniority litigation arbitration, that committee should
14 not and should be stopped from spending any more money
15 towards seniority litigation or any seniority activity.

16 Now, Mr. Gresham submitted the motion last night
17 saying we sort of agree with that, but what we want to do is
18 to pay some lingering expenses -- I think that's set forth in
19 paragraph 5 of the motion. They want to pay something like
20 up to \$15,000 for expenses, costs incurred through yesterday
21 and then perhaps we'll have some more going forward.

22 THE COURT: I guess you're hoping Mr. Gresham's
23 remarks before this Court are short or otherwise there will
24 be additional expenses.

25 MR HARPER: Well, that's a completely different

1 issue. He's not representing anybody in seniority, but I
2 don't want to shoot Mr. Gresham down.

3 What Mr. Gresham is proposing is why don't we stop
4 after we pay whatever the outstanding debt is. And my retort
5 to Mr. Gresham and explanation to the Court it's no longer
6 necessary. It's, in fact, not necessary for them to spend
7 USAPA's money to pay for that because since the end of
8 January, first part of February, APA has set aside.

9 THE COURT: The 4 million.

10 MR HARPER: 1.3 million for each of the three
11 merger committees. So they can take these expenses that they
12 have incurred, submit it to APA and get it reimbursed that
13 way and thereby not deplete the treasury funds anymore for
14 seniority purposes.

15 Now, I'm going to talk about what might happen in
16 the future. USAPA's merger committee sent that letter in
17 early afternoon yesterday and then early evening last night
18 and it's in front of you, President Bradford of USAPA sent a
19 letter saying they didn't have the right to make any of those
20 statements. We're not bound by it and, by the way, we may
21 decide to try to enter this again in the future. If they
22 tried to enter this again in the future, I would ask the
23 Court that we put together a restraining order here that
24 would prevent them from in the future getting back into the
25 fray and becoming involved in seniority litigation --

1 integration expenses using the treasury funds and part of the
2 problem that the panel and the participants in DC today are
3 trying to figure out is what happens now that there's a hole
4 in this integration process since USAPA's merger committee
5 has left. And there's word out in the --

6 THE COURT: Maybe it's a better question for
7 Mr. Gresham than for you, but what is the relationship
8 between the merger committee and USAPA itself as an entity?

9 MR HARPER: They can answer. My understanding is
10 their position is that committee was USAPA's merger committee
11 before they decertification. So it was what Mr. Hummel put
12 together back in -- so is the USAPA merger committee. By
13 agreement with APA and the American, USAPA's merger committee
14 was permitted to go forward and then there's language in was
15 we call the protocol agreement paragraph 8 --

16 THE COURT: And you have a merger committee as
17 well.

18 MR HARPER: Well, we had to fight for our merger
19 committee, but we do have a merger agreement, and
20 Mr. Ferguson is on the merger committee. But the connection
21 is in the protocol agreement, there's a clause that says the
22 USAPA merger committee still has to abide by the rules,
23 regulations, constitution, and BPR from USAPA. So there's a
24 lifeline or a connect between USAPA's merger committee and
25 USAPA.

1 Now, I was going back to the hole that has been
2 created by USAPA walking away. I don't know how the panel
3 and the participants are going to solve that. There's word
4 in the ether out here that there's going to be perhaps an
5 effort to put together a replacement east merger committee.
6 I don't know if that will occur or not occur, but I would
7 suggest to the Court that we would need to have a TRO that
8 would prevent USAPA if there is a future merger committee for
9 the east, using treasury funds directly or indirectly, to
10 support the activity of that committee. Because that would
11 be a committee that would be put together for the express
12 purpose, I think, of avoiding the injunction that was issued
13 by the Ninth Circuit last Friday.

14 So in seniority integration directly, those are the
15 issues that I see currently that we are asking the Court to
16 enter a temporary restraining order until we can get to the
17 trial to stop all of that from occurring. Freeze the funds,
18 don't permit them to spend any money at all for the purpose
19 of seniority list integration in whatever fashion it might
20 occur, and I'm not just talking now about the direct
21 participation in the arbitration that's pending up in D.C.

22 From my point of view, Your Honor, now there's
23 another issue, and we just have a proposed different order
24 than the one we initially submitted to you. There's another
25 issue I believe that has occurred ever since the Ninth

1 Circuit's opinion came out last Friday, and I -- it's a
2 90-page opinion, and I don't expect that you guys are on top
3 of it yet. But the bottom line is, the majority in the Ninth
4 Circuit in that opinion issued an order, when's it remanded
5 down to Judge Silver back in the district court in Phoenix
6 for her to enter an injunction prohibiting and at that point
7 in time there still was a U.S. -- USAPA merger committee,
8 prohibiting that committee for arguing for an integration
9 list other than the Nicolau list, which is the list the west
10 pilots are advocating. So there's an injunction out there
11 now that says you can't do that.

12 THE COURT: You were advocating something else?

13 MR HARPER: I am. I'm taking you one step further,
14 because as of Friday it seemed to me now no matter what USAPA
15 wants to do with the adding ton Ninth Circuit opinion,
16 whether it is to file the petition for rehearing en bang, to
17 file a petition for certiorari. If they lose that in the
18 Ninth Circuit in the U.S. Supreme Court and we have been
19 there before in the eight years of litigation, or whether
20 when this gets back down to Judge Silver and she's
21 contemplating an injunction using treasury funds to oppose
22 that, or using treasury funds to oppose the common benefit
23 application that the west pilots are going to make once it
24 gets down to Judge Silver, assuming that the majority's
25 opinion is still intact, because the west pilots since the

1 summer of 2007 have spent \$4 million out of their pocket
2 getting to the result that they got last Friday in the Ninth
3 Circuit.

4 By definition, Your Honor, at least by last Friday
5 going further in support of the USAPA's position in
6 connection with the Addington case is not collective legal
7 action on behalf of the entire pilot group. It is club fight
8 between the west club --

9 THE COURT: It's always been a club fight, but some
10 clubs have switched positions vis-a-vis each other over time.

11 MR HARPER: And we've had the uncertainty, and
12 they'll tell you that I lost five times during the course of
13 the seven years and, you know, to a certain extent they were
14 right, but we kept it alive and we got to where we are. So
15 I'm not -- I'm not contending for the purpose of dissolution,
16 which, you know, then arose on September 16, 2014. I'm not
17 contending that we go back into any time before that and try
18 to resurrect monies that were miss spent in our opinion all
19 the way along. I'm not even saying I want to go back and say
20 we ought to be given the opportunity to collect what they
21 spent between September 16, 2014, and last Friday. I'm
22 saying now a game changer has occurred and now that we have a
23 firm decision that says that all the way along this was east
24 against west, pursuing it further cannot be collective legal
25 action on behalf of the entire pilot group.

1 So I would like to talk about getting a TRO that
2 would stop that from occurring from this day going forward.
3 So that's the new.-

4 THE COURT: And you have a modified proposed TRO --

5 MR HARPER: I have a modified proposed order that I
6 can hand up to the Court. I think we can uploaded it earlier
7 today, but I can hand it up. I'll give it to John.

8 MR. GRESHAM: I think I got it at 1:00 today.

9 MR HARPER: I got your --

10 THE COURT: There's been a lot of late filing
11 lately.

12 MR. GRESHAM: Yes. I at least got it in the day
13 before.

14 MR HARPER: May I approach, Your Honor?

15 THE COURT: You may. Just for record purposes,
16 we'll just mark this as Plaintiff's Exhibit 1 for purposes of
17 this hearing.

18 MR HARPER: So as we come here today with the
19 updates that have occurred clear through ten o'clock last
20 evening, those are the tea up and purposes of the TRO. There
21 still remain the other issues that are in the LMRDA claim.

22 THE COURT: And what would need to be done -- I'm
23 going to ask this of both of you. What would need to be done
24 to get us in this point to the point where we actually can
25 tea this up dispositively at least at this level?

1 MR HARPER: And I'll try to be as true to the
2 conversation that we had just an hour ago. I just got into
3 town shortly before noon. I came down from D.C.. There are
4 a couple of things that perhaps we could agree to, but I know
5 at least an hour ago Mr. Gresham was somewhat opposed to.

6 First of all, there are three pending litigation
7 matters as I understand it, still active at USAPA. One is an
8 action by former president Cleary against USAPA and there's a
9 lot of bad blood between former president and USAPA.

10 Mr. Gresham is local counsel for that, and he tells
11 me that to wrap up that litigation would take approximately
12 \$75,000. So perhaps we can enter into some sort of an
13 arrangement understanding saying, hey, look, as part of
14 getting all of this shut down as much as we can, go ahead and
15 defend that action, give us a budget, and stay in the
16 neighborhood of \$75,000.

17 There's agreements, 401(k) agreements that I think
18 affects several thousand pilots, mostly east, I think, but we
19 don't care. Wrap that one up. And I've been told earlier
20 today that, you know, it may take 25, \$30,000, but for sure
21 less than \$50,000, to get that one wrapped up. Okay, go
22 forward with that. Put that in as our budget and if we can't
23 stay to it, then let's come back and talk about it. Set aside
24 the Addington matter because he strongly disagrees with my
25 proposal on Addington. So that's the third piece of

1 litigation. So perhaps we could get rich in agreement here
2 and say, go ahead and go forward on the other two pieces of
3 litigation.

4 We talked about agreeing to an accounting, and I'm
5 hopeful maybe without getting it all wrapped up, that we can
6 get agree to the accounting. They're doing an audit right
7 now. They've sent information out to the pilots and the
8 audit they claim will be done sometime in July. Well, that's
9 a good start. We've got an audit to work with. Maybe we
10 could agree to, you know, somebody to do the accounting and
11 we could set up a budget out of the USAPA funds to accomplish
12 the accounting. I think maybe we can get that done.

13 As part of this wrapping up and part of what's in
14 the LMRDA as the officers and directors not handling the
15 affairs of USAPA correctly, there's a lingering dispute
16 between what pilots were pilots in good standing on
17 September 16 because they were current on dues and which
18 pilots weren't. The breakdown, Your Honor, between
19 percentages east/west is approximately 70 percent/30 percent.
20 So at the end of the day when some of this is ready to go
21 out, it should go out that way, but we need to make sure that
22 every pilot who is a pilot in good standing and may or may
23 not have some sort of misunderstanding with USAPA over that
24 has a place in this to get that resolved so at the end of the
25 day the list is, correct. And John and I talked a little bit

1 about addressing that and maybe that issue can be subsident
2 into the accounting, slash, dues reconciliation and get that
3 taken care of.

4 One of the issues that has been floating around out
5 here is that USAPA to try to get some money out quickly might
6 take a step, reverse itself on the collective legal action
7 and say no, they're not and dissolve and try to send the
8 money out more quickly than otherwise. John and I talked
9 about an understanding here today that USAPA would not go
10 forward and dissolve until we worked all of these things out.

11 THE COURT: All that sounds very cooperative, but
12 the history is something other than that. If -- if you're
13 not able to work things out, in terms of -- the ultimate
14 resolution here.

15 MR HARPER: Set us down for a preliminary
16 injunction hearing. A preliminary injunction hearing and get
17 us off to trial.

18 THE COURT: I mean, are you ready for that within a
19 short period of time?

20 MR HARPER: Within a short period of time I am. I
21 personally think it would take less than two days. He may
22 have a difference of opinion. There would be some discovery
23 that's going to be necessary to collect all the facts. But
24 whether or not the directors -- the defendants acted within
25 or without their fiduciary duties, really hinges on certain

1 facts. You were put on notice not to do it. They went ahead
2 and did it. If it's contrary --

3 THE COURT: Well, they did it, and they also filed
4 a declaratory action saying tell us it's okay to do.

5 MR HARPER: Right. I mean, but they went forward
6 even over -- maybe we don't win it, but at least we think
7 we're entitled to have it litigated and decided. And in that
8 regard, I need a little guidance from the Court on the
9 housecleaning issue.

10 As John said when he stood up, he represents only
11 the defendants who have appeared. We've got a couple that
12 are refusing to pick up their mail four or five times. I
13 don't know if he can just stand up today and say I represent
14 the rest of those folks or if you want to us get process
15 serves. I'm asking for self-help. We did what the rules
16 said we can send them certified mail four times, and every
17 time it came back an said rejected.

18 THE COURT: You know, the ones served any of them
19 officers. Any of the four?

20 MR HARPER: I think they're all BPR members. So I
21 think all four of the national officers accepted. There have
22 been a change in national officers. John Owens over here is
23 now the secretary/treasurer. He wasn't when we filed the
24 lawsuit. We have not reached out and brought him into this
25 because suing the former one in that status of secretary

1 seemed toe to me to be enough to kind of put the place on
2 notice. But there are four BPR members who have just, I
3 guess, don't sign for certified mail. But if you want me to
4 go forward with the process serve to clean it up, we'll spend
5 the money and go out and do it. I'm not too sure that's a
6 good use the west pilot's money because it's coming out of
7 their pockets. Maybe he can stand up and accept service.

8 So those are the issues, I think, are still out
9 there. Maybe we can take a few of them off the table; maybe
10 we can't, because he wants a full settlement and we're not
11 going to be in a position for full settlement. Maybe he gets
12 done, we can look at our calendars, you can say, come on,
13 hitch it up and you can go to trial.

14 THE COURT: Thank you.

15 MR. GRESHAM: Your Honor, if it's okay with the
16 Court, there are a couple of things. Mr. Silverman is the --
17 has been the attorney for USAPA since there was -- well, not
18 quite. There was USAPA for a number of years. I am actually
19 acting as counsel, not just local counsel. But if Your Honor
20 permits, I'd like Mr. Silverman to give a couple of things
21 that are historical to the USAPA before I get into the main
22 argument.

23 THE COURT: You can break it up in any way you
24 think is most helpful.

25 MR. GRESHAM: Thank you.

1 MR. SILVERMAN: Thank you, Judge.

2 Judge, let me make a couple of corrections to the
3 record that I think are absolutely critical here. And before
4 doing so, let me remind the Court, as Mr. Harper has done,
5 about some of the origination story here.

6 September 16th, 2014, as Mr. Harper said, the
7 national mediation board decertified USAPA, certified APA, so
8 on and so forth.

9 Shortly thereafter, the then national offices of
10 the organization said under the authority invested in them
11 under the constitution and bylaws, we have the power to defer
12 the commencement date of dissolution if in our judgment there
13 is pending now or likely to be in the future matters
14 requiring for which there should be collective legal action,
15 including seniority list integration for the pilot group. It
16 does not say for the entire pilot group. The constitution
17 and bylaws says for the pilot group.

18 The national officers -- the then national officers
19 at that time voted to defer dissolution and distribution of
20 assets either in whole or part because in their view in
21 accordance with the statement that they put out at the time
22 there were numerous things affecting USAPA both as -- both
23 sort of in they were defending and they were prosecuting that
24 made it imprudent to dissolve and distribute at that time.

25 In fact, in a reversal of events, that was the

1 position that USAPA took on September 16, 2014. It was
2 objected to by the folks -- by the Bollmeier defendants and
3 Velez and so forth because they thought they were just
4 holding onto the treasury willy-nilly and weren't
5 distributing.

6 They have now put forth as of a couple of days ago
7 a demand upon USAPA and its officers and attorneys so on and
8 so forth don't you dare dissolve and distribute. I want the
9 record to be very clear that was the action taken --

10 THE COURT: When did they do that?

11 MR. SILVERMAN: Sorry?

12 THE COURT: When did they do that?

13 MR. SILVERMAN: Mr. Harper issued a notice I
14 believe it's entitled Notice to USAPA Officers and Attorneys
15 yesterday, Judge.

16 MR HARPER: I think it went out yesterday, Your
17 Honor.

18 MR. SILVERMAN: So that -- so that is -- there is
19 no longer it seems to me in this case, Judge, whether in the
20 context of the declaratory judgment action or affecting the
21 merits of the LRMDA 501 case that the Velez and the Bollmeier
22 plaintiffs are now in agreement that the national officers
23 have to correct it when they refuse to distribute to dissolve
24 and distribute on September 4 -- 16, 2014.

25 But the correction I wanted to make, Judge, was

1 that it's collective legal action including seniority listing
2 integration on behalf of the pilot.

3 THE COURT: Is collective legal action a defined
4 term?

5 MR. SILVERMAN: In the constitution and bylaws, it
6 is not, Judge. Collective legal action.

7
8 THE COURT: Is pilot group a defined term?

9 MR. SILVERMAN: No, Judge.

10 THE COURT: So how does this Court go about
11 defining it, either one of those terms?

12 MR. SILVERMAN: This Court respectfully, Judge,
13 uses precedence as to the kinds of things that -- that USAPA
14 considered collective legal action when it was a certified
15 bargaining representative consistent with the fair
16 representation. So that -- so that, for example, USAPA could
17 take a grievance when it was the certified bargaining
18 representative on behalf of certain pilots that didn't --
19 that didn't enure to the benefit of every pilot, just like
20 every legal organization. And, in fact, we attach in our
21 papers a couple of arbitration decisions where arbitrators
22 have found that USAPA -- where USAPA did things on behalf of
23 segments, portions of the pilot group that didn't affect --

24 THE COURT: But nothing arises to the level of east
25 coast pilot/west coast pilot disagreement. I mean, that's --

1 that's kind of a rare animal.

2 MR. SILVERMAN: It is a rare animal, Judge, but the
3 standard for --

4 THE COURT: Especially when you start out fairly
5 parallel. Although east coast pilots are larger in number,
6 and then over time the one club gets named the controlling
7 union group over the other club.

8 MR. SILVERMAN: Yes. So --

9
10 THE COURT: You start out sort of --

11 MR. SILVERMAN: Yes, Judge. But let me say two
12 things. One, in terms of that, up until June 26, 2015, the
13 prevailing law, the law of the case with respect to that
14 specific issue, the DFR east versus west in the court per
15 Judge Silver's judgment entered in the DFR cases, including
16 declaratory judgment case, was that the east pilots did not
17 act improperly in the face of various challenges by the west
18 pilots. That they were discriminated against on the grounds
19 of majority versus minority numbers.

20 So, Judge, in terms of where you draw the
21 precedence so it's -- it's labeled all principles as to what
22 institutes collective action, collective bargaining,
23 collective negotiations, and long line of cases that examine
24 these matters in the context of collective bargaining where
25 there is no universality is never required. A union, Judge,

1 could never get anything done if universality is required.
2 And, in fact, there are numerous examples, some of which we
3 cite in our papers, where various factions are at odds in the
4 fact that a union chooses one over the other is not in itself
5 a violation of a duty fair representation which constrains in
6 that context definitions of collective action.

7 Further precedence would be any association, any
8 association or grouping of individuals that exists under
9 constitution and bylaws for the period of time, for example,
10 after USAPA was no longer certified bargaining representative
11 to the extent then the Court would then look to other
12 precedence or precedences other than in the collective
13 bargaining and duty fair representation context. Any
14 association provides for representation in accordance with
15 numbers and has a, you know, representative groups like, you
16 know, that form the board of pilot representatives so on and
17 so forth, board of directors, that would provide precedent
18 for a meaning of collective. And I would submit to you,
19 Judge, in that context also universality is not the standard.

20 THE COURT: But -- but -- but in terms to use
21 Mr. Harper's word game changer, there seems like there's two
22 potential game changers here. One is Ninth Circuit opinion
23 on Friday and the other one is the decertification on
24 September 16th of 2014. What might have been collective
25 legal action when you are the certified bargaining

1 organization might not be afterwards. And so it may be the
2 same issue, the same type of effort, but your status has
3 changed dramatically, and ought that not to change the
4 Court's understanding of what is a collective legal action?

5 MR. SILVERMAN: The status -- the representational
6 status changed on September 16th. The underlying documents
7 did not change. The underlying document allowed USAPA to
8 pursue collective legal action on behalf of the pilot group,
9 including seniority list integration. That's -- so at that
10 point, September 16, 2014, USAPA is drawing upon its
11 formative documents to pursue the actions that were then
12 pursued previously.

13 And as I say again, Judge, up until June 26th,
14 2015, the state of the law was that USAPA did not violate the
15 duty of fair representation, an analog to collective legal
16 action by -- by doing the things that it did, including
17 entering into the MOU and having -- and not giving the west a
18 separate committee. So that -- so that in terms of -- in
19 terms of the organization, September 15th to December 17th,
20 it's still the same document. It's still the same body of
21 law that informed the decision-making as to what is
22 permissible under the collective legal action, but there's
23 another element here, Judge, and that is -- well, two other
24 elements. One, the reasonableness of the determination of
25 the board of directors is as of the time the determination

1 was made. Moreover -- so they made that determination under
2 the law of Judge Silver, not the Ninth Circuit.

3 Moreover, courts are justifiably give deference to
4 the good faith determinations by the -- the determinations
5 made by members of the board of directors or officers --

6 THE COURT: You're not saying to me today that if
7 the decision to defer was made in good faith on
8 September 16th, that any expenditure that occurred subsequent
9 to that is valid? You're not saying that?

10 MR. SILVERMAN: I am saying that, Judge.

11 THE COURT: Any reasonable, unreasonable --

12 MR. SILVERMAN: No. No, no, no.

13 -- I can't look at the reasonableness afterwards?

14 MR. SILVERMAN: No, I don't mean that. I mean that
15 there are -- obviously, as officers of an organization they
16 are constrained by various duties --

17 THE COURT: Even though the document is the same,
18 the entity that is spending the money has changed from a
19 certified bargaining organization to something else, to a
20 nonprofit organization that has an interest in this issue.

21 MR. SILVERMAN: Judge, it was always a North
22 Carolina not-for-profit organization

23 THE COURT: It was, but it also was a certified
24 bargaining organization.

25 MR. SILVERMAN: It was also a certified bargaining.

1 THE COURT: No longer is.

2 MR. SILVERMAN: As of September 16th, that's
3 correct.

4 THE COURT: But the formative documents -- so
5 before September 16, 2014, USAPA is constrained by both its
6 constitution and bylaws and the duty of fair representation
7 by virtue of the fact of its certified bargaining agent.
8 After September 16th, it is constrained by the constitution
9 and bylaws, which was preexisting.

10 And my suggestion to the Court is that the
11 definition of collective legal action which existed before
12 and after September 16th allowed the officers at that time to
13 make the decision to defer, to pursue the actions that they
14 took in reliance upon that those were actions that had
15 existed prior to September 16th and is a not-for-profit
16 organization that is allowed by its constitution and bylaws
17 to pursue collective legal actions on behalf of the pilot
18 group, including seniority list integration, that that --
19 those decisions were reasonable and that under settled
20 principles, they should be deferred to.

21 The other correction I want to make, Judge, I think
22 we finally got around to that, is there was some language
23 that was being used in terms of injunction. This is a TRO
24 only and we submit -- Mr. Gresham will get into it -- that
25 the elements of the TRO -- of a TRO have not been met here.

1 In terms of there was -- there was discussion about
2 the status of the USAPA merger committee. First of all, the
3 USAPA merger committee is a duly-constituted committee under
4 the ages of USAPA provided for the USAPA bylaws and union
5 operating manual.

6 Under the protocol agreement, Judge, various
7 parties are given rights, responsibilities, so on and so
8 forth. USAPA is involved in the protocol agreement as is
9 USAPA merger committee involved in the protocol agreement and
10 there are provisions relating to them. But in terms of the
11 USAPA merger committee, it is a creature of USAPA, and what
12 you have now is as a result of the Ninth Circuit's ruling is
13 that the USAPA merger committee is no longer participating in
14 the McCaskill-Bond seniority integration process, even though
15 there's no mandate, even though Judge Silver hasn't issued an
16 an injunction. In abundance of caution, the merger committee
17 has said it's inappropriate for to us be involved in this and
18 they are no longer there.

19 As Mr. Harper mentioned, that leaves quite a hole
20 in these proceedings, but that's the state of affairs, and
21 that's the matter we brought the attention to the Court last
22 night that as a result of that, there will be no more
23 expenditures in relation to the USAPA merger committee except
24 for money that's already been incurred and some wind up,
25 minor wind up expenses.

1 And in terms of money that's been incurred, it
2 would include, Judge, when pilots are released from flying,
3 they are put on something called flight pay loss and
4 that's -- that's something that those are costs that are
5 reimbursed to the company by the unions and there is a bill
6 to USAPA for the flight pay lost attributable to the pilots
7 on the merger committee for the month of June. But there
8 will not be -- the commitment USAPA is making there will not
9 be such costs incurred in the future because those pilots on
10 the USAPA merger committee have been returned to their flying
11 positions.

12 So the relief that in various iterations was sought
13 by the west pilots has already -- has come into effect by
14 virtue of the meteor strike of the Ninth Circuit in the
15 Addington case with all of the dust that's still in the air
16 and clouding our visions, Judge.

17 THE COURT: Does the Ninth Circuit have a panel
18 review, reconsideration process similar to the Fourth?

19 MR. GRESHAM: Yes.

20 THE COURT: So there's still options in terms of
21 reconsideration, en banc review and --

22 MR. SILVERMAN: There are, Judge. There are,
23 Judge.

24 MR. GRESHAM: Yes.

25 THE COURT: And we're in the middle of all of that?

1 MR. SILVERMAN: So we're in the middle of that,
2 Judge. We're in the beginning stages of that, Judge, and
3 that is one of the reasons why in the motion to defer that we
4 filed last night in view of, if I can continue with my
5 analogy of the dust, you know, from this meteor strike still
6 clouding the sun and all our visions, many things are not --
7 are very unclear in terms of -- the only thing that is clear
8 is that the USAPA merger is not involved in the integration
9 in the McCaskill-Bond proceedings. Lots of other things are
10 not clear. We don't know what the positions of the other
11 parties are. Mr. Harper mentioned he's been in Washington.
12 Folks there that are trying to figure out how to proceed at
13 this point.

14 THE COURT: The image I have in mind is being stuck
15 on a tarmac. Close to the comfort.

16 MR. SILVERMAN: Those are the points I just wanted
17 to clarify, Judge, in terms of. And I appreciate you
18 allowing me to do that. Thank you.

19 MR HARPER: Your Honor, may I make a suggestion
20 before John takes the podium? Maybe we could allow me just
21 to cabin my remarks to Mr. Silverman and then we can go on
22 with whatever else.

23 THE COURT: No. Let me hear from Mr. Gresham
24 first.

25 MR HARPER: Okay.

1 MR. GRESHAM: Your Honor, several things. First of
2 all, when there was the decertification, USAPA immediately
3 filed a declaratory judgment action.

4 THE COURT: The same day.

5 MR. GRESHAM: To determine if indeed what they had
6 done was appropriate.

7 THE COURT: Right.

8 MR. GRESHAM: That was removed by Mr. Harper to
9 this Court well before the Bollmeier action was filed. If
10 you look, it was I believe six months prior. So --

11 THE COURT: One was in September; one was in
12 February.

13 MR. GRESHAM: Yes. So that action was there. Your
14 question earlier was why not use -- we put the question to
15 the Court: Have we done this correctly? At that time, the
16 order in the Addington case, which the Ninth Circuit dealt
17 with last week, was an order from the district court which
18 was in favor of USAPA that there was not a DFR. And if you
19 will look back at when you look at our declaratory judgment
20 complaint, we put in everything that we might wish, you know,
21 that we thought we needed to do. And in fact, the magistrate
22 judge allowed us to amend that complaint June 22nd. So that
23 complaint is still there.

24 We must say that the one thing that Mr. Harper did
25 not talk about is can you meet the four elements that the

1 Fourth Circuit requires before a TRO is entered?

2 MR HARPER: Your Honor --

3 THE COURT: Mr. Harper, I'm going to let you talk
4 when Mr. Gresham is done.

5 MR HARPER: But we're not here on motions today. I
6 just want to make sure the Court understands.

7 MR. GRESHAM: I'm not suggesting we're here on the
8 motions.

9 THE COURT: Mr. Harper, let Mr. Gresham finish his
10 remarks and anything you want to say on rebuttal, I'll be
11 glad to hear from you.

12 MR. GRESHAM: I think there are two elements that I
13 think they failed to meet. One is on the fact that the LMRDA
14 501 claim, and we have set this out essentially in
15 Document 24, pages 19 through 26, this case does not fit as
16 an LMRDA case. Those cases deal in the main with a case
17 where a union officer is getting a benefit, is getting a car,
18 is doing something else, is taking a benefit.

19 If you look at Mr. Harper's pleadings initially
20 before the Ninth Circuit came out, what he said was the
21 benefit that these defendants in the Bollmeier case were
22 getting was they would end up with a better seniority
23 position than the west pilots. That's true. There were six
24 of them served. There are 3,566 east pilots. So 3,560 of
25 them would receive the same benefit as these folks.

1 So we have put before the Court that the Bollmeier
2 plaintiffs do not have a substantial likelihood of success on
3 their complaint, and that is the first of the four elements
4 that are required. And we would ask the Court before
5 entering any injunction beyond the limited injunction that we
6 are prepared to do today just to deal with the Ninth Circuit
7 matter, to take it a very careful look to determine if indeed
8 there is a substantial likelihood of success on the merits,
9 the first of the four elements. And as all the district
10 courts and the Fourth Circuit in the footnote have said, the
11 standard for a TRO in this circuit is the same as the
12 standard for a preliminary injunction.

13 THE COURT: Right.

14 MR. GRESHAM: You've also got to weigh the harm.
15 We have provided discovery that there is \$9 million
16 significant change in the treasury. The monies, as we also
17 put in our discovery that were a part of something that was a
18 5 percent dues increase at some point knowing that this
19 American and US Air merger was going to happen. That money
20 was put in a separate account and not a penny of that has
21 been touched. That is the money that was to deal with this.

22 So we believe initially that there is another a
23 significantly likelihood of success on the merits and beyond
24 that, the harm has not been shown because of the amounts in
25 the treasury.

1 Now, I heard Mr. Harper say for the first time
2 today, and I think if Your Honor looks at their pleadings,
3 nothing about, well, maybe somebody we talked today got a new
4 computer, but there's none of that in their filings with
5 regard to why this is an LMRDA 501 claim. It is you're
6 getting better seniority along with your 3,560 other folks.
7 So that is our point on the first element that I think
8 Mr. Harper has to show today, which is that he meets the four
9 standards in the Fourth Circuit to obtain his injunction.

10 Let me stop there to say that given what has
11 happened in the Ninth Circuit, the committee has, and I think
12 USAPA has agreed, that they're not going forward with a
13 merger committee that advocates for something other than what
14 is known as the Nicolau Award, which was what --

15 THE COURT: The mediator, the mediation.

16 MR. GRESHAM: The early arbitration that has led to
17 this continued thing.

18 What you got to hope, Your Honor, when you're on a
19 US Air plane it's not a mixed crew.

20 So, in any event, it is very important again to
21 note that up until last week the court ordered with regard to
22 whether USAPA had engaged in any unlawful conduct was that it
23 had not, and we have presented, and I think Mr. Harper did
24 also, both the opinion and the 29-page dissent. So the
25 question is where will that case go?

1 And this is a good time for me to say I find it
2 interesting that the notion is at this point USAPA having won
3 in the district court, having obtained a strongly worded and
4 lengthy dissent should not be able -- and the suit is against
5 the Addington case. The suit is against USAPA and US Air
6 ways. They are the defendants. Addington and a number of
7 people are the plaintiff. That they're now for the first
8 time at 12:48 today saying, oh, and you shouldn't be able to
9 argue to the Ninth Circuit that the majority opinion is
10 incorrect either by having one of the two judges joining the
11 dissenting judge and issuing a new opinion or the matter
12 going to the strange en banc proceeding in the Ninth Circuit,
13 which is 14 of them decide and then 9 of them form the panel.
14 We're much better off in the Fourth Circuit than in the Ninth
15 with that.

16 But this notion that somehow you should enjoin US
17 Air that had prevailed in this case in the district court
18 from putting forth its legal position with regard to this
19 two/one decision is surprising and certainly not something
20 that should ever be included in any injunction in this Court.

21 THE COURT: So with respect to what both sides
22 agree is appropriate.

23 MR. GRESHAM: Yes, sir.

24 THE COURT: I guess Mr. Harper has submitted a
25 proposed TRO. I guess you haven't had a sufficient time to

1 look at it?

2 MR. GRESHAM: No. What we did have, though, Your
3 Honor, is Mr. Ferguson's affidavit that he put before the
4 Court last -- June 18th, a week and a half ago, where in
5 paragraph 22, Mr. Ferguson says, the plaintiffs in west pilot
6 seek a limited TRO. They seek one that enjoins defendant
7 from authorizing USAPA to spend any more money from its
8 treasury on the entire senior integration process. Spending
9 it not in support of what they said was not collective legal
10 action. That was their demand on June 18th. And we
11 understand that. And the last thing we want to do or the
12 merger committee appears to want to do because they acted on
13 their own, is to move forward when we don't know what will
14 ultimately happen, which may create more injury if the Ninth
15 Circuit majority opinion is upheld. So we've stopped, and we
16 agreed in what we filed last night that we would either
17 stipulate or if, Your Honor, wanted to enter an injunction
18 that said you shall not make any monies beyond -- because
19 these folks didn't know this was coming.

20 They had to go to Washington yesterday because that
21 was the first mediation of the arbitration process. We're
22 not going to put another penny into that until if the Ninth
23 Circuit reverses itself, then we would come back to the Court
24 and say this injunction should be dissolved and be able to
25 argue at that point. And Mr. Harper can argue, oh, no, no,

1 we have sufficient evidence here.

2 So we are agreeing that the one thing that we are
3 willing to do is exactly what Mr. Ferguson was suggesting
4 that the Court do 12 days ago, which is enter that injunction
5 and since we filed a declaratory judgment action that we
6 shouldn't dissolve, we will stipulate -- I don't think this
7 needs to be an injunction. We will stipulate in open court
8 and file a stipulation that we are making no attempt to
9 dissolve USAPA. There is no dissolution. The interesting
10 thing --

11 THE COURT: So without dissolution, there's no
12 disbursement.

13 MR. GRESHAM: Right. Right. The monies stay in
14 the treasury.

15 I note that there is a claim for attorney's fees in
16 the Ninth Circuit case in Addington. And if we were unable
17 to defend even back in the district court under what the
18 provisions of the injunction would be, it would seem unfair
19 for Mr. Harper to be able to put forward his attorney's fee
20 that would be paid by USAPA without USAPA being able to
21 defend itself.

22 So we think that trying to push this thing further
23 just isn't the way we should go or that the Court should go
24 because it isn't required. There has been nothing filed
25 beyond what Your Honor has, and indeed, understanding the

1 Court has to deal with both the declaratory action and this
2 action and last week made a decision that both parties had
3 actually agreed to do some time ago, which is put them
4 together, which seems to make investigation sense in judicial
5 economy, that there is no reason to go beyond the injunction
6 that we are prepared today in despite of our argument that
7 they may not be entitle titled to an injunction, the limited
8 injunction that we not spend beyond the monies that we put in
9 our motion last night without approval of the Court and some
10 expense came up after that.

11 After Mr. Harper had had a chance to respond and
12 say that's not appropriate and, Your Honor, would say yea or
13 nay on that; that that is the extent that the Court should go
14 today and but for the Addington decision, we would have been
15 arguing there should be no injunction, but we do not want to
16 put USAPA or the merger committee in a position that they may
17 if the Ninth Circuit current two to one opinion is upheld
18 that they have gone against what the Court had put in its
19 initial opinion.

20 So that's what we're prepared to do, and we think
21 that is what the Court should order us to do. Thank you.

22 THE COURT: Thank you.

23 Mr. Harper.

24 MR HARPER: Thank you, Your Honor.

25 I tried to do this quickly and in the order

1 presented to you. And the first question, if I recall
2 correctly, is how do you determine what the words collective
3 legal action on behalf of the pilot group, and I did
4 overstate it the word entire is not there. And Mr. Silverman
5 said prior practice that USAPA. Perhaps, but not totally
6 because this clause did not become operative until
7 September 16, 2014. So nobody was operating under this
8 clause that USAPA prior to that date. But luckily we have
9 some legislative history on this.

10 Mr. Bradford, who is the founder of USAPA, back in
11 2007, has written over time about what this clause means and
12 why it was put into the constitution as he had it drafted.
13 And he has written and we have haven't put it into the record
14 yet, but we will. He has written that this language was put
15 in because he wanted to be able to have this union after it
16 was decertified fight any future and senior pilot integration
17 in the next merger that was disadvantageous to the US Airways
18 pilots, and he had anticipated that by the time we got to
19 this point, the two lists that were arbitrated back in 2007
20 would have been integrated and going forward there would have
21 been one list in defending whatever adverse seniority
22 decision that had come down would be, in fact, collective
23 legal action on behalf of the pilot group.

24 And if we go forward, Your Honor, you will see
25 that. And that will perhaps help inform you what that clause

1 means. It does not mean that they can continue to fight back
2 the west pilots in a seniority situation where the two lists
3 were never merged. So that's going to help you and inform
4 you perhaps and get to the bottom of what that language
5 means.

6 Let me just flip back. I had a couple of other
7 points of Mr. Silverman.

8 Mr. Silverman made the statement that USAPA still
9 is a party somehow to the protocol agreement. That's not
10 true. Paragraph 18 of the protocol agreement says starting
11 at the beginning back in September of 2014 they were a party
12 to the protocol agreement because they were the duly
13 recognized bargaining representative and they sat down and
14 negotiated with APA and the airlines over the protocol
15 agreement and they signed on to it. But paragraph 18 says
16 that when APA takes over, paragraph 18 of the protocol
17 agreement, when APA takes over, then the parties to the
18 protocol agreement going forward will be the airlines, APA
19 and the merger committees, which up until yesterday at noon
20 included the APA committee, the west committee and the USAPA
21 committee.

22 USAPA is no longer by operation under paragraph 18
23 a party to the protocol agreement. I don't know if that
24 means much in the larger scheme of things, but it does mean
25 that they are no longer involved at all in any way, shape, or

1 form in the seniority litigation process. All they are
2 proposing in their stipulated stipulation is we will not
3 spend any more money on anything we're not involved in, and I
4 told you the worries we have. They've changed names not
5 once, they may change names again and put together in some
6 fashion another east merger committee that will pop up in the
7 seniority litigation process and try to get U.S. -- USAPA
8 funds there to support that. Their words and their proposal
9 are not broad enough to stop them from spending money on
10 seniority litigation efforts going forward is totally
11 uncertain of what the landscape is going to look like a week
12 from now.

13 So just limiting the injunction to something that
14 they are no longer involved in because of their merger
15 committee's actions yesterday is not adequate protection to
16 us. The only thing that we are asking for going forward is
17 not an injunction that they can't take whatever future action
18 they want to take with respect to a rehearing or motion on
19 bond or certiorari, we're just saying spend the east pilot's
20 money on that. Don't spend the west pilot's money on that
21 like you have in the past.

22 Now, that doesn't mean they can't go forward. They
23 can go out to the all the east pilots here and say, guys,
24 pony up. We need some money here to undo what the Ninth
25 Circuit did, so send in your monies, post tax paycheck monies

1 just like the west pilots have been doing to the tune of
2 \$4 million for eight years. They can go forward. We're not
3 saying don't enjoin them from doing that. And to make it
4 easier for them to gather some funds to do this, we will
5 agree that they can go forward if they want and file a
6 petition for rehearing or a motion for hearing en banc and
7 use USAPA monies to pay for that, but stop after that.

8 If they want to go to the Supreme Court or if they
9 want to go down and fight it down in district court in
10 Phoenix once the mandate comes back, make them pay for it out
11 of their own pockets. That's only fair. That helps balance
12 the equities between the two parties post-Addington Ninth
13 Circuit, and we would request the Court to limit them going
14 forward just through the petition rehearing on bond and it is
15 due now in the Ninth Circuit on -- on July 10th.

16 The Ferguson affidavit was prepared before the
17 Addington decision and before the Addington decision, it
18 clearly reflected what we were asking because at that
19 particular point in time there still was a U.S. merger
20 committee participating in the seniority litigation. Events
21 have overtaken the Ericson -- Ferguson affidavit from
22 June 17. The pleading that we filed today with respect to
23 the contour of the order that we would ask you to enter
24 reflects the changed circumstances from Mr. Ferguson's
25 affidavit of two weeks ago. If that affidavit had been

1 prepared after those events, it would be reflective of what
2 we asked in the order taking into consideration the events
3 going forward.

4 The harm. This has been an issue for them for as
5 long as we have been arguing about this. The harm is
6 reflected in the financial information that we uploaded and
7 made part of the exhibit and it was produced to us the other
8 day. The harm is from September 16, 2014, to June 15, 2015,
9 3,351,000 --

10 THE COURT: You're repeating yourself now. You
11 made that point.

12 MR HARPER: And it's not going to come back. I
13 mean, he brought it up. It's not coming back. So stop it
14 from getting any worse. And it's not coming back unless we
15 can claw back some of that money from the individual
16 defendants, which is highly speculative. But that is the
17 harm. That's the gravamen.

18 THE COURT: I'm not saying it it's not a relevant
19 point, but it--

20 MR HARPER: I understand. It came up and you said
21 I could respond to it. I should have had better sense than
22 to repeat myself. I'm sorry.

23 And, you know, I do think that we have adequately
24 answered all of the questions that Mr. Gresham suggested and
25 we haven't made our points on, we're entitled to a TRO. It's

1 in our briefs. I think it's handled. The cases that he
2 talks about somebody getting a car or somebody getting --
3 those are typical. This is an atypical case. What the --
4 what the wrongdoing is is that they've used their money to
5 try to push themselves up on a seniority list to the serious
6 disadvantage of the west pilots and that costs money and they
7 were doing it to feather their own nests, so to speak, and
8 that surely or perhaps is a recognized legitimate claim under
9 the LMRDA. That's why we're litigating it. Thank you.

10 THE COURT: Thank you.

11 MR. GRESHAM: Very short point.

12 THE COURT: Very short. I don't think you need to
13 go to the podium for the shortness.

14 MR. GRESHAM: I am. This will keep me very short.

15 MR HARPER: He's got a bad hip.

16 MR. GRESHAM: Yes, I just had a hip replacement
17 three and half weeks ago. I'm wandering around with no cane.

18 THE COURT: Who did the surgery?

19 MR. GRESHAM: Dr. Masanus.

20 THE COURT: Mason?

21 MR. GRESHAM: Mason and Masonus are the twins that
22 do the front.

23 THE COURT: Right.

24 MR. GRESHAM: To make it clear, we understood the
25 injunction would be that USAPA would not spends money on a

1 merger committee. We weren't trying to parse the words that
2 somehow we were going to do something that got around that.

3 THE COURT: Well, here's what I'm going to direct
4 you. Was that the only point you were going to make?

5 MR. GRESHAM: My one other point is look at the
6 caption in that case. It is Addington v. the US Airlines
7 Pilots Association. They're entitled to defend themselves.
8 That's it.

9 THE COURT: Right. There's a lot up in the air
10 with respect to the timing of this hearing and digesting the
11 Addington decision recent filings, and what I'm going to ask
12 the attorneys to do is put your heads together on the things
13 that you agree upon and submit a stipulation. I'll decide
14 whether it stays in a stipulation form or I convert it to
15 some type of TRO. But I really want you all who have lived
16 with this case and know this case and know the implications
17 of any order of the Court better than I do to have the first
18 crack at a joint filing that does as much as you all can
19 agree to do. And then submit that to me along with either a
20 joint recitation of the areas remaining in dispute or if you
21 can't agree to that, each of you file what you think remains
22 open for the Court's resolution.

23 I think that will help me get something out quickly
24 and hopefully definitively and then jet us into a posture
25 where we're looking for some kind of final resolution on

1 these two actions. I'd like to move with all deliberate
2 speed to get that done rather than continue in the spirit of
3 limbo that is not helpful to anyone.

4 So I'm going to ask you to do the work first. And
5 is two weeks a sufficient amount of time or is that too long?
6 Two weeks to get something to me?

7 MR HARPER: That's plenty of time, Your Honor.

8 MR. GRESHAM: Yes, Your Honor. I think that's
9 quite suitable.

10 THE COURT: All right. Let's do that and submit a
11 stipulation as to an agreed upon set of conditions with
12 either a joint filing as to the remaining issues in dispute
13 or separate filings if you can't come to an agreement and
14 I'll take it from there.

15 MR. GRESHAM: Thank you, Your Honor.

16 MR HARPER: Thank you, Your Honor.

17 (Concluded at 3:33 p.m.)
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