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 7 **POLSINELLI SHUGHART, P.C.**  
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 13 *Attorneys for Plaintiffs*

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

16 Don ADDINGTON; *et al.*,

CASE NO. 2:13-CV-00471-PGR

17 *Plaintiffs,*

**Declaration of Marty Harper**

18 vs.

19 US AIRLINE PILOTS ASS'N, *et al.*,

20 *Defendants.*

21 I, Marty Harper, HEREBY DECLARE:

22 1. I am an adult resident of the State of Arizona.

23 2. I began practicing law in 1973. During my 39 years in private  
 24 practice, I have worked on a number of class action cases. In this  
 25 declaration, I include some examples of my class action experience. A  
 26 copy of my firm biography is attached hereto.

27 3. I served as lead class and trial counsel for indirect purchasers  
 28 in an antitrust class action against Microsoft. A class was certified in this  
 action, and on the eve of trial after over six years of complex litigation,  
 including multiple appeals, the matter was settled with Microsoft. Class  
 members received a settlement with a face value of \$104 million.

1 4. I was lead trial counsel in a mass action involving Continental  
2 Airlines pilots who sued the Airlines Pilots Association (ALPA). *Airlines*  
3 *Pilots Ass'n, Int'l v. O'Neill*, 499 US 65 (1991); *O'Neill v. Airlines Pilots*  
4 *Ass'n, Int'l*, 939 F.2d 1199 (5th Cir. 1991).

5 5. I was lead counsel in a putative class action of pilots of Emery  
6 Worldwide Airlines, Inc., alleging claims against the airline and the  
7 union. *Rachford v. Air Line Pilots Ass'n., Int'l*, No. C-03-3618-PJH, 2006  
8 WL 927742 (N.D. Cal. 2006).

9 6. I was lead trial counsel for a class of pilots (the same class at  
10 issue here) alleging and proving breach of the duty of fair representation  
11 against their union. *Addington v. US Airline Pilots Ass'n*, 606 F.3d 1174  
12 (9th Cir. 2010) (vacating judgment on ripeness grounds).

13 7. I was lead trial counsel for a class of pilots (the same class at  
14 issue here) alleging breach of the duty of fair representation against their  
15 union. *US Airways v. Addington*, No. 10-cv-01570-ROS (July 26, 2010).

16 8. I was lead trial counsel for a putative class in a state-wide wage-  
17 and-hour class action against Wal-Mart.

18 9. I represent a national trucking firm in a large class action  
19 consisting of approximately 60,000 drivers.

20 9. My partner, Andrew Jacob, was counsel with me on *Wal-Mart*,  
21 *Emery*, *Addington*, *US Airways*, and the trucking firm case, and  
22 performed substantial work in these matters while working at this firm  
23 for the last 8 ½ years. A copy of his firm biography is attached hereto.

24 10. My associate, Jennifer Axel, was counsel with me on complex  
25 litigation cases while working at this firm for the last 4 ½ years. A copy of  
26 her firm biography is attached hereto.

27 11. The firm of Polsinelli Shughart, P.C., has extensive class action  
28 litigation experience.

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12. I declare under penalty of perjury under the laws of the State of Arizona that the foregoing is true and correct.

Dated this 25th day of March, 2013.

**POLSINELLI SHUGHART, PC**

*/s/ Marty Harper*  
By \_\_\_\_\_

Marty Harper  
Andrew S. Jacob  
Jennifer Axel  
CityScape  
One East Washington St., Ste. 1200  
Phoenix, AZ 85004  
*Attorneys for West Pilots*

**CERTIFICATE OF SERVICE**

I hereby certify that on this 25th day of March 2013, I electronically transmitted the foregoing document to the U.S. District Court Clerk's Office by using the ECF System for filing and transmittal.

*/s/Andrew S. Jacob*  
By \_\_\_\_\_



**MARTY HARPER**  
Shareholder

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Marty Harper is the vice chair of Polsinelli Shughart's Commercial Litigation practice group. With over 38 years experience, Mr. Harper has represented a wide range of entities in a diverse array of large complex civil litigation matters. He is an AV® peer reviewed litigator who has been included in *Best Lawyers in America* for his experiences in Commercial Litigation, Construction and Labor and Employment Law.

Mr. Harper is the immediate past chair of Mackrell International, a leading network of law firms from around the world. Mr. Harper was the chair of Mackrell International from June 2008 through May 2011. This network allows firms to remain close to their clients while at the same time offering them the expertise and knowledge obtained by professionals in other jurisdictions. In his role as chairman, Mr. Harper had a dynamic impact on the shape of the organization, adding 20 quality law firms to its membership to assist clients in reaching their on-going global legal needs during his tenure as chair. Mr. Harper's position required him to chair meetings around the globe, from Hanoi, Vietnam to Budapest, Hungary, Charleston, South Carolina and Athens, Greece.

#### Areas of Practice

##### Commercial Litigation

Representing businesses, financial institutions and individuals in contract, distribution and franchise disputes, stock valuation disputes, securities fraud, partnership and shareholder claims, lender liability breach of fiduciary duty, business torts and general commercial litigation.

##### Construction Law

Representing owners, general contractors, major subcontractors and design professionals on public and private projects in contract drafting and negotiation, claims preparation, arbitration and trial of claims, surety claims, job site injuries and design professional liability issues.

##### Labor and Employment Law

Representing large groups of pilots and other airline employees in disputes with their union and others arising under the Railway Labor Act; owners and key employees in non-compete and trade secret disputes.

#### Memberships and Affiliations

- Lawyer's Committee for Civil Rights Under Law
  - Board of Directors, 1998-2008
- State Bar of Arizona
  - Labor Committee
  - Construction Committee
- Maricopa County Bar Association
- Arizona State Democratic Party
  - General Counsel, 1997-2008
- American Bar Association

#### Distinctions

- Ranked in *Chambers USA: America's Leading Lawyers for Business*, Litigation: General Commercial (Arizona), 2011, 2012
- Selected as one of *Arizona's Finest Lawyers*, 2011

#### Departments

- Litigation

#### Practice Areas

- Commercial Litigation
- Accounting Litigation
- Antitrust

#### Education

- J.D., *magna cum laude*, Arizona State University-Sandra Day O'Connor College of Law, 1973
- B.A., Gonzaga University, 1965

#### Admissions

- Arizona, 1973

#### Court Admissions

- U.S. District Court, Arizona
- United States Supreme Court
- U.S. Court of Appeals, Fifth Circuit
- U.S. Court of Appeals, Tenth Circuit
- U.S. Court of Appeals, Ninth Circuit
- Supreme Court of Arizona
- U.S. District Court, Southern District of Texas
- U.S. District Court, Northern District of Texas
- Arizona Court of Appeals
- Denver Bankruptcy Court
- District Court in Denver

- Selected for inclusion in *The Best Lawyers in America*<sup>®</sup>
  - 2009-2013, Bet-the-Company Litigation
  - 2009-2013, Construction Law
  - 2013, Securities Litigation
  - 2006-2013, Commercial Litigation
  - 1987-1992, 2009-2013, Labor and Employment
- Recognized by *Super Lawyers Magazine*, 2005-2009
- Selected for inclusion in *Southwest Super Lawyers* 2010, 2011 and 2012, General Litigation
- *AZRE's Top People to Know in Commercial Real Estate* 2011, Commercial Litigation

## EXPERIENCE

### **Marty Harper has substantial experience in all types of commercial business and construction litigation.**

Mr. Harper has represented owners, architects, developers and contractors in various construction related matters throughout Arizona. He also has experience in labor relations and argued a significant labor case before the U.S. Supreme Court in January, 1991. Mr. Harper recently represented approximately 1,800 former America West Pilots in a high profile case against the pilots' Union, USAPA. Mr. Harper obtained a permanent injunction against the Union after a nine-day jury trial in federal court.

### **Recently, Mr. Harper represented:**

- A putative class of employees in a state-wide class action against Wal-Mart
- A certified class in a state-wide class action against Microsoft
- A national trucking firm in a large class action consisting of approximately 19,000 drivers
- Several bankruptcy trustees in large bankruptcy matters in Arizona
- A certified class of 1,800 former America West pilots
- A national accounting group in five related securities/malpractice actions in state and federal court
- A national law firm in a malpractice/fraud case

### **Mr. Harper has previously represented:**

- An accounting firm in significant, high profile litigation in Arizona
- A client from Alaska, recovering damages for the tortious interference of a significant business opportunity in the State of Washington
- The bankruptcy trustee for MarkAir Airlines in Alaska, recovering \$16.5 million in a breach of contract dispute
- The bankruptcy trustee for Kaiser Steel, recouping more than \$65 million following a leveraged buyout
- More than 400 Continental Airline pilots following the 1981 strike at Continental Airlines, recovering more than \$20 million for the pilots

### **Significant represented decisions:**

- *Garza v. Swift Transp. Co., Inc.*, 2009 WL 2579527, (Ariz. Aug 24, 2009)
- *Arizona State Democratic Party v. State of Arizona*, 210 Ariz. 527, 115 P.3d 121 (2005)
- *Southwest Holdings, L.L.C. v. Kohlberg & Co.*, 325 B.R. 417, 424 (Bankr. D. Ariz. 2005)
- *Southwest Holdings, L.L.C. v. Kohlberg & Co.*, 315 565-576 (Bankr. D. Ariz. 2004)
- *Bunker's Glass v. Pilkington*, 206 Ariz. 9, 75 P.3d 99 (2003)
- *In re Kaiser Steel Corporation*, 998 F.2d 783 (10th Cir. 1993)
- *Air Line Pilots Association, International v. O'Neill*, 499 US 65, 111 S.Ct. 1127, 113 L.Ed.2d 51 (1991)
- *O'Neill v. Air Line Pilots Association, International*, 939 F.2d 1199 (5th Cir. 1991)
- *Biltmore Associates, LLC v. Twin City Fire Ins. Co.*, ---F.3d---, 2009 WL 1976071 (9th Cir. Jul. 10, 2009)
- *Addington v. US Airline Pilots Ass'n*, 588 F. Supp.2d 1051 (D. Ariz. 2008)
- *Addington v. US Airline Pilots Ass'n*, 2009 WL 2169164 (D. Ariz. July 17, 2008)

**NEWS**

November 29, 2012      Polsinelli Shughart Files Lawsuit on Behalf of Arizona Dream Act Coalition

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**ANDREW S. JACOB**  
Shareholder

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Not only is Andrew S. Jacob an experienced attorney, but he spent 15 years as a practicing interventional cardiologist. After clerking for the Honorable Barry Silverman on the United States Ninth Circuit Court of Appeals, Dr. Jacob joined the firm's complex litigation team in Phoenix. He also earned admission to the Ninth Circuit Court of Appeals.

During his tenure as a physician, Dr. Jacob chaired multiple medical staff committees, actively consulted for the Health Services Advisory Group and the Arizona Medical Board, and served on the board of the Scottsdale PHO. He authored several publications, served on the editorial board of a peer review journal, and was recognized as the Teacher of the Year at Scottsdale Healthcare in 2000, just prior to beginning his legal studies.

#### Memberships and Affiliations

- State Bar of Arizona
- Mission of Mercy, mobile medical unit that provides free medical care to the uninsured, working poor and homeless of Maricopa County
  - Member of Arizona Leadership Council

#### Distinctions

- Known by some in the Arizona office as the lawyer's lawyer, Dr. Jacob focuses his practice on the complex legal analysis required by our more difficult cases.
- One of the leading attorneys on a challenging labor union unfair representation case, Dr. Jacob played an integral role in formulating and implementing the successful legal strategy that resulted in a rare plaintiff's win.

#### EXPERIENCE

##### Significant Representative Decisions

- *Biltmore Associates, LLC v. Twin City Fire Ins. Co.*, 572 F.3d 663, (9th Cir. 2009).
- *Addington v. US Airline Pilots Ass'n*, 2009 WL 2169164 (D. Ariz. July 17, 2009).
- *Addington v. US Airline Pilots Ass'n*, 588 F. Supp.2d 1051 (D. Ariz. 2008).
- *Garza v. Swift Transp. Co., Inc.*, 222 Ariz. 281, 213 P.3d 1008 (2009).
- *Valley Forge Ins. Co. v. Sam's Plumbing, LLC*, 220 Ariz. 512, 207 P.3d 765 (2009).
- *In re Southwest Supermarkets, LLC*, 376 B.R. 281 (Bankr. D. Ariz. 2007).
- *In re Southwest Supermarkets, LLC*, 325 B.R. 417, 424 (Bankr. D. Ariz. 2005).
- *In re Southwest Supermarkets, LLC*, 315 B.R. 565 (Bankr. D. Ariz. 2004).
- *Lubin v. Thomas*, 213 Ariz. 496, 144 P.3d 510 (2006).

#### NEWS

November 29, 2012 [Polsinelli Shughart Files Lawsuit on Behalf of Arizona Dream Act Coalition](#)

#### Departments

- Litigation

#### Practice Areas

- Commercial Litigation
- Appellate Practice
- Law Firm Defense

#### Education

- J.D., *magna cum laude*, Arizona State University-Sandra Day O'Connor College of Law, 2003, *Order of the Coif*; Pedrick Scholar; Judge Mary B. Schroeder Federal Practice Award; Center Scholar (Center for Law, Science, and Technology); Outstanding Graduate
- M.D., Duke University Medical School, 1976
- B.A., *summa cum laude*, University of Massachusetts, 1972

#### Admissions

- Arizona, 2003

#### Court Admissions

- Supreme Court of Arizona, 2003
- U.S. Court of Appeals, Ninth Circuit, 2004
- U.S. District Court, District of Arizona, 2004



**JENNIFER J. AXEL**  
Associate

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Fax: 602.926.2301



Jennifer J. Axel concentrates her practice in the areas of commercial and business litigation on behalf of large corporations, small businesses and individuals. Ms. Axel represents clients in both federal and state courts and has appellate, mediation and arbitration experience. Ms. Axel has represented both lenders and borrowers in a wide variety of litigation matters arising out of commercial loans, including obtaining receiverships after a loan has defaulted as well as both prosecuting and defending deficiency actions.

#### Memberships and Affiliations

- State Bar of Arizona
- Maricopa County Bar Association
- Arizona Association of Defense Counsel

#### EXPERIENCE

##### Ms. Axel's representative experience includes:

- Representation of largest private bank in Arizona in lawsuit against investment bank related to mortgage backed securities
- Obtained court-appointed receivers over several large commercial projects on behalf of multi-national insurance provider
- Representation of dozens of individuals and entities against large lending institutions regarding real estate and business loans
- Representations of community banks in dispute with borrowers, employees and providers
- Representation of large rental machinery company in fiduciary lawsuit against ex-employees, lender and investment banker
- Representation of individuals in FINRA proceedings regarding unsuitable investments
- Representation of registered representative in civil suit brought by FINRA
- Representation of governmental organizations in 1983 claims
- Representation of large restaurant franchise in dispute over international rights to open stores in Australia
- Representation of software provider in arbitration proceeding to enforce terms of development agreement
- Representation of dozens of borrowers in post-judgment enforcement actions
- Representation of developer in dispute with homeowners association regarding termination of developer control period
- Representation of developer of medical office buildings in dispute with joint venturer
- Representation of provider of educational software content in dispute regarding development agreement
- Representation of brand development firm regarding copyright use
- Representation of tenants in disputes with landlords

#### Departments

- Litigation

#### Practice Areas

- Commercial Litigation

#### Education

- J.D., New York University, 2005, *Journal of Legislation and Public Policy*, Staff Editor
- B.A., *cum laude*, University of California-Los Angeles, 2002, History; Phi Alpha Theta, History Honor Society; National Society of Collegiate Scholars

#### Admissions

- Arizona, 2005

#### Court Admissions

- U.S. District Court, District of Arizona, 2005
- U.S. Court of Appeals, Ninth Circuit, 2007