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

Don Addington; et al.,
Plaintiffs,

vs.

US Airline Pilots Ass'n, et al.,
Defendants.

No. CV-13-00471-PHX-ROS

**PLAINTIFFS' OPPOSITION TO
USAPA'S MOTION TO CONTINUE
TRIAL ON ACCOUNT OF ILLNESS
OF PRESIDENT HUMMEL**

Plaintiffs, the West Pilots, oppose USAPA's motion to continue the trial because President Hummel is not at all necessary to USAPA's defense. Indeed, his sworn testimony shows that he has no knowledge of the subject matter that is at issue. In contrast, Mr. Bradford—the founder and current Vice-President of USAPA—testified that he has ample knowledge of this subject matter.

I. President Hummel has little to no direct knowledge of the subject matter at the heart of this litigation: negotiation and ratification of the Memorandum of Understanding (“MOU”).

At his deposition conducted on September 17, 2013, President Hummel repeatedly denied having any personal knowledge of subject matter that is material to this litigation. The excerpts from the transcript of that deposition, which are attached to this brief, show as follows:

1 1. President Hummel did not know that USAPA opposed class certification in
2 this litigation. [Hummel Depo., 123:2 to 123:15 (Sep. 17, 2013).]

3 2. He did not know whether USAPA has rules for its Ballot Certification
4 Committee to follow when it reports results. [*Id.* at 113:6 to 113:10.]

5 3. He did not know who USAPA used for legal counsel on “vote ratification
6 issues.” [*Id.* at 88:23 to 89:23.]

7 4. He did not know that USAPA was using the results of the MOU ratification
8 vote against the West Pilots in this litigation. [*Id.* at 114:12 to 114:18.]

9 5. He had “no idea” whether USAPA will try to put the East and West Pilots in a
10 date-of-hire seniority order if there is a seniority arbitration with the American pilots. [*Id.*
11 at 15:13 to 15:19.]

12 6. He did not know whether US Airways was “comfortable” with the seniority
13 language in the August 2012 draft of the MOU that did not have the Paragraph 10(h)
14 language. [*Id.* at 138:9 to 138:22.]

15 7. He testified that he completely delegated to attorney Pat Szymanski the
16 responsibility to draft language for Paragraph 10(h) of the MOU. [*Id.* at 131:21 to 134:3.]
17 And in so doing, he did not tell Mr. Szymanski “what or how” to go about it. [*Id.* at
18 136:14 to 136:21.]

19 8. He was unable to identify or otherwise explain the problem with the seniority
20 language in the draft MOU and why it required the intervention of Mr. Szymanski. [*Id.* at
21 139:8 to 139:15.]

22 9. He did not know who proposed or why they proposed language for the MOU
23 that disclaimed it was the “Single Agreement” referred to in the 2005 Transition
24 Agreement. [*Id.* at 140:16 to 141:4.]

25 10. He did not know where the language that became Paragraph 10(h) came from
26 (even though in the Proposed Pretrial Order USAPA stipulates that it came from
27 USAPA). [*Id.* at 146:20 to 147:7.]
28

1 11. He did not know whether the protocol agreement that is currently being
2 worked on by the USAPA Merger Committee provides for separate West Pilot
3 participation in the planned seniority integration with the American pilots. [*Id.* at 15:24 to
4 16:22.] Indeed, he has not even seen drafts of that protocol. [*Id.* at 16:23 to 17:1.]

5 12. He did not know whether the USAPA Merger Committee has put together
6 date-of-hire lists to be used in that seniority integration. [*Id.* at 17:18 to 18:2.] He said
7 that is for the “board” (the USAPA Board of Pilot Representatives or “BPR”), not him, to
8 address. [*Id.* at 18:2 to 18:8.]

9 13. He said it is “not his job” to tell anyone to prepare “potential merger lists” and
10 he has not seen any. [*Id.* at 23:12 to 24:6.]

11 14. He could not say that he verified the response to Plaintiffs’ interrogatories
12 based on personal information. [*Id.* at 31:1 to 31:9.]

13 15. He had not seen an analysis recently performed for USAPA by expert Rick
14 Salamat for purposes of seniority integration. [*Id.* at 72:6 to 72:14.]

15 16. He did not know what occurred after he delegated the USAPA Grievance
16 Committee Chairman and USAPA Business Intelligence Committee Chairman to go to
17 New York in July 2012 to meet with USAPA’s general counsel to address issues related
18 to the MOU. [*Id.* at 76:6 to 77:9.]

19 17. He did not know whether there were ongoing contract negotiations between
20 US Airways from September 2012 to December 10, 2012. [*Id.* at 78:24 to 79:6.]

21 18. He did not recall ever seeing the comprehensive CBA proposal that USAPA
22 made to US Airways in November 2011. [*Id.* at 90:10 to 90:16.] And he did not know
23 whether that proposal had been rejected by US Airways. [*id.* at 91:3 to 91:15.]

24 **II. Legal Argument**

25 USAPA cannot have it both ways. It cannot now argue that President Hummel is
26 essential to its defense when, less than a month ago, Mr. Hummel repeatedly testified that
27 he had little to no direct knowledge of the events that are material to this action. Indeed,
28 he testified that he was completely unaware that USAPA had vigorously opposed class

1 certification. Surely, USAPA does not need someone with such lack of knowledge to
2 participate in the trial scheduled to begin in less than two weeks.

3 The West Pilots claim that, with no legitimate union purpose, USAPA proposed and
4 agreed to Paragraph 10(h) of the MOU and claims that this language amended or
5 superseded the 2005 Transition Agreement seniority integration provisions, allowing it to
6 impose its date-of-hire seniority list as if the Nicolau arbitration had never occurred. The
7 presence of President Hummel at trial cannot help resolve whether USAPA had a
8 legitimate purpose for Paragraph 10(h) because he repeatedly testified that he had no
9 knowledge of why Paragraph 10(h) was put into the MOU. But now, on the eve of trial,
10 USAPA is arguing—and doing so with no evidentiary support—that Mr. Hummel was at
11 the center of it all.

12 If Mr. Hummel were to attend the trial, the West Pilots would object to him
13 testifying as to matters that he could not testify to at his deposition. Because he should be
14 precluded from giving such testimony, there can be no prejudice to USAPA if he is
15 unable to attend the trial or otherwise assist counsel in preparation for trial. USAPA has
16 known of Mr. Hummel's illness since last May and has a Vice-President for just such
17 contingencies. The Court, therefore, should deny USAPA's motion to continue the trial
18 on the basis of President Hummel's illness.

19 **III. Conclusion**

20 The Court should deny USAPA's motion to continue the trial.

21 Dated this 15th day of October, 2013.

22 **POLSINELLI PC**

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CERTIFICATE OF SERVICE

I hereby certify that on this 15th day of October 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 _____