Michael K. Jeanes, Clerk of Court
*** Electronically Filed ***
09/23/2013 8:00 AM

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

TX 2012-000231 09/20/2013

HONORABLE DEAN M. FINK

CLERK OF THE COURT
S. Brown
Deputy

ALPHA I I INC, et al.

SCOTT R COOK

v.

ARIZONA DEPARTMENT OF REVENUE

SCOT G TEASDALE

AARON R MAURICE

UNDER ADVISEMENT RULING

The Court took this matter under advisement following oral argument September 11, 2013. Upon further consideration of Plaintiff's Motion for Summary Judgment, and Defendant's Cross-Motion for Summary Judgment, the Court finds as follows.

Beginning with the motion to strike, published court decisions are not "unauthenticated exhibits." The Court of Claims opinion (of which Papillon, as a party, unquestionably was on notice), although not dispositive, is of some persuasive value with regard to Papillon's licensure; its citation was therefore proper. It was also germane to the argument raised in the original motion. It is of course common for a reply memorandum to refine the party's earlier arguments to address the counterarguments raised in the response. The Court frankly did not consider the other new material in the reply to be useful. The Court therefore denies the motion to strike.

"In interpreting statutes, … each word, phrase, clause, and sentence must be given meaning so that no part will be void, inert, redundant, or trivial." *Estate of Braden ex rel. Gabaldon v. State*, 228 Ariz. 323, 327 n.6 (2011). The Supreme Court did not exempt from this rule words enclosed in parentheses, or suggest that such words are to be construed differently than if they had not been parenthesized. The Court therefore may not simply ignore the reference to 14 CFR part 121, parentheses or no. The Court believes that the meaning of the reference to part 121 is clear, even if the legislature did not speak with what Justice Souter, in another context, described as "the discrimination of an Oxford don." *Davis v. U.S.*, 512 U.S. 452, 476 (1994) (Souter, J., concurring). To have any meaning at all, the statutory language, "A person

holding … a supplemental air carrier certificate under federal aviation regulations (14 Code of Federal Regulations part 121)," must be referring to a certificate issued under part 119 authorizing operation pursuant to part 121.

Section 121.1 describes the scope of part 121 as "prescrib[ing] rules governing – (a) The domestic, flag, and supplemental operations of each person who holds or is required to hold an Air Carrier Certificate or Operating Certificate under part 119 of this chapter." Part 119, in turn, clearly recognizes that certification is based on the part under which the airline is authorized to engage in common carriage; *see* 14 CFR § 119.5(d) ("A person authorized to engage in common carriage under part 121 or part 135 of this chapter, or both, shall be issued only one certificate authorizing such common carriage, regardless of the kind of operation or the class or size of aircraft to be operated."). Papillon's authorization is under part 135. Page 8 of the Order Issuing Interstate Certificate Authority (exhibit 1 to Plaintiffs' motion) states, "Given the limited scope of Papillon's operations, we would consider Papillon's acquisition of larger aircraft that would require certification from the FAA under 14 CFR Part 121 as a substantial change in operations. Therefore, we propose to limit any authority issued to Papillon to operations conducted under Part 135. Should Papillon desire to operate larger aircraft that would require certification from the FAA under Part 121, it must first provide the Department with at least 45-days advance notice of such plans and provide updated information establishing its fitness for such expansion." *See also Papillon Airways, Inc. v. U.S.*, 105 Fed.Cl. 154, 160 (Fed.Cl. 2012): "Papillon operates pursuant to a certificate issued by the Federal Aviation Authority ('FAA') under Part 135 of its regulations.… In order to conduct additional scheduled flights, a commuter certification under Part 121 is required by the FAA."[1]

Plaintiffs' appeal to the legislative history cannot prevail over the clear and unambiguous language of the statute. *State v. Christian*, 205 Ariz. 64, 65 ¶ 6 (2003). The legislature limited the exemption to supplemental air carriers whose operations fall under part 121. Had the legislature intended to extend the exemption to all supplemental air carriers, there would have been no reason to mention the Code of Federal Regulations at all, suggesting that the legislature meant to include operators authorized under one regulation but not others. But even supposing that the reference was made out of carelessness, the statutory language is what it is. The remedy is to go back to the legislature.

Based on the foregoing, as well as the arguments of Defendant,

[1] The Court is somewhat puzzled by Plaintiffs' objection to the Department's use of this language. Whatever errors the Court of Claims may have made in its opinion, this brief portion appears to be a straightforward paraphrase of the FAA order. At most, it demonstrates that the legislature's reference to a part 121 certificate, if it was a mistake, was a mistake made by others as well.

IT IS ORDERED denying Plaintiffs' Motion for Summary Judgment filed February 12, 2013.

IT IS FURTHER ORDERED granting Defendant's Cross-Motion for Summary Judgment, filed April 10, 2013.

IT IS FURTHER ORDERED vacating the trial scheduling conference set September 23, 2013 at 9:00 a.m.

IT IS FURTHER ORDERED directing Defendant to lodge a form of judgment and file any Application and Affidavit for Attorney's Fees and Statement of Taxable Costs by October 21, 2013.