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**UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA**

Don Addington, *et al.*,

 Plaintiffs,

v.

US Airline Pilots Association and US
Airways, Inc.,

 Defendants.

Case No. CV08-01633-PHX-NVW

**STIPULATED ORDER PROTECTING
THIRD PARTY US AIRWAYS, INC'S
CONFIDENTIAL DOCUMENTS AND
INFORMATION**

Plaintiffs Don Addington, et al. ("Plaintiffs") and the US Airline Pilots Association ("USAPA") (collectively, the "Parties") and US Airways, Inc. ("US Airways"), by their respective counsel, in recognition of the fact the Parties' document requests served upon US Airways request sensitive or non-public information, hereby agree and stipulate to the following provisions concerning the confidentiality of certain testimony, information, and/or documents obtained from US Airways in this action:

1. This Stipulated Order Protecting Confidential Documents and Information (hereinafter "Stipulated Protective Order" or "Order") shall apply to all information and documents provided by US Airways, pursuant to a subpoena (or pursuant to agreement to treat a request as a subpoena) requesting either documents or testimony pursuant to Rule 45 of the Federal Rules of Civil Procedure in connection with the above-captioned matter (collectively, "subpoenas"), whether written, electronic, oral, visual, or contained in documents, transcripts, or in any other form. In connection with responding to such subpoenas, including

1 depositions, US Airways may designate any document, thing, material, testimony or other
2 information contained therein or derived therefrom, as "Confidential Information" under the
3 terms of this Stipulated Protective Order.
4

5 2. The term "Confidential Information" as used in this Stipulated Protective
6 Order shall include but not be limited to any document, thing, material, testimony or other
7 information which concerns or relates to: personnel or customer-related information; business
8 processes, operations, research, plans, analyses, or apparatus; fleet or crew planning, scheduling,
9 projections, analyses or forecasts; financial information, analysis, or records; amount or source
10 of any revenue, costs, income, profits, or losses; expenditures of any persons, corporation, or
11 other organizations; US Airways' labor relations; business records; trade secrets; other
12 proprietary or confidential business information; or when revealing such documents or
13 information would compromise the privacy rights and interests of individuals or entities not a
14 party to this action; or, in addition to the above, any document, thing, material, testimony or
15 other information which US Airways in good faith believes qualifies under Rule 26(c)(G) of the
16 Federal Rules of Civil Procedure and/or the Arizona Trade Secret Act, A.R.S. §44.401, et seq.
17

18 3. Material produced by US Airways in the above-captioned litigation and
19 designated Confidential Information in accordance with the terms set forth herein shall be
20 subject to the terms of this Order and shall not be used or disclosed except as expressly
21 permitted hereunder. Confidential Information, as that term is employed herein, means any
22 information so designated. Notwithstanding the foregoing, US Airways may use the
23 Confidential Information in the ordinary course of legitimate business affairs or otherwise,
24 including in this litigation if it deems necessary, and such use by US Airways will not be
25 deemed to have the effect of an admission or waiver by US Airways of non-confidentiality, or
26 of altering the confidentiality of any such Confidential Information, or of altering any existing
27 obligation of any Party or US Airways under this Order.
28

1 4. All information, whether designated as Confidential Information or not,
2 that is produced, provided or exchanged in the course of this litigation (other than information
3 that is publicly available prior to its production, provision or exchange in the course of this
4 litigation) shall be used by the Party to whom the information is provided (the "Receiving
5 Entity") solely for purposes directly related to the prosecution or defense of this litigation, and
6 not for any other purpose whatsoever, and not in connection with any other claim, demand, suit,
7 action or proceeding. Confidential Information (and any information contained therein or
8 derived therefrom) shall be retained in the possession and control of counsel for the Parties in
9 such a manner as to preserve their confidential nature and to carry out the terms of this
10 Stipulated Protective Order. Such materials shall not be disseminated in any way that would
11 make them accessible to anyone not entitled to view or receive such information under the terms
12 of this Stipulated Protective Order.

13
14 5. Documents containing Confidential Information shall be so designated by
15 placing the legend "Confidential" on each page of the document, or by placing said legend in
16 such other manner (e.g., on a CD containing such document, or in a cover letter or email) as to
17 clearly indicate that the entire document is Confidential Information. In lieu of marking the
18 original documents, US Airways may mark the copies of such documents which are produced.

19
20 6. Counsel may utilize Confidential Information in the deposition of any
21 person. Prior to using or disclosing any Confidential Information in a deposition, however,
22 counsel shall inform the deponent of this Stipulated Protective Order, shall provide him or her a
23 copy of this Stipulated Protective Order, and shall request the deponent execute a copy of the
24 Certification annexed hereto as Attachment A. In the situation where counsel taking the
25 deposition has tendered the Certification to a deponent in good faith and the deponent refuses to
26 execute the Certification, such counsel agrees to refrain from questioning the deponent
27 regarding Confidential Information until the Party desiring execution of the Certification has
28 informed US Airways of the deponent's refusal and the Party and US Airways have had a

1 reasonable opportunity to seek assistance from the Court in compelling the execution of the
2 Certification.

3
4 7. Testimony disclosing or derived from Confidential Information taken at a
5 deposition, conference, or hearing shall be designated as Confidential Information by making a
6 statement to that effect on the record at the deposition or other proceeding or in a written
7 statement served within 30 days of receipt of the deposition or other proceeding transcript
8 identifying the pages of the deposition transcript containing Confidential Information. All
9 deposition transcripts shall be treated as Confidential Information for the 30-day period
10 following their receipt. The Parties agree that it shall be the deposing attorney's responsibility
11 to ensure that pages of deposition transcripts containing Confidential Information are properly
12 designated "Confidential." The Parties also agree to provide US Airways with copies of
13 transcripts containing Confidential Information immediately upon receipt and to permit US
14 Airways to designate as confidential any pages of transcripts that contain Confidential
15 Information within the 30-day period described in this Paragraph.

16
17 8. Confidential Information may be disclosed only to the following persons
18 (hereinafter, "Qualified Persons"):

19
20 a. counsel of record for the Parties, and counsel's employees to whom
21 counsel believes, in good faith, disclosure of specific documents marked with a "Confidential"
22 designation is necessary for assistance in the representation of the Parties;

23
24 b. non-attorneys retained by a Party solely for the purpose of assisting
25 counsel in connection with this litigation, including but not limited to independent experts,
26 provided that such persons have, prior to disclosure, signed the annexed Certification attesting to
27 the fact that they have read this Stipulated Protective Order and agree to be bound by its terms;

28
c. named plaintiffs Don Addington, John Bostic, Mark Burman,
Afshin Iranpour, Roger Velez, and Steve Wargocki, provided that such persons have, prior to

1 disclosure, signed the annexed Certification attesting to the fact that they have read this Stipulated
2 Protective Order and agree to be bound by its terms;

3
4 d. deponents and/or witnesses who, for purposes of viewing and
5 testifying with respect to Confidential Information, sign the annexed Certification attesting to the
6 fact that they have read this Stipulated Protective Order and agree to be bound by its terms; and

7 e. any stenographers engaged to transcribe depositions or other
8 testimony conducted in this litigation, as well as videographers engaged to videotape same.

9
10 9. With respect to the Court, its staff, the jury, and persons present in the
11 courtroom during any proceedings in this litigation who are merely observers of such
12 proceedings, said persons shall not be bound by the terms of this Order.

13
14 10. If a Party wishes to file Confidential Information with the Court or refer
15 in a memorandum or other filing to the Confidential Information, that Party and US Airways
16 will move to file the Confidential Information under seal in accordance with Local Rule 5.6 of
17 the United States District Court for the District of Arizona. If the Party wishing to file
18 Confidential Information and US Airways do not agree to file the Confidential Information
19 under seal, the Party and US Airways will follow the procedure set forth in Local Rule 5.6(d).
20 The Parties agree that they will seek to avoid the unnecessary filing of Confidential Information
21 with the Court, and only do so when necessary to support their pleadings, motions or other
22 papers.

23
24 11. In the event that any Confidential Information is used in any Court
25 proceeding in this action other than trial, it shall not lose its confidential status through such use,
26 and the Party using such Confidential Information shall take all reasonable steps to maintain its
27 confidentiality during such use.

1 12. If a Receiving Entity disputes the specific designation, the Receiving
2 Entity shall advise counsel for US Airways in writing of the objection. Within seven (7) days
3 after receipt of such objection, US Airways will set forth in writing its basis for the designation.
4 If the dispute cannot be resolved, the Receiving Entity may apply to the Court for a modification
5 of the classification of the document. All documents designated "Confidential" shall remain so
6 designated until counsel for US Airways re-designates them or the Court resolves the issue.

7
8 13. Nothing in this Stipulated Protective Order shall preclude US Airways
9 from requesting from the Court or the Parties additional or further protections for documents or
10 information, for instance, protections designating certain documents as "Attorneys' Eyes Only."
11 Nothing in this Stipulated Protective Order shall be construed as an admission that any
12 Confidential Information is relevant or discoverable.

13
14 14. This Stipulated Protective Order is entered solely for the purpose of
15 facilitating the exchange of Confidential Information between US Airways and the Parties
16 without involving the Court unnecessarily in the process. Nothing in this Stipulated Protective
17 Order, nor the production of any Confidential Information under the terms of this Order, nor any
18 proceedings pursuant to this Order shall be deemed to have the effect of an admission or waiver
19 by US Airways, or of altering the confidentiality or non-confidentiality of any such Confidential
20 Information, or of altering any existing obligation of US Airways. Nothing in this Order shall
21 be construed as limiting in any way: the right of US Airways to object to furnishing information
22 sought by any Party or non-party; the right of US Airways to object to information requested to
23 be furnished by any third person/entity; any third person/entity's right to object to furnishing
24 information; and/or the right of US Airways to seek more stringent protection with respect to
25 any particular document or information, whether on the ground of confidentiality or otherwise.
26 This Stipulated Protective Order shall not be construed as waiving any right to assert a claim of
27 privilege, relevance, or other grounds for not producing information or documents requested.

1 15. The parties to this Order agree to enter into a further protective order
2 within a reasonable period prior to any scheduled trial of this matter to address the use of
3 Confidential Information during such trial proceedings.
4

5 16. This Stipulated Protective Order shall survive the final termination of this
6 action, and the Court shall retain jurisdiction to resolve any dispute concerning the use of
7 Confidential Information disclosed hereunder. After these actions have been resolved by
8 settlement or judgment and all appeals have been exhausted (“final termination”), counsel for
9 US Airways and the Parties shall confer and counsel for the Parties shall return to US Airways
10 all documents, material, and deposition transcripts designated as Confidential Information and
11 all copies of same in their possession or the possession of their employees and/or agents, as well
12 as all documents created, produced, reproduced, provided to or referenced by persons identified
13 in paragraphs 8(b)-(e), above, and any notes, transcripts or other written documents derived
14 from Confidential Information or containing information derived from such Confidential
15 Information, or shall certify the destruction thereof.
16

17 17. If any Party inadvertently discloses and/or produces any Confidential
18 Information which is the subject of this Stipulated Protective Order, said inadvertent disclosure
19 and/or inadvertent production shall not be deemed as a waiver in whole or in part of US
20 Airways’ claim of confidentiality, either as to the specific information disclosed or as to any
21 other information relating thereto or on the same or related subject matters. If material is
22 appropriately designated as Confidential Information after the material was initially produced,
23 the Receiving Entity, on timely notification of the designation, must make reasonable efforts to
24 assure that the material is treated in accordance with the provisions of this Stipulated Protective
25 Order.
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18. Any party to this Stipulated Protective Order that violates this Order shall immediately use its best efforts to recover all such materials and information and to prevent any use or dissemination of the Confidential Information and materials.

Dated: _____ SHUGHART THOMSON & KILROY, P.C.
Marty Harper
Kelly J. Flood
Andrew S. Jacob

By: _____
MARTY HARPER
Attorneys for Plaintiffs

Dated: _____ SEHAM, SEHAM, MELTZ & PETERSEN, LLP
Lee Seham
Nicholas P. Granath
Lucas K. Middlebrook

LUBIN & ENOCH, PC
Stanley Lubin


By: _____
LEE SEHAM
Attorneys for Defendant, US Airline Pilots
Association

Dated: _____ O'MELVENY & MYERS LLP
Robert A. Siegel
Rachel S. Janger

US AIRWAYS, INC.
Sarah Asta
Karen Gillen

By: _____
ROBERT A. SIEGEL
Attorneys for US Airways, Inc.

DATED THIS 31ST DAY OF MARCH, 2009.



Neil V. Wake
United States District Judge

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Attachment A

CERTIFICATION

I, _____ do solemnly swear that I am fully familiar with the terms of the Stipulated Protective Order agreed to by US Airways and the Parties in *Addington v. US Airline Pilots Association*, Case No. CV-08-1633-PHX-NVW, in the United States District Court for the District of Arizona, and hereby agree to comply with and be bound by the terms and conditions of said Stipulated Protective Order unless and until modified by further agreement of the Parties and US Airways. I hereby consent to the jurisdiction of said Court for purposes of enforcing this Stipulated Protective Order. I understand that all Confidential Information and copies or descriptions thereof, including but not limited to any notes or other transcriptions made therefrom, are to be returned to counsel within 60 days after the final termination of this proceeding as defined in paragraph 16 of the Order.

Name

Date