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

Don ADDINGTON, John BOSTIC, Mark  
BURMAN, Afshin IRANPOUR, Roger  
VELEZ; and Steve WARGOCKI,

*Plaintiffs,*

vs.

US AIRLINE PILOTS ASSOCIATION, and  
US AIRWAYS, INC.,

*Defendants.*

CASE NO. 2:08-CV-1633-NVW

**PROPOSED FINAL PRETRIAL  
ORDER FOR JURY TRIAL**

The following is the joint Proposed Final Pretrial Order to be considered at the  
Final Pretrial Conference set for **April 21, 2009 at 2:00 PM.**

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12 **B. STATEMENT OF JURISDICTION.**

13 **1.** Plaintiffs contend that the First Amended Complaint raises a federal  
14 question claim. 45 U.S.C. § 151, *et seq.* There is jurisdiction under Title 28 U.S.C.  
15 §1331. *See Air Line Pilots Assn, Intl. v. Transamerica Airlines, Inc.*, 817 F.2d 510, 515  
16 n.3 (9th Cir. 1987) (noting that NMB jurisdiction is limited to determine “who is the  
17 employees’ representative”)

18 **2.** Defendants dispute subject matter jurisdiction on four grounds: i) the case  
19 is not ripe for adjudication; ii) plaintiffs fail to state a legally cognizable claim; iii) this  
20 dispute is within the exclusive jurisdiction of the System Board of Adjustment and/or  
21 will pre-judge factual and contractual interpretation issues that are pending before the  
22 System Board of Adjustment per order of this Court; iv) the National Mediation Board  
23 has exclusive jurisdiction over all election related disputes.

24 **C. STIPULATIONS AND UNCONTESTED FACTS AND LAW**

25 **1.** The following material facts are admitted or stipulated to by the parties  
26 and require no further proof:

- 27 1. Plaintiff Don Addington is a resident of the State of Arizona, who at all times  
28 relevant to this Complaint has been a West Pilot.
1. Plaintiff John Bostic is a resident of the State of Arizona, who at all times  
relevant to this Complaint has been a West Pilot.

- 1 3. Plaintiff Mark Burman is a resident of the State of Arizona, who at all times  
2 relevant to this Complaint has been a West Pilot.
- 3 4. Plaintiff Afshin Iranpour is a resident of the State of Arizona, who at all times  
4 relevant to this Complaint has been a West Pilot.
- 5 5. Plaintiff Roger Velez is a resident of the State of Arizona, who at all times  
6 relevant to this Complaint has been a West Pilot.
- 7 6. Plaintiff Steve Wargocki is a resident of the State of Arizona, who at all times  
8 relevant to this Complaint has been a West Pilot.
- 9 7. US Airways is a Delaware corporation with its principal place of business in  
10 Tempe, Arizona. At all times relevant to this action, US Airways has engaged in  
11 interstate commerce in the industry of air transportation, and has been an  
12 employer in an industry affecting interstate commerce.
- 13 8. At the time of the merger and at all times until April 18, 2008, the Air Line Pilots  
14 Association (“ALPA”) represented both the US Airways (“East”) and the  
15 America West (“West”) pilots as the sole bargaining representative of the pilots.
- 16 9. In May 2005, two air carriers, America West Airlines, Inc. (“America West”) and the  
17 premerger US Airways, Inc., agreed to merge such that they would  
18 combine all or substantially all of their assets.
- 19 10. The surviving entity is known as “US Airways.” To distinguish it from the pre-  
20 merger entity by the same name, it is referred to hereinafter as the “Airline.”
- 21 11. On September 23, 2005, the two airlines and ALPA entered into the “Transition  
22 Agreement,” which was for the purpose of governing the process of the airlines’  
23 operational merger as it related to the airline pilots.
- 24 12. Under then-existing ALPA Merger Policy, the Arbitration Board is composed of  
25 two non-voting ALPA members chosen from the Master List of Pilot Neutrals.  
26 The third member and Chairman of the Board was required to be chosen from a  
27 list of Arbitrators approved by ALPA.  
28

- 1 13. The Arbitration Board must render a seniority integration decision consistent  
2 with the criteria set forth in ALPA Merger Policy.
- 3 14. The parties to the Nicolau Arbitration were stated to be “the US Airways Pilot  
4 Merger Representatives and the America West Pilot Merger Representatives.”
- 5 15. The decision of Arbitrator George Nicolau was issued in May, 2007.
- 6 16. The Nicolau Award generated considerable negative reaction among many East  
7 pilots. On or about July 25, 2007, the East MEC determined that the East pilots  
8 would never ratify a single collective bargaining agreement that incorporated the  
9 Nicolau List.
- 10 17. A majority of East Pilots strenuously objected to the Nicolau Award and were  
11 opposed to its implementation.
- 12 18. From August 15, 2007 through the date of loss of ALPA’s representation status  
13 on April 18, 2008, there were no further negotiations toward a single collective  
14 bargaining agreement.
- 15 19. The Transition Agreement states that the parties shall maintain “Separate  
16 Operations” until the implementation of a single collective bargaining agreement  
17 covering both pilot groups. During Separate Operations, East and West aircraft  
18 may only be flown by East and West pilots respectively, unless otherwise  
19 permitted or agreed under the Transition Agreement.
- 20 20. Both the Transition Agreement and ALPA Merger Policy states that the Airline  
21 may not use the single seniority list until an agreement is reached on a single  
22 collective bargaining agreement covering both pilot groups, unless otherwise  
23 agreed to by all of the parties.
- 24 21. At this time, the Airline is still conducting separate pilot operations where each  
25 pilot group works under a different pilot collective bargaining agreement that  
26 utilizes its own seniority list.
- 27 22. Defendant US Airline Pilots Association (“USAPA”) is an unincorporated  
28 association with a principal place of business in Charlotte, North Carolina.

1 23. After an election, the National Mediation Board (“NMB”) certified USAPA as  
2 the collective bargaining representative of the pilots employed in the service of  
3 the Airline on April 18, 2008.

4 24. The USAPA Merger Committee presented its seniority integration proposal to  
5 the Airline on September 30, 2008. The Airline has not yet responded to the  
6 USAPA seniority integration proposal.

7 2. The following facts are subject to further rulings from the Court regarding  
8 relevance, materiality, foundation and completeness. Both Plaintiffs and USAPA have  
9 proposed Statements of Fact that can be resolved after the Motions in Limine are ruled  
10 upon and the issues at trial are narrowed in the pretrial conference.

11 Plaintiffs’ Proposed Undisputed Facts Not Agreed to by USAPA:

12 *(Plaintiff’s trial exhibit number and the source document are identified. If*  
13 *USAPA will agree to the admission of the source documents, then these additional facts*  
14 *would not require any valuable trial time.)*

15 25. Terms : Plaintiff contends that the parties should be able to agree to a single and  
16 consistent set of terms to use during the trial to avoid juror confusion. The parties  
17 have not been able to reach complete agreement on these terms.

18 a) “Merger” to refer to the merger between US Airways and America West  
19 Airlines.

20 b) “US Airways” to refer to the pre-merger air carrier;

21 c) “Airline” will refer to the post-merger air carrier now flying under the US  
22 Airways name;

23 d) “West CBA” will refer to the collective bargaining agreement between  
24 America West Airlines and its pilots.

25 e) “West Pilots” to refers, as individuals and as a group, to the pilots on the  
26 seniority list incorporated into the West CBA.

27 f) “East CBA” to refer to the collective bargaining agreement between the pre-  
28 merger US Airways and its pilots;

- 1 g) “East Pilots” to refer, as individuals and as a group, to the pilots on the  
2 seniority list incorporated into the East CBA, including all New Hire Pilots  
3 assigned to East operations;
- 4 h) “Furloughed Pilots”: refers to those US Airways pilots who were on  
5 furlough and not actively flying for US Airways at the time of the merger.
- 6 i) “New Hire Pilots”: refers to those East Pilots who were not employed by, or on  
7 furlough from US Airways at the time of the merger, and who started  
8 employment with the Airline after the merger.
- 9 j) “Separate Operations” refers to the Airlines’s operation as those provisions  
10 defined in Section II.A of the Transition Agreement, including the provisions of  
11 Section II.B.
- 12 k) “West and East Pilots” refers to the entire group of pilots on both West  
13 CBA and East CBA seniority lists, and individuals on those lists;
- 14 26. At the time of the merger, all of the West Pilots were actively working. (Ex. 2,  
15 ADD09.)
- 16 27. In 2005, at the time of the merger, there were approximately 1894 West Pilots  
17 and 5,300 East Pilots. (Ex. 2, ADD09.)
- 18 28. At the time of the merger, out of a total of 5,300 East Pilots 1,691 were on  
19 furlough (not working but having recall rights). (Ex. 2, ADD09.)
- 20 29. The Transition Agreement incorporated a set of policies and procedures called  
21 “ALPA Merger Policy.” (Ex. 21, ADD2624.)
- 22 30. Prior to and during this merger, aspects of ALPA Merger Policy were explained  
23 in of US Airwaves, an ALPA magazine available to the East Pilots. (Ex. 4,  
24 ADD539, 541; Ex. 7, ADD658, 660-661; Ex. 16, ADD2006; Ex. 57, ADD4833;  
25 Ex. 58, ADD4920-4921.)
- 26 31. The January/February/March 2002 edition of US Airwaves stated:  
27 a) “A pilot’s status as a furlougee at the time of the merger announcement  
28 or arbitration hearing may also bear significantly on the pilot’s placement on the  
merged list”;

- 1 b) “[A]bsence of current employment and uncertainties about future  
2 prospects are among the equities likely to affect a furlougee’s seniority  
3 placement”;
- 4 c) “The only certainty in seniority integration is that the outcome is never  
5 certain until the merger representatives reach an agreement or, failing a  
6 negotiated solution, the arbitrator issues an award.” (Ex. 7, ADD658.)
- 7 32. The Summer 2005 edition of US Airwaves stated:  
8 a) “The Award of the Arbitration Board shall be final and binding on all  
9 parties to the arbitration and shall be defended by ALPA.”;  
10 and  
11 b) “No ALPA seniority integration arbitration result has ever been set aside  
12 by the courts, although some dissatisfied pilots have challenged the award before  
13 administrative agencies and the courts.” (Ex. 4, ADD541.)
- 14 33. The Transition Agreement provided that certain steps would occur when the  
15 Airline transitions from separate to integrated pilot operations. (Ex. 21,  
16 ADD2626.)
- 17 34. One such step was that the pilots would create an integrated seniority list. (Ex.  
18 21, ADD264.)
- 19 35. Another such step was that the Airline would accept this integrated seniority list,  
20 subject to certain standards. (Ex. 21, ADD264.)
- 21 36. A third such step was that the Airline and pilots would bargain to create a single  
22 collective bargaining agreement that would implement that seniority list. (Ex. 4,  
23 ADD541; Ex. 21 2625.)
- 24 37. Under ALPA governance, each of the pilot groups had a Merger Committee that  
25 had “complete and full authority” to create an integrated pilot seniority list  
26 according to ALPA Merger Policy. (Ex. 3, ADD96; Ex. 57, ADD4834.)
- 27 38. Under ALPA Merger Policy, in the event of a merger between two ALPA-  
28 represented carriers, Merger Representatives appointed by the two MEC’s are  
required to make efforts to negotiate a mutually satisfactory method of  
integration of the two affected pilot groups. (Exhibit 3, ADD 0098-0099)

- 1 39. ALPA Merger Policy provides that “The merger representatives shall carefully  
2 weigh all the equities inherent in their merger situation. In joint session, the  
3 merger representatives should attempt to match equities to various methods of  
4 integration until a fair and equitable agreement is reached, keeping in mind the  
5 following goals, in no particular order: (a) preserve jobs; (b) avoid windfalls to  
6 either group at the expense of the other; (c) maintain or improve pre-merger pay  
7 and standard of living; (d) maintain or improve pre-merger pilot status; and (e)  
8 minimize detrimental changes to career expectations.” (Exhibit 3, § G.5, ADD  
9 0090-0090)
- 10 40. The Merger Representatives were not successful in negotiation or mediating an  
11 acceptable pilot integration agreement. (Exhibit 2)
- 12 41. Under ALPA Merger Policy, in the event that the Merger Representatives  
13 appointed by the respective MEC’s could not reach a negotiated or mediated  
14 agreement on seniority integration, it was mandatory to submit the dispute to  
15 arbitration before a three-person Arbitration Board. The purpose of the  
16 arbitration is “to reach a fair and equitable resolution consistent with ALPA  
17 policy.” (Exhibit 3, ADD 0095, § B.1)
- 18 42. These two Merger Committees were unable to agree on how to create an  
19 integrated pilot seniority list that merged the 1,691 East Pilots who were on  
20 furlough at the time of the merger with the West Pilots, all of whom were  
21 actively working at the time of the merger. (Ex. 2, ADD06, 08.)
- 22 43. The Award of the Arbitration Board is “final and binding on all parties to the  
23 arbitration...” (Exhibit 3, ADD 00101; § H.5.B)
- 24 44. The East and West MEC Merger Representatives submitted the dispute to a  
25 Board of Arbitration chaired by George Nicolau (the “Nicolau Arbitration”).  
26 (Exhibit 2, ADD 0002)
- 27 45. The East Merger Committee wanted to place these East Pilots ahead of the West  
28 Pilots because the East Pilots had earlier dates of hire. (Ex. 2, ADD12.)



- 1 46. The West Merger Committee wanted to put the West Pilots ahead of these East  
2 Pilots because the West Pilots had jobs at the time of the merger. (Ex. 2,  
3 ADD12.)
- 4 47. Following ALPA Merger Policy, the two Merger Committees entered into an  
5 arbitration to create a single integrated seniority list. (Ex. 2, ADD06.)
- 6 48. ALPA Merger Policy stated that such arbitrations would be “final and binding.”  
7 (Ex. 3, ADD101.)
- 8 49. Both East and West pilot groups submitted testimony and evidence to the  
9 Nicolau Arbitration Board. (Ex 2 Nicolau Award)
- 10 50. ALPA National engaged in continuing efforts from May, 2007 through April 18,  
11 2008, to encourage the East and West pilot groups to resolve their disagreements.  
12 (Exhibit 3, § I.4)
- 13 51. Under ALPA Merger Policy, the decision of the Arbitration Board “will be  
14 presented to management” and ALPA is required to “use all reasonable means at  
15 its disposal to compel the company to accept and implement the merged seniority  
16 list.” (Exhibit 3, § I.1)
- 17 52. By July 25, 2007, thousands of East Pilots communicated “outrage” to ALPA  
18 representatives and officers at what they perceived to be inequities in the Nicolau  
19 Award. (Ex. 11, ADD707; Ex. 22, ADD2695.)
- 20 53. By July 25, 2007, a majority of East Pilots stated they would refuse to ratify a  
21 single collective bargaining agreement if it implemented the Nicolau Award.  
22 (Ex. 11, ADD707.)
- 23 54. On May 21, 2007, the East MEC asserted in a presentation made to the ALPA  
24 Executive Council that the Nicolau Award should not be implemented. (Exhibit  
25 221, AAA ..2263; Exhibit 168, ADD 002277)
- 26 55. The East Pilots supported the action of the East Pilot MEC.
- 27 56. Hundreds of East Pilots protested at the May 21 Executive Council meeting in  
28 opposition to implementation of the Nicolau Award. (Exhibit 11, ADD 00077)

- 1 57. On or about August 15, 2007, the East MEC resolved to withdraw its  
2 representatives from negotiations for a single collective bargaining agreement.  
3 Exhibit 5, ADD 00600; Exhibit 59, ADD 4924)
- 4 58. The Nicolau Award placed East Pilots who were on furlough at the time of the  
5 merger below the West Pilots, all of whom had been actively employed at the  
6 time of the merger. (Exhibit 2, ADD 00032)
- 7 59. Until the announcement of the Nicolau Award, the East Pilots intended to adopt a  
8 single collective bargaining agreement using the seniority list from the Award.
- 9 60. On August 15, 2007, the East Pilots withdrew their representatives from the Joint  
10 Negotiating Committee. (Ex. 5, ADD600; Ex. 17, ADD2021, Ex. 59,  
11 ADD4924.)
- 12 61. On May 16, 2007, Stephen Bradford (referring to the Nicolau Award as “this  
13 award”) raised the subject of replacing ALPA with a new union in a letter to  
14 ALPA Executive Vice-President Russ Webber, stating “[w]e must leave ALPA if  
15 this award stands.” (Ex. 107, ADD4945.)
- 16 62. In the same letter, Mr. Bradford stated “we don’t not want to leave ALPA, but  
17 we will just to ensure we can have some say in the next merger. We will write  
18 our own merger policy into our bylaws and defend it in civil court if we have to,  
19 even if we are out-voted by ALPA in another election as a result of a merger.”  
20 (Ex. 107, ADD4946.)
- 21 63. By the end of May 2007, Mr. Bradford, Scott Theuer, Jamie Javurek and other  
22 East Pilots formed a committee (the “Committee”) to explore ways to prevent  
23 implementation of the Nicolau Award. (E. 40, ADD4737; Ex. 53, ADD4855.)
- 24 64. On June 9 and June 14, 2007, the Committee met with two law firms to inquire  
25 whether “formation of a new bargaining agent” could prevent implementation of  
26 the Nicolau Award. (Ex. 14, ADD909; Ex. 40, ADD4737; Ex. 42, ADD916; Ex.  
27 77, ADD4927; Ex. 314, USAPA2346; Ex. 315, USAPA2356.)  
28

1 65. Sometime in June, 2007, the Committee created Defendant US Airline Pilots  
2 Association (“USAPA”).

3 66. Mr. Bradford became the “Interim President” of USAPA at its inception on June  
4 1, 2007. (Exhibit 48, USAPA 23491)

5 67. After being formed, USAPA successfully campaigned to replace ALPA as the  
6 bargaining representative for the pilots employed by the Airline.

7 68. As Interim President, Mr. Bradford asked USAPA’s current counsel whether the  
8 East Pilots could prevent implementation of the Nicolau Award if they were  
9 represented by a new independent union such as USAPA.. (Ex. 43, ADD4690.)

10 69. USAPA, from its creation, announced that as the single bargaining agent (union)  
11 it would not allow implementation of the Nicolau Award. (Ex. 24, 3107.)

12 70. “Roll call voting” in a union is a method of voting where each member votes and  
13 each vote is weighted equally. The alternative is voting through representatives.  
14 Representatives might be allotted in some way other than in proportion to the  
15 number of represented members.

16 71. An individual who participated in drafting USAPA’s Constitution commented on  
17 roll call voting as follows: “Roll call voting is an issue. I understand the  
18 reluctance to allow this method. Our lawyers tell us we must have it or in the  
19 case of a gerrymandering of the bases we could find ourselves in deadlock with  
20 the West, unable to do business.” (Ex. 50, USAPA23821.)

21 72. This individual also commented that if USAPA’s Constitution had a voting  
22 scheme that was unfair to West Pilots, USAPA and its leaders might be sued for  
23 violation of the duty of fair representation (“DFR”) as follows:

24 “This would kill us in a courtroom. We must remember that  
25 loosing a DFR lawsuit on this basis would involve monetary  
26 compensation to the West and very likely a court mandated  
27 seniority re-integration. This reintegration could be punitive to  
28 the East to make up for lost time to the West. Additionally the  
leadership could be up for additional charges and costs. I am not  
willing to face personal chapter 11 for an experiment that our  
legal team is telling me could happen. We don't want to reinvent

1 the Wheel. In a perfect world the ideal of a non-domicile related  
2 seniority system that was thoroughly vetted and tested could be a  
3 good thing. We don't have the time, resources or ability, as far as  
4 I can see, to build this better mousetrap. The perfect is the enemy  
5 of the good.”

(Ex. 50, USAPA23822.)

6 73. US Aviation.com is a web board where, using pseudonyms, pilots from both  
7 sides have posted commentary concerning their seniority dispute.

8 74. Mr. Javurek, one of the founders of USAPA, posts on US Aviation.com using the  
9 pseudonym “USA320 Pilot.”

10 75. On August 4, 2007, Mr. Javurek wrote: “the US Airways pilots will do  
11 everything and anything to never let the Nicolau Award be implemented.” (Ex.  
12 52, ADD4794.)

13 76. On September 20, 2007, the ALPA Executive Council passed resolutions that  
14 stated:

15 “[T]here is no basis for the Executive Council to further consider  
16 the [East Pilot] request to set aside the Award. The Executive  
17 Council further finds that there is no basis for setting aside the  
18 Award, which under Merger Policy is now to be defended by  
19 ALPA as issued by the Arbitration Board.”

(Ex. 28, USAPA312; Ex. 19, ADD 2152; Ex. 25, 3111.)

20 77. On October 1, 2007, the President of ALPA wrote the following to the Chairman  
21 of the East Pilots governing body (called the “East MEC”):

22 “The ALPA Executive Council has determined that there is no  
23 ground under ALPA Merger Policy to set aside the Nicolau  
24 Award seniority list.”

25 “With respect to the ... merger, it is time for the MEC to comply  
26 with its representational and legal obligations under the  
27 Constitution & By-Laws, ALPA Merger Policy, the Transition  
28 Agreement, and implementing resolutions of the Executive  
Council. The MEC, at this meeting, should adopt a resolution (or  
resolutions) reversing all prior efforts to bar or precondition the  
continuation of joint negotiations.” (Ex. 19, ADD2151-2152.)

1 78. In December, 2007, ALPA submitted the Nicolau Award to the Airline for its  
2 acceptance. (ADD4695-ADD4696.)

3 79. The Airline accepted the Nicolau Award on December 20, 2007, as the integrated  
4 seniority list to be incorporated into the single collective bargaining agreement  
5 under negotiation between the Airline and ALPA as the bargaining agent for the  
6 East Pilots and West Pilots.

7 80. The President of ALPA directed the East Pilot MEC as follows:

8 ["T]he MEC should also adopt a resolution recognizing that the  
9 award is to be included in the single agreement to be negotiated  
10 under the Transition Agreement and Merger Policy, provided only  
11 that the Association and all MECs will comply with valid court  
orders, if any, affecting the terms of the award."

12 (Ex. 19, ADD2152.)

13 81. On December 20, 2007, the Airline accepted the Nicolau Award. (Ex. 9,  
14 ADD699.)

15 82. USAPA posts comments and information on its web site.

16 83. On October 28, 2007, the USAPA website stated as follows:

17 "Unlike ALPA, which is constitutionally committed to  
18 implementing the Nicolau award, USAPA is constitutionally  
19 committed to using its full resources to obtain seniority  
integration on a date of hire basis."

20 (Ex. 97, ADD4916.)

21 84. On October 28, 2007, the USAPA website stated as follows:

22 "The Nicolau is the product of an ALPA-mandated process and  
23 ALPA is bound to defend that process" and "USAPA, however, is  
24 not bound by ALPA's Constitution and cannot be subjected to  
ALPA's political control."

25 (Ex. 97, ADD4915.)

26 85. On January 21, 2008, USAPA filed a Constitution with the Department of Labor.  
27 (Ex. 47, ADD3825-3854.)  
28

1 86. On January 31, 2008, Stephen Bradford stated that the Nicolau Award “can be  
2 negotiated away by USAPA whether the West agrees or not.” (Ex. 33; USAPA  
3 2351.)

4 87. The National Mediation Board (“NMB”) began the process of holding an  
5 election to decide whether to recognize ALPA or USAPA as the bargaining  
6 representative.

7 88. The NMB determined that, as of November 29, 2007, the pilot counts for the two  
8 sides of the Airline were as shown in the table below:

	<b>Active</b>	<b>Leave</b>	<b>Furlough</b>	<b>Total</b>
<b>East</b>	2,844	537	161	3,542
<b>West</b>	1622	149	0	1,771

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13 (Ex. 95, ADD4863.)

14 89. The pilot counts changed from 2005 because nearly all of the East Pilots who had  
15 been on furlough were recalled. Approximately half of these pilots accepted  
16 recall and returned to work. (Ex. 15, ADD1906.)

17 90. In the campaign leading up to the NMB election, representatives of USAPA  
18 stated that it has “abandoned the Nicolau Award”; it would not be “bound” to  
19 honor the Nicolau Award; and “certainly on USAPA’s watch, it [the Nicolau  
20 Award] will go away.” (Ex. 8, ADD668-687.)

21 91. In the campaign leading up to the NMB election, the USAPA website stated:  
22 “Inside ALPA, the only issue preventing a ratifiable joint contract is the  
23 existence of two MECs, and therefore mandatory dual-ratification;” “USAPA  
24 will remove this impediment and will promptly enter into negotiations with  
25 management for a quality contract;” and “ALPA is required to defend the  
26 Award.” (Ex. 37, USAPA2379.)  
27  
28

- 1 92. On January 31, 2008, Mr. Bradford stated that the Nicolau Award “can be  
2 negotiated away by USAPA whether the west agrees or not.” (Ex. 33,  
3 USAPA2351.)
- 4 93. On February 2, 2008, Mr. Bradford stated, “the question of East/West will be  
5 decided by a vote for ALPA or USAPA. When USAPA becomes the bargaining  
6 agent, there will be no West and a simple majority can renegotiate seniority  
7 integration.” (Ex. 34, USAPA2352.)
- 8 94. On February 10, 2008, Mr. Bradford stated: “[T]he question of East/West will be  
9 decided by a vote for ALPA or USAPA. When USAPA becomes the bargaining  
10 agent, there will be no West and a simple majority can renegotiate seniority  
11 integration.” (Ex. 35, USAPA2353.)
- 12 95. On April 16, 2008, USAPA stated on its website as follows: “Upon certification  
13 of USAPA, the Nicolau Award is rendered moot. It doesn’t have to be fixed,  
14 changed, or renegotiated as it is no longer relevant to the US Airways pilots. ”  
15 (Ex. 24, ADD3107.)
- 16 96. USAPA formed a Merger Committee, a Negotiating Committee, and a governing  
17 Board of Pilot Representatives.
- 18 97. The Merger Committee was comprised of 3 East Pilots, the Negotiation  
19 Committee was comprised of 3 East Pilots and the Board of Pilot representatives  
20 was composed of 12 East Pilots.
- 21 98. USAPA “charg[ed]” the Merger Committee “to create contract language to  
22 ensure the implementation and durability of the date of hire seniority list with  
23 suitable conditions and restrictions.” (Ex. 383, USAPA13780.)
- 24 99. USAPA stated: “A primary objective of the Merger Committee is not only to  
25 negotiate a DOH-based seniority integration of East and West pilots, but also to  
26 ensure the permanency of any such integration agreed to with the Company.”  
27 (Ex. 24, ADD3107; Ex. 96, ADD4911.)  
28

- 1 100. USAPA did not expressly instruct the Merger Committee to consider West Pilot  
2 views with respect to the finality of the Nicolau Award.
- 3 101. At the start of June 2008, there were no pilots on furlough.
- 4 102. It was reasonably foreseeable that the Airline might reduce service and if it did,  
5 that it might furlough First Officers, and/or demote Captains.
- 6 103. It was reasonably foreseeable that during separate operations, any furloughs  
7 would fall on the pilots at the bottom of either the West or the East seniority lists.
- 8 104. It was reasonably foreseeable that if there were integrated operations  
9 implementing the Nicolau Award, any furloughs would fall on the pilots at the  
10 bottom of the Nicolau Award seniority list.
- 11 105. On or about June 12, 2008, the Airline announced plans to furlough 300 pilots,  
12 including 175 West Pilots. (Ex. 301, USAPA3221.)
- 13 106. At present, the Airline has furloughed 142 West Pilots (all of whom were  
14 working in 2005). (Ex. 110, ADD4947-4972.)
- 15 107. The Airline has two-pilot crews comprised of a Captain and a First Officer.
- 16 108. Generally, therefore, the Airline operates with equal numbers of Captains and  
17 First Officers.
- 18 109. Captain is a preferred higher paying position.
- 19 110. Pilots with higher seniority tend to be Captains and pilots with lower seniority  
20 tend to be First Officers.
- 21 111. To keep the numbers of Captains and First Officers equal, therefore, the Airline  
22 on average will demote one Captain to First Officer for every two First Officers  
23 it furloughs.
- 24 112. Similarly, the Airline will promote one First Officer to Captain for every two  
25 First Officers it hires or recalls from furlough.
- 26 113. The Airline demoted approximately 71 West Pilot Captains as a result of having  
27 furloughed 142 West Pilot First Officers.
- 28



1 114. While these 142 West Pilot First Officers are on furlough, approximately 750  
2 East Pilots who were on furlough at the time of the merger are working.

3 115. No West Pilot First Officer would have been furloughed, and no West Pilot  
4 Captain would have been demoted if the Airline had selected pilots for furlough  
5 according to the seniority order of the Nicolau Award.

6 116. USAPA has been bargaining with the Airline toward the adoption of a new  
7 collective bargaining agreement.

8 117. USAPA has not been bargaining with the Airline toward the adoption of a new  
9 collective bargaining agreement that would integrate operations utilizing the  
10 Nicolau Award.

11 118. In March 2009, candidate for USAPA President, Doug Mowery, announced that  
12 his intentions to finalize bargaining with the Airline as soon as possible so that  
13 USAPA could “secure” a date-of-hire seniority list and achieve what he asserted  
14 would be the “complete elimination” of the Nicolau Award “threat hanging over  
15 our heads.” (Ex. 111, ADD4963-4969.)

16 119. USAPA is planning to use its Constitutional ratification provision to thwart any  
17 remedy by this Court to order adoption of the Nicolau Award. Hence, the  
18 Philadelphia Domicile recently stated: “NOTHING will happen until a majority  
19 of members in GOOD standing ratify a new contract.” (Ex. 45, ADD4739.)

20  
21 USAPA’s Proposed Undisputed Facts Not Agreed to by Plaintiff:

22 120. With respect to union-represented employee groups, the general policy of the air  
23 carriers was to permit the unions to resolve the seniority integration issue  
24 internally, subject to the airlines’ right to avoid undue costs arising from the  
25 seniority integration process.

26 **Plaintiffs’ Objections:** relevance; agreements with other groups not relevant to  
27 arbitration process the pilots agreed to, *see Plts.’ MIL #2*, or issues in the case;  
28

1 Airline accepted the list so no issue regarding Airline avoiding acceptance of the  
2 Nicolau Award.

3 121. Pursuant to internal union policy, the unions for the Flight Attendants,  
4 Mechanics, Stock Clerks, Baggage Handlers, and Maintenance Specialists  
5 integrated the employees in these classifications on a date-of-hire basis. The  
6 airlines agreed that that integration on this basis for these employee groups was  
7 “fair and equitable.”

8 **Plaintiffs’ Objections:** Relevance; as more fully set forth in *Plts.’ MIL #2*; waste  
9 of time and confusion of the jury.

10 122. Pursuant to an arbitration conducted under Allegheny-Mohawk procedures, the  
11 East and West Dispatchers were integrated on a date-of-hire basis.

12 **Plaintiffs’ Objections:** relevance, Rule 403; confusion of issues and waste of  
13 time; not material or probative of claims or defenses. *See Plts.’ MIL #2*.

14 123. Under the Transition Agreement, the airlines allowed ALPA to resolve the pilot  
15 seniority integration issue subject to ALPA’s internal ALPA Merger Policy  
16 subject to the airlines’ right to avoid undue costs arising from the seniority  
17 integration process. The terms of ALPA Merger Policy are set out in a document,  
18 entitled “Section 45 –Merger and Fragmentation Policy” and dated August 10,  
19 2005.

20 **Plaintiffs’ Objections:** relevance, Rule 403; confusion of issues and waste of  
21 time; not material or probative of claims or defenses; Airline accepted the  
22 Nicolau Award.

23 124. Merger Representatives consider the following criteria currently stipulated by  
24 ALPA Merger Policy: a) Preserve Jobs, b) Avoid windfalls to either group at the  
25 expense of the other, c) Maintain or improve pre-merger pay and standard of  
26 living, d) Maintain or improve pre-merger pilot status, and e) Minimize  
27 detrimental changes to career expectations. These criteria were established in  
28

1 1991 pursuant to an amendment of ALPA Merger Policy by the ALPA Board of  
2 Directors in 1991.

3 **Plaintiffs' Objection:** This is not a complete or accurate statement of the ALPA  
4 Merger Policy, Section G.5.

5 125. ALPA is a unitary labor organization with a single Constitution and By-Laws  
6 governing all subordinate bodies and members.

7 **Plaintiffs' Objections:** relevance; not material to any claim or defense;  
8 confusion, Rule 403 waste of time, misleading the jury. ALPA status not in issue.  
9 *See Plts.' MIL #3.*

10 126. At all relevant times, ALPA was an international labor organization that  
11 represented approximately 61,000 airline pilots at over 40 U.S. and Canadian  
12 airlines.

13 **Plaintiffs' Objection:** relevance; not material to any claim or defense;  
14 confusion, Rule 403 waste of time, misleading the jury. ALPA status not in issue.  
15 *See Plts.' MIL #3.*

16 127. All ALPA members may be "disciplined fined, or expelled" for violating  
17 ALPA's rules and policies, including violations of the ALPA Constitution and  
18 By-Laws or failing to comply with the decisions of ALPA's governing bodies,  
19 such as the ALPA Board of Directors, the ALPA Executive Board or the ALPA  
20 Executive Council.

21 **Plaintiffs' Objection:** relevance; not material to any claim or defense;  
22 confusion, Rule 403 waste of time, misleading the jury. ALPA status not in issue;  
23 ALPA discipline not in issue. *See Plts.' MIL #3.*

24 128. At airlines where ALPA is the collective bargaining representative, the CBA is  
25 administered by a Master Executive Council ("MEC") composed of pilot  
26 representatives who are elected by pilots who are members in good standing. In  
27 order to be a member in good standing of ALPA, an individual pilot must be  
28

1 current in his dues obligations to ALPA as required under the ALPA Constitution  
2 and By-Laws.

3 **Plaintiffs' Objection:** relevance; not material to any claim or defense;  
4 confusion, Rule 403 waste of time, misleading the jury. ALPA status not in issue.  
5 Pilot membership in ALPA not an issue; no issue re ALPA dues collection; no  
6 relevance to USAPA's conduct. See Plts.' MIL #3.

7 129. MEC's are subordinate bodies of ALPA. MEC's do not have the authority to act  
8 as collective bargaining representatives. ALPA itself is the sole bargaining  
9 representative of the pilots employed by ALPA-organized airlines. MEC's and  
10 their representatives are forbidden to initiate any action that is inconsistent with  
11 Constitution and By-Laws or with the best interests of the Association or the  
12 general membership.

13 **Plaintiffs' Objections:** relevance: MEC authority not in issue or relevant to any  
14 claim or defense; Rule 403 waste of time; confusion of issues; misleading the  
15 jury. *See Plts.' MIL #3.*

16 130. ALPA Merger Policy is promulgated by the ALPA Board of Directors.

17 **Plaintiffs' Objections:** relevance: ALPA's governance or organization is not  
18 relevant to any issue in the case. *See Plts.' MIL #3.*

19 131. The ALPA Board of Directors is also empowered to amend ALPA Merger  
20 Policy. Neither the promulgation nor the amendment of ALPA Merger Policy is  
21 subject to a ratification vote by ALPA rank-and-file members.

22 **Plaintiffs' Objections:** relevance: ALPA's governance or organization is not  
23 relevant to any issue in the case. *See Plts.' MIL #3.*

24 132. Pursuant to ALPA Merger Policy, MEC's are required to appoint Merger  
25 Representatives, who are also subject to removal by the MEC's. Merger  
26 Representatives are not elected by ALPA rank-and-file members. Merger  
27 Representatives must be ALPA members in good standing.  
28

1       **Plaintiffs’ Objections:** relevance: ALPA’s governance or organization is not  
2 relevant to any issue in the case. No issue re ALPA MEC’s duties. *See Plts.’*  
3 *MIL #3.*

4 133. Prior to this amendment, ALPA Merger Policy provided as preface to these  
5 criteria: “Merger representatives should, whenever possible, use Conditions and  
6 Restrictions so as to accomplish seniority list integration based on date of hire,  
7 keeping in mind the following primary goals:”. The amendment of ALPA  
8 Merger Policy in 1991 was advocated by representatives of the relatively junior  
9 pilot group at United in order to obtain an advantage over the more senior US  
10 Airways pilot group.

11       **Plaintiffs’ Objections:** relevance: seniority issue was submitted to final and  
12 binding arbitration that did not involve this provision; confusion; waste of time,  
13 hearsay. *See Plts.’ MILs #2, #3.*

14 134. The Nicolau Award granted no seniority credit to East Furlougees with up to  
15 16 years of seniority relative West pilots with as little two months of seniority.  
16 [Brucia dissent] Moving up the list from that point, West and East pilots were  
17 ratioed together in a manner that effectively eliminated 16 years of date-of-hire  
18 seniority for every East pilot.

19       **Plaintiffs’ Objections:** relevance, materiality; USAPA not permitted to relitigate  
20 Nicolau Award; contested issues is whether or not USAPA bound to defend the  
21 Award and use it as the seniority proposal for the new CBA. The Nicolau Award  
22 is the best evidence of the consideration give to each pilot group. *See Plts.’ MIL*  
23 *#1.*

24 135. On or about August 15, 2007, the US Airways MEC resolved to withdraw its  
25 representatives from negotiations for a single collective bargaining agreement  
26 due to the West MEC’s refusal to agree to a joint proposal for immediate pay  
27 parity. [State Complaint ¶ 93].  
28

1 **Plaintiffs' Objections:** no objection to the fact of withdrawal from joint  
2 negotiations on 8/15/2007; objection to the accuracy or credibility of the stated  
3 purpose. Should use "East MEC" for consistent terminology.

4 136. ALPA National engaged in continuing efforts from May, 2007 through April 18,  
5 2008, to resolve the impasse that had developed between the US Airways MEC  
6 and the West MEC. These efforts were conducted pursuant to a May 24, 2007  
7 Executive Council resolution, which urged the two MEC's to "explore  
8 consensual approaches that promote career protection and mutual success, and  
9 achieve an acceptable single collective bargaining agreement that improves pay,  
10 benefits, work rules and job security for both pilot groups." During this period  
11 ALPA National put "extreme pressure" on the West MEC to agree to a  
12 modification of the Nicolau Award. The West MEC refused, at all times, to  
13 consider any modification of the Nicolau Award, including the introduction of  
14 any conditions or restrictions that would delay or limit the impact of the seniority  
15 integration list contained in the Nicolau Award.

16 **Plaintiffs' Objections:** Relevance, hearsay. The pilots submitted to final and  
17 binding arbitration that did not require any further negotiation or discussion;  
18 ALPA's effort to get the East Pilots to accept the final and binding nature of the  
19 Nicolau Award or come up with a compromise that both pilot groups would  
20 accept and support is not relevant to whether the Nicolau Award was final and  
21 binding. ALPA National determined that there was no error in the process or  
22 procedure, and therefore submitted the list to the Airline, who accepted it.  
23 Should use "East MEC" for consistent terminology. *See Plts.' MIL #1.*

24 137. ALPA used all reasonable means at its disposal to implement the Nicolau Award.

25 **Plaintiffs' Objections:** Plaintiffs do not contend that ALPA failed to follow the  
26 Transition Agreement or the ALPA Merger Policy. USAPA intends to offer this  
27 language to impose its argument that West Pilots were obligated to renegotiate  
28 the Nicolau Award with the East Pilots to give the East Pilots the result they had

1 asked for in the Arbitration. No such obligation existed because the Nicolau  
2 Award was final and binding between the East and West Pilots. “All reasonably”  
3 is an ambiguous conclusion that could be misconstrued in other contexts.

4 138. Under ALPA Merger Policy, there is no required timetable for implementation of  
5 a seniority integration arbitration award.

6 **Plaintiffs’ Objection:** Although ALPA Merger Policy did not have an express  
7 timetable, the Transition Agreement had an implied covenant of good faith and  
8 fair dealing that required all parties to make reasonable good faith efforts to  
9 timely implement a seniority integration arbitration award. This language is  
10 misleading because it suggests, as a legal conclusion, that no such obligation  
11 existed. Any small probative value is outweighed by prejudice. Rule 403.

12 139. In the years preceding the Nicolau Award, there had been broad-based support  
13 among both East and West pilots for an independent union. Many East and West  
14 pilots shared the concern that ALPA, as a multi-carrier union, might act contrary  
15 to the interests of their airline-specific pilot groups.

16 **Plaintiffs’ Objections:** Rule 401, 403 relevance, waste of time confusion of the  
17 issues; prior history and pilot concerns re ALPA hearsay, lacking foundation, and  
18 a waste of time. *See Plts.’ MIL #3.*

19 140. In the years preceding the Nicolau Award, West MEC Chairman John McIlvenna  
20 formed an independent union as an alternative to ALPA due to ALPA’s lack of  
21 democracy institutions, lack of political accountability, and concern that ALPA’s  
22 multi-carrier structure compromised its representation of the West pilots’  
23 interest. McIlvenna’s independent union effort came close to obtaining  
24 endorsement from a majority of West pilots.

25 **Plaintiff’s Objections:** Rule 401, 403 relevance, waste of time, confusion of the  
26 issues; prior history and pilot concerns re ALPA hearsay, lacking foundation.  
27 States past allegations as if they are established fact. *See Plts.’ MIL #3.*  
28



1 141. In the early 1990's, the East pilots came close to succeeding in the formation of  
2 an independent union in reaction to ALPA's failure to properly represent the East  
3 group and its sabotage of a British Airways investment plan, which would have  
4 enhanced the East pilots' employment opportunities.

5 **Plaintiffs' Objections:** Rule 401, 403 relevance, waste of time, confusion of the  
6 issues; prior history and pilot concerns re ALPA hearsay, and lacking foundation.  
7 States past allegations as if they are established fact. *See Plts.' MIL #3.*

8 142. During US Airways bankruptcy proceedings pre-dating the formation of  
9 USAPA, ALPA agreed to terminate the East pilots' pension plan without  
10 allowing a prior vote by the pilot rank-and-file.

11 **Plaintiffs' Objections:** Rule 401, 403 relevance, waste of time confusion of the  
12 issues; prior history and pilot concerns re ALPA hearsay, lacking foundation, and  
13 a waste of time. Prior concessions and bankruptcy proceedings not relevant and  
14 are prejudicial to Plaintiffs who were working for a viable airline at the time of  
15 the merger. *See Plts.' MIL #1.*

16 143. During US Airways bankruptcy proceedings pre-dating the formation of  
17 USAPA, and for the purpose of providing financial assistance to the carrier,  
18 ALPA agreed to changes in the East CBA's scope provisions that significantly  
19 increased outsourcing of pilot jobs to US Airways' wholly-owned subsidiaries.

20 **Plaintiffs' Objections:** Rule 401, 403 relevance, waste of time confusion of the  
21 issues; prior history and pilot concerns re ALPA hearsay, lacking foundation, and  
22 a waste of time. Prior concessions and bankruptcy proceedings not relevant and  
23 are prejudicial to Plaintiffs who were working for a viable airline at the time of  
24 the merger. *See Plts.' MIL #1.*

25 144. USAPA announced its creation on or about August 6, 2007, with a broad  
26 platform of political objectives, including: a) a constitutional pilot bill of rights,  
27 b) membership ratification of all contracts and side letters, c) increasing the level  
28 of democratic control by the members, including direct election of national



1 officers, d) the creation of a carrier-specific union that could better pursue the  
2 objectives of the pilot group, e) reducing wasteful spending of the members'  
3 dues money, and f) obtaining better collective bargaining agreements.

4 **Plaintiffs' Objections:** primary contested issue of fact; relevance,  
5 argumentative; conflicts with true motives expressed in other documents;  
6 published information and witness testimony is the best evidence of USAPA's  
7 objectives.

8 145. USAPA's Constitution, which was posted on its website during its campaign,  
9 provided that it was an "objective" of USAPA: "To maintain uniform principles  
10 of seniority based on date of hire and perpetuation thereof, with reasonable  
11 conditions and restrictions to preserve each pilot's un-merged career  
12 expectations."

13 **Plaintiffs' Objections:** primary contested issue of fact; relevance,  
14 argumentative; conflicts with true motives expressed in other documents;  
15 published information and witness testimony is the best evidence of USAPA's  
16 objectives. *See Plts.' MIL # 5.*

17 146. During the inter-union election campaign that proceeded certification by the  
18 National Mediation Board, USAPA campaigned for the votes of East and West  
19 pilots through mailings, its website, and roadshows in Philadelphia, Charlotte  
20 and Phoenix. During these campaign activities, USAPA communicated to East  
21 and West pilots its policy objectives, including its constitutional objective related  
22 to seniority integration.

23 **Plaintiffs' Objections:** primary contested issue of fact; relevance,  
24 argumentative; conflicts with true motives expressed in other documents;  
25 published information and witness testimony is the best evidence of USAPA's  
26 objectives. *See Plts.' MIL # 5.*

27 147. During the inter-union election campaign, USAPA communicated to West pilots  
28 that USAPA would protect their interests by, among other things: a) obtaining a

1 better contract, b) providing more democratic and efficient union representations,  
2 and c) protecting West pilots in their existing positions.

3 **Plaintiffs’ Objections:** primary contested issue of fact; relevance,  
4 argumentative; conflicts with true motives expressed in other documents;  
5 published information and witness testimony is the best evidence of USAPA’s  
6 objectives.

7 148. During the inter-union election campaign, USAPA communicated to West pilots  
8 that USAPA wanted them to become dues-paying members and be actively  
9 involved within the USAPA political structure.

10 **Plaintiffs’ Objections:** primary contested issue of fact; relevance,  
11 argumentative; conflicts with true motives expressed in other documents;  
12 published information and witness testimony is the best evidence of USAPA’s  
13 objectives.

14 149. Subsequent to USAPA’s certification, the America West Airlines Pilots  
15 Protective Alliance (AWAPPA) – a corporation formed to promote West pilots’  
16 interests – commenced a campaign to “destroy” USAPA. The AWAPPA  
17 campaign included concerted efforts to jam USAPA’s information and safety  
18 hotlines in order to disrupt USAPA’s operations and to inflict financial harm on  
19 USAPA. The AWAPPA campaign also involved a highly successful campaign to  
20 persuade the approximately 1800 West pilots not to become members of USAPA  
21 or pay either dues or agency fees. To date, only about 6 percent of the West  
22 pilots have been USAPA members in good standing.

23 **Plaintiffs’ Objections:** Subject of *Plts.’ MIL # 6*; Rule 401 and 403 relevance,  
24 misleading, prejudicial, no probative value; no defense to DFR claims;  
25 AWAPPA ‘s conduct not at issue.

26 150. AWAPPA also engaged in a program of intimidating West pilots – through  
27 threats of physical harm, threats to property, economic coercion, and telephonic  
28

1 harassment – who expressed an interest in participating in USAPA’s political  
2 structure.

3 **Plaintiffs’ Objections:** Subject of *Plts.’ MIL # 6*; Rule 401 and 403 relevance,  
4 misleading, prejudicial, no probative value; no defense to DFR claims.  
5 AWAPPA conduct not at issue.

6 151. The AWAPPA-coordinated dues boycott and intimidation frustrated USAPA’s  
7 efforts to obtain the participation of West pilots on the USAPA Board of Pilot  
8 Representatives, Negotiating Advisory Committee, and Merger Committee.

9 **Plaintiffs’ Objections:** Subject of *Plts.’ MIL # 6*; Rule 401 and 403 relevance,  
10 misleading, prejudicial, no probative value; no defense to DFR claims;  
11 AWAPPA’s conduct not at issue.

12 152. Since the date of its certification, USAPA’s collective bargaining objective has  
13 been to obtain agreement with the Company on a single collective bargaining  
14 agreement that would enhance wages, benefits, and working conditions and  
15 implement a date-of-hire seniority list with conditions and restrictions designed  
16 to protect each pilot’s unmerged career expectations. Pursuant to USAPA’s  
17 Constitution, USAPA’s Merger Committee developed a seniority integration  
18 proposal that combined a date-of-hire seniority list with conditions and  
19 restrictions, substantially limiting the exercise of date-of-hire seniority by East  
20 pilots, which conditions and restrictions were designed to protect each pilot’s  
21 unmerged career expectations.

22 **Plaintiffs’ Objections:** argumentative; relevance, negotiations are confidential;  
23 hearsay; self-serving; Rule 403 prejudice, misleading, waste of time and  
24 confusion of issues. *See Plts.’ MIL #4.*

25 153. The conditions and restrictions contained with the USAPA Merger Committee  
26 seniority integration proposal: a) created protected positions for West pilots  
27 within West operations that severely limited the ability of East pilots to use their  
28 date-of-hire seniority over a ten-year period; b) created recapture rights that

1 protected a West pilot's ability to return to his/her original home domicile in the  
2 event of a displacement result from an economic downturn; c) provided that the  
3 conditions and restrictions would protect West pilots from encroachment on their  
4 positions by pilots from other airlines in the event of a future merger; d) created  
5 the ability to reallocate protected positions to EMB 190 aircraft in the event of a  
6 carrier decision to operate that aircraft in the West domiciles of Phoenix or Las  
7 Vegas; e) allowed senior West pilots to use their seniority, without restriction, to  
8 bid into widebody flying opportunities not available within West operations; f)  
9 created a reduction ratio system to ensure that West captains would not suffer  
10 demotions disproportionate to their number within the combined system.

11 **Plaintiffs' Objections:** argumentative; relevance, negotiations are confidential;  
12 hearsay; self-serving; Rule 403 prejudice, misleading, waste of time and  
13 confusion of issues. *See Plts.' MILs #1, #4.*

14 154. The USAPA Merger Committee presented its seniority integration proposal to  
15 US Airways on September 30, 2008. The Company has not yet responded to the  
16 USAPA seniority integration proposal. In order for the seniority integration  
17 proposal to be implemented, the following would have to happen: 1) USAPA's  
18 Negotiating Advisory Committee and US Airways would have to reach a  
19 tentative agreement on a single collective bargaining agreement, 2) the USAPA  
20 Board of Pilot Representatives would have to approve the tentative agreement on  
21 a single collective bargaining agreement by a majority vote, and 3) USAPA  
22 members in good standing would have to approve the single collective  
23 bargaining agreement by a majority of votes cast.

24 **Plaintiffs' Objections:** argumentative; relevance, negotiations are confidential;  
25 hearsay; self-serving; Rule 403 prejudice, misleading, waste of time and  
26 confusion of issues. *See Plts.' MIL #4.*

27 3. The following issues of law are uncontested and stipulated to by the  
28 parties:

1 The parties have not been able to agree on uncontested issues of law.

2  
3 Plaintiffs Contend: The Court has already determined the relevant scope of  
4 USAPA's duty of fair representation and, therefore, this should be an uncontested issue  
5 of law for this liability trial.

6 Defendant Contends: No issues of law are uncontested.

7  
8 **D. CONTESTED ISSUES OF FACT AND LAW**

9 The parties have not reached agreement on any contested issue of fact or law.  
10 Contentions in response to each party's issues, therefore, do not imply that they agree  
11 that the issue statement is a valid issue of fact or law.

12  
13 **1a.** Plaintiffs assert that the following are the material issues of FACT to be  
14 tried and decided:

15  
16 ISSUE #1: *Whether USAPA was created so that the East Pilots could*  
17 *disregard the Nicolau Award.*

18 Plaintiffs Contend: Yes; founders of USAPA made admissions to this  
19 effect. East Pilot representatives determined that the East Pilots would  
20 never ratify the Nicolau Award. The East Pilots determined that if they  
21 remained as ALPA members, then the "final and binding" Nicolau Award  
22 would be put into effect. The East Pilots also determined that the only  
23 way to avoid implementation of the Nicolau Award was to replace ALPA  
24 as the bargaining agent.

25 Defendant Contends: This is not a fact issue that arises under the claim as  
26 pled; subject to this objection, USAPA was lawfully formed, elected, and  
27 certified and for lawful purposes.

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ISSUE #2: *Whether USAPA promised that, if elected as the bargaining representative, it would disregard the Nicolau Award.*

Plaintiffs Contend: Yes; USAPA repeatedly and unambiguously made such promises, and made no excuse for such promises, in order to pander to the East Pilot majority who would not accept the results of the final and binding arbitration they bargained for, in a process they had agreed to as fair and reasonable, with an Arbitrator they approved of and supported.

Defendant Contends: This is not a fact issue that arises under the claim as pled; subject to this objection, USAPA made no promise to “disregard” the Nicolau Award and made no unlawful representations and acted within the law and its duty of fair representation at all times.

ISSUE #3: *Whether USAPA did disregard the Nicolau Award.*

Plaintiffs Contend: Yes; it is undisputed that USAPA created a constitution to disregard the Nicolau Award by using date-of-hire as its seniority scheme after the issue was previously decided in final and binding arbitration. It is undisputed that USAPA did not review, consider, or evaluate the Nicolau Award in creating the current seniority proposal. It is undisputed that USAPA has not made any effort to support or defend the Nicolau Award. USAPA has promised its members that it will never give any force, effect or consideration to the Nicolau Award.

Defendant Contends: This is not a fact issue that arises under the claim as pled; subject to this objection, USAPA acted lawfully in pursuit of lawful goals in regard to seniority integration and with respect to all employees in the represented craft or class.

**1b.** Defendant asserts that the following are the material issues of FACT to be tried and decided:

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ISSUE # 1: *Whether ALPA Merger Policy contains a timetable for completing negotiations for a single collective bargaining agreement following an airline merger?*

Defendant Contends: No, it does not.

Plaintiffs Contend: This has no relevance to whether USAPA is liable for unfair representation. *See Plts.’ MIL # 3.* Plaintiffs concede that ALPA Merger Policy does not have a timetable for completing negotiations. The jury could be misled or confused, however, if this were treated as a material fact.

ISSUE # 2: *Did, under ALPA Merger Policy, when a post-merger tentative agreement is reached on a single collective bargaining agreement, each Master Executive Council – followed by each pilot group – have the right to a separate ratification vote on the tentative agreement?*

Defendant Contends: Yes, they did.

Plaintiffs Contend: This has no relevance to whether USAPA is liable for unfair representation. *See Plts.’ MIL # 3.* Plaintiffs concede that ALPA Merger Policy provides for separate ratification. It is misleading, however, to state this without qualification. ALPA National may have had the authority to take away ratification rights.

ISSUE # 3: *Did, under ALPA Merger Policy, each Master Executive Council and each pilot group have the right to analyze, debate, and ratify a contract that met its needs?*

Defendant Contends: Yes, they did.

Plaintiffs Contend: This has no relevance to whether USAPA is liable for unfair representation. *See Plts.’ MIL # 3.* In addition, the language used

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is misleading and ambiguous. Consequently, this ought not to be regarded as an undisputed material fact. The most accurate statement on this subject is that ALPA Merger Policy expressly denied any opportunity to analyze, debate, or ratify a seniority list that was created according to ALPA Merger Policy.

ISSUE # 4: *Did ALPA National engage in continuing efforts from May, 2007 through April 18, 2008 to resolve the impasse that had developed between the US Airways MEC and the America West MEC pursuant to a May 24, 2007 Executive Council resolution which directed the two MEC's to "explore consensual approaches that promote career protection and mutual success, and achieve an acceptable single collective bargaining agreement that improves pay, benefits, work rules and job security for both pilot groups."?*

Defendant Contends: Yes, it did.

Plaintiffs Contend: This has no relevance to whether USAPA is liable for unfair representation. *See Plts.' MIL # 3.* In addition, the language used is misleading and ambiguous. It is true that the ALPA Executive Council passed a resolution using the language quoted. The phrase "continuing efforts," however, is ambiguous. Defendant would likely use this language to mislead or confuse the jury if this were deemed an undisputed material fact. Moreover, reference to April 18, 2008, improperly ignores that ALPA National deemed the Nicolau Award as valid, final and binding before October 2007 and presented it as such to the Airline in December 2007.

ISSUE # 5: *Did ALPA use all reasonable means at its disposal to implement the Nicolau Award?*



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Defendant Contends: Yes, it did.

Plaintiffs Contend: This has no relevance to whether USAPA is liable for unfair representation. *See Plts.’ MIL # 3*. This language is too ambiguous to be deemed an undisputed material fact. Moreover, it is contradicted by evidence that, at the time of the NMB election, USAPA supporters were stating that ALPA could compel implementation of the Nicolau Award

ISSUE # 6: *In post-merger contract negotiations, did US Airways condition increases in pilot wages and benefits on the parties reaching an agreement on a single collective bargaining agreement?*

Defendant Contends: Yes, it did.

Plaintiffs Contend: This has no relevance to whether USAPA is liable for unfair representation. *See Plts.’ MIL # 3*. All that stood in the way of the parties reaching an agreement on a single collective bargaining agreement was the East Pilot intention to prevent any steps that might lead to implementation of the Nicolau Award.

**2a.** Plaintiffs assert that the following are the issues of LAW to be determined:

ISSUE #1: *If Factual Issue # 1 is proven, whether USAPA violated its duty of fair representation.*

Plaintiffs Contend: Yes. *See Air Wisconsin Pilots Protection Committee v. Sanderson*, 909 F.2d 213, 217 (7th Cir. 1990) (“[A]n attempt by a majority of the employees in a collective bargaining unit [‘to oust the union’ is] ... could itself be thought a violation of the duty of fair representation by the union that the majority used as its tool.”).

Defendant Contends: This is not an issue of law that arises under the claim as pled; subject to the objection, USAPA did not violate its duty. “If

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the union’s leaders took account of the fact that the workers at the larger firm preferred this outcome, so what? Majority rule is the norm.” *Rakestraw v. United Airlines, Inc.*, 981 F.2d 1524, 1533 (7th Cir. 1992).

ISSUE #2: *If Factual Issue # 2 is proven, whether USAPA violated its duty of fair representation.*

Plaintiffs Contend: Yes. *See Truck Drivers & Helpers, Local Union 568 v. NLRB*, 379 F.2d 137, 145 (D.C. Cir. 1967) (promising unfair representation “would . . . constitute a default by [the union] in its obligation to represent fairly all the employees in the unit for which it becomes the exclusive bargaining representative.”).

Defendant Contends: This is not an issue of law that arises under the claim as pled; subject to the objection, USAPA did not violate its duty. “The losers always may say that the union ‘intended’ them to lose. As all of society is an assembly of minorities, the losers can point to some respect in which they are a minority and insist that the distinction must have been part of a ‘bad faith’ plot ...” *Rakestraw v. United Airlines, Inc.*, 981 F.2d 1524, 1531 (7th Cir. 1992).

ISSUE #3: *If Factual Issue # 3 is proven, whether USAPA violated its duty of fair representation.*

Plaintiffs Contend: Yes. A union violates the duty of fair representation if it “has renounced any good faith effort to reconcile the interests” of all members of the bargaining unit. *Truck Drivers & Helpers, Local Union 568 v. NLRB*, 379 F.2d 137, 142-43 (D.C. Cir. 1967).

Defendant Contends: This is not an issue of law that arises under the claim as pled; subject to the objection, USAPA did not violate its duty. “Taken to its limits, the approach prevents the union from resolving

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differences internally and representing the interests of workers as a group. Yet one of the premises of the Railway Labor Act ... is that unions act democratically to reach a collective decision – the majority is entitled to prevail ... That must entail the conclusion that the effort to aid one group at the expense of another is not *itself* arbitrary or in bad faith.” *Rakestraw v. United Airlines, Inc.*, 981 F.2d 1524, 1531-32 (7th Cir. 1992).

**2b.** Defendants assert that the following are the issues of LAW to be determined:

ISSUE # 1: *Did USAPA violate its duty of fair representation to the US Airways pilots by adopting a constitutional objective that promoted date-of-hire seniority integration with appropriate conditions and restrictions based on each pilot's unmerged career expectations instead of adopting implementation of the Nicolau Award as its seniority integration policy?*

Plaintiffs Contend: Yes. This act was part of a continuing course of conduct intended to deprive all pilots of the right to require implementation of the Nicolau Award as a condition of integrated operations under a single collective bargaining agreement.

Defendant Contends: No, it did not.

**E. LIST OF WITNESSES**

**1. Plaintiffs' Witnesses**

**a.** Witnesses who shall be called at trial:

**Stephen H. Bradford:** Fact: History

**Ken Stravers:** Fact: History

**Afshin Iranpour:** Fact: History

**Doug Dotter:** Fact: History

**Mark Burman:** Fact: History

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**Russ Payne:** Fact: History; deposition topics

**Al Hemenway:** Fact: History and deposition testimony.<sup>1</sup>

**Brian Stockdell:** Fact: History and factual analysis of the data listed on the seniority list generated by the Nicolau List and the same analysis applied to the USAPA seniority list.

**Tania Bziukiewicz,** as a foundational witness for the video clips that are part of Plaintiff’s exhibits.

**Brice LeCarre,** as a foundational witness for the video clips that are part of Plaintiff’s exhibits

**b.** Witnesses who may be called at trial:

Don Addington: Fact: History and effect of USAPA’s actions

John Bostic Fact: History and effect of USAPA’s actions

Roger Velez Fact: History and effect of USAPA’s actions

Steve Wargocki Fact: History and effect of USAPA’s actions

Bob Mann (Rebuttal on issues of US Airways and AWA financial status at the time of merger, as testified to in Nicolau Arbitration, with exhibits and demonstrative exhibits.)

Dan Aiken (Rebuttal on issues of fairness/unfairness of Nicolau Award if the Court permits USAPA to challenge the Nicolau Award or introduce testimony about the benefits and protection in the Conditions and Restrictions of the current proposal.

Mark W. King: Fact: History; deposition topics

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<sup>1</sup> Mr. Hemenway will be out of the country the first week of trial. Plaintiffs intend to call him as part of their case-in-chief, but he may not be able to appear until during the second week of trial. Plaintiffs request USAPA's cooperation in allowing them to call him as soon as practicable. Plaintiffs reserve the right to introduce Mr. Hemenway's deposition testimony in the event he is not available at all, and will exchange potential page and line designations with USAPA for that purpose.

1 Jamie Javurek: Fact: History and communications by him

2 Scott Theuer; Fact: History; deposition topics

3 Bob Davison, Fact: History; deposition topics

4 Doug Mowery, Fact: History; deposition topics

5 Randy Mowrey, Fact: History; deposition topics

6 Michael Cleary, Fact: History; deposition topics

7 c. Witnesses who are unlikely to be called at trial:

8 Eric Ferguson Fact: History and effect of USAPA's actions

9 Jeff Koontz Fact: History and effect of USAPA's actions

10  
11 **2. Defendant's Witnesses**

12 a. Witnesses who shall be called at trial:

Name	Address	Fact or Expert	Subject
Cleary, Michael	445 Hamilton Av. # 1204 White Plains, NY 10601	Fact	History
Davison, Bob	445 Hamilton Av. # 1204 White Plains, NY 10601	Fact	Seniority proposal
Diorio, Paul	445 Hamilton Av. # 1204 White Plains, NY 10601	Fact	Bargaining
Fallon, David	445 Hamilton Av. # 1204 White Plains, NY 10601	Fact	Intimidation
Flores, Michael	445 Hamilton Av. # 1204 White Plains, NY 10601	Fact	Other employee groups
Hall, Roger	445 Hamilton Av. # 1204 White Plains, NY 10601	Fact	History (ALPA)
Harris, James	445 Hamilton Av. # 1204 White Plains, NY 10601	Expert	Economics

1	Helton, Frank	445 Hamilton Av. # 1204 White Plains, NY 10601	Fact	Intimidation
2				
3	Hurd, Richard	445 Hamilton Av. # 1204 White Plains, NY 10601	Expert	Labor & Seniority
4				
5	Kirch, Robert	445 Hamilton Av. # 1204 White Plains, NY 10601	Fact	History
6				
7	Koseruba, Dave	445 Hamilton Av. # 1204 White Plains, NY 10601	Fact	Motives for supporting USAPA
8				
9	McIlvenna, John	805 Fifteenth Street N.W., # 1000 Washington D.C., 20005	Fact	History
10				
11	Mowery, Doug	445 Hamilton Av. # 1204 White Plains, NY 10601	Fact	Bargaining and history
12				
13	Mowrey, Randy	445 Hamilton Av. # 1204 White Plains, NY 10601	Fact	Merger policy and USAPA proposal
14				
15	Salamat, Rikk	445 Hamilton Av. # 1204 White Plains, NY 10601	Expert	Finance & statistic
16				
17	Skiles, Jeff	445 Hamilton Av. # 1204 White Plains, NY 10601	Fact	Inequities of Nicolau
18				
19	Stephan, Jack	445 Hamilton Av. # 1204 White Plains, NY 10601	Fact	History
20				
21	Sullenberger, Chesley	445 Hamilton Av. # 1204 White Plains, NY 10601	Fact	History
22				
23				
24	Szpyrka, Steve	445 Hamilton Av. # 1204 White Plains, NY 10601	Fact	Consideration of West interests
25				
26	Theurer, Scott	445 Hamilton Av. # 1204 White Plains, NY 10601	Fact	History
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## (b) Witnesses who may be called at trial by USAPA

<b>Name</b>	<b>Address</b>	<b>Fact or Expert</b>	<b>Subject</b>
Addington, Don	3636 N. Central Av., # 1200Phoenix, AZ 85012	Fact	Depo subjects
Bostic, John	3636 N. Central Av., # 1200Phoenix, AZ 85012	Fact	Depo subjects
Bradford, Steve	445 Hamilton Av. # 1204 White Plains, NY 10601	Fact	History
Burman, Mark	3636 N. Central Av., # 1200Phoenix, AZ 85012	Fact	Depo subjects
Ciabbatoni, Dave	445 Hamilton Av. # 1204 White Plains, NY 10601	Fact	History
Collelo, Dean	445 Hamilton Av. # 1204 White Plains, NY 10601	Fact	History
Hemenway, Al	400 South Hope Street Los Angles, CA 90071-2899	Fact	History
Hummel, Gary	445 Hamilton Av. # 1204 White Plains, NY 10601	Fact	Impact of integration on safe operations
Iranpour, Afsin	3636 N. Central Av., # 1200Phoenix, AZ 85012	Fact	Depo subjects
King, Mark	445 Hamilton Av. # 1204 White Plains, NY 10601	Fact	history
Krebs, Mark	445 Hamilton Av. # 1204 White Plains, NY 10601	Fact	Consideration of West interests
Kubik, Tom	445 Hamilton Av. # 1204 White Plains, NY 10601	Fact	Impact of integration on safe operations

1 2 3 4 5 6 7 8 9 10 11 12 13 14	Parrella, Tracy	445 Hamilton Av. # 1204 White Plains, NY 10601	Fact	Grievances
	Payne, Russ	445 Hamilton Av. # 1204 White Plains, NY 10601	Fact	History
	Portale, Jim	445 Hamilton Av. # 1204 White Plains, NY 10601	Fact	Mid Atlantic issues
	Stravers, Kenneth	3636 N. Central Av., # 1200Phoenix, AZ 85012	Fact	Depo subjects
	Thorpe, Mark	445 Hamilton Av. # 1204 White Plains, NY 10601	Fact	History (USAPA)
	Velez, Roger	3636 N. Central Av., # 1200Phoenix, AZ 85012	Fact	Depo subjects
	Wargocki, Steve	3636 N. Central Av., # 1200 Phoenix, AZ 85012	Fact	Depo subjects

(c) Witnesses who are unlikely to be called at trial:

<b>Name</b>	<b>Address</b>	<b>Fact or Expert</b>	<b>Subject</b>
15 16 17 18 19 20	none		

21           **3.** Each party understands that it is responsible for ensuring that the  
 22 witnesses it wishes to call to testify are subpoenaed. Each party further understands that  
 23 any witness a party wishes to call shall be listed on that party’s list of witnesses; the  
 24 party cannot rely on the witness having been listed or subpoenaed by another party.

25 **F. LIST OF EXHIBITS**

26           **1.** The following exhibits are admissible in evidence and may be marked in  
 27 evidence by the Clerk:  
 28



1           a.     Plaintiff's Exhibits:

2           None.

3           b.     Defendant's Exhibits:

4           None.

5           2.     As to the following exhibits, the parties have reached the following  
6 stipulations:

7           a.     Plaintiff's Exhibits:

8           None pending rulings on Motions in Limine

9           b.     Defendant's Exhibits:

10          None pending rulings on Motions in Limine

11          3.     As to the following exhibits, the party against whom the exhibit is to be  
12 offered objects to the admission of the exhibit and offers the objection stated below:

13          a.     Plaintiff's Exhibits

14          Please see attached Exhibit 1 listing Plaintiff's Exhibits, with Defendant's  
15 Objections.

16          b.     Defendant's Exhibits

17          Please see attached Exhibit 2 listing Defendant's Exhibits with Plaintiffs'  
18 Objections.

19          4.     Each party hereby acknowledges by signing this joint Proposed Final  
20 Pretrial Order that any objections not specifically raised herein are waived.

21

22   **G.     DEPOSITIONS TO BE OFFERED**

23          1.     The parties shall list the depositions that may be used at trial. The  
24 portions to be read or submitted at trial shall be identified by page and line number.  
25 Additionally, the party offering the deposition shall provide the Court with a copy of the  
26 offered deposition testimony. The offering party shall highlight, in color, the portions  
27 of the deposition to be offered. If multiple parties are offering the same deposition, only  
28 one copy of such deposition shall be provided. Such copy shall contain each party's

1 highlighting (each party should use a different color). Any party objecting to the  
2 admission in evidence of any portion of a deposition shall identify by page and line  
3 number the portion to which objection is made and shall state the grounds of objection  
4 specifically.

5       **2. Plaintiffs:** Except as noted, Plaintiffs do not currently anticipate using any  
6 of the following depositions of USAPA witnesses in the case in chief. (But see footnote  
7 1 above in regard to Mr. Hemenway.) Areas of testimony and pending motions in  
8 limine may require the use of one or more depositions for impeachment or cross  
9 examination.

10               Stephen Bradford (cross examination and impeachment)

11               Mark King (cross examination and impeachment)

12               Paul Diorio

13               David Ciabattoni

14               Tracy Parella

15               Doug Mowery

16               Randy Mowrey (cross examination and impeachment); Plaintiffs also  
17 intend to offer Mr. Mowrey's prior testimony at the October, 2008  
18 proceedings.

19               Jack Stephen

20               Bob Kirch

21               Robert Davison (cross examination and impeachment)

22               Scott Theuer (cross examination and impeachment)

23               Mike Cleary (cross examination and impeachment)

24               Jamie Javurek

25       **3. Defendant:** Except as noted, Defendants do not currently anticipate using  
26 any of the following depositions in the case in chief. Areas of testimony and pending  
27 motions in limine may require the use of one or more depositions for impeachment or  
28 cross examination of the following:

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- Bostic, John
- Burdick, Mark
- Dotter, Douglas
- Ferguson, Eric
- Helton, Frank
- Hemenway, Al
- Iranpour, Afshin
- Koontz, Jeffrey
- Lozano, Antonio
- McIlvenna, John
- Payne, Russ
- Stravers, Kenneth
- Stockdell, Brian
- Vasin, Mitch
- Velez, Roger
- Wargocki, Steven

4. Each party hereby acknowledges by signing this joint Proposed Final Pretrial Order that any deposition not listed as provided herein will not be allowed, absent good cause.

**H. MOTIONS IN LIMINE**

Motions *in limine* shall be filed as separate pleadings *and responded to in accordance with the instructions contained in the Order Setting Final Pretrial Conference.*

**I. LIST OF PENDING MOTIONS**

None

**J. PROCEDURES FOR EXPEDITING TRIAL**

The parties shall discuss and report on all available procedures that might be used to expedite trial, including but not limited to (a) presenting stipulated summaries of

1 deposition testimony rather than reading deposition excerpts; (b) editing videotaped  
2 depositions to limit the amount of time required for presentation; (c) using summary  
3 exhibits in place of voluminous documentary evidence; (d) stipulations on authenticity  
4 and foundation; (e) presenting direct expert testimony through summary or written  
5 reports; (f) using the courtroom technology to expedite the presentation of evidence.

6 The parties are invited to contact Sandra Fredlund, Judge Wake's Courtroom Deputy  
7 Clerk, to arrange a time to visit the courtroom and examine its technology. Information  
8 about courtroom technology can also be found at [www.azd.uscourts.gov](http://www.azd.uscourts.gov) under Judicial  
9 Officer Information. The parties will supplement this section after the Court has ruled  
10 on the pending motions in limine.

11 **K. ESTIMATED LENGTH OF TRIAL**

12 4 hours for opening statements and closing arguments

13 17.5 hours for Plaintiff(s) case, including cross-examination of other parties'  
14 witnesses

15 50 hours for Defendant(s) case, including cross-examination of other  
16 parties' witnesses

17 0.5 hours for Plaintiff(s) rebuttal

18 72 hours TOTAL ESTIMATED TIME

19 **L. JURY DEMAND**

20 A jury trial request was timely and properly made by USAPA..

21 **M. JOINT STATEMENT OF THE CASE**

22 There is no agreement on the joint statement; each side submits  
23 the following:

24  
25 Plaintiffs Statement of the Case:

26 Two airlines, US Airways and America West, merged in 2005.  
27 The pilots who were employed by US Airways are referred to as  
28 the "East Pilots." The pilots who were employed by America  
West Airlines are referred to as the "West Pilots." At the time of

1 the merger, US Airways had twice as many pilots working as the  
2 number of pilots working for America West. The entity that  
3 resulted from the merger is also called "US Airways." To avoid  
4 confusion, we will refer to it as the "Airline."

5 As part of the merger, the two airlines and their pilots entered into  
6 an agreement on a procedure to be followed to combine the  
7 combine their separate seniority lists into one integrated seniority  
8 list. This procedure led to an arbitration conducted by a three  
9 person panel, chaired by George Nicolau. After a full hearing in  
10 which each pilot group presented testimony and evidence, the  
11 arbitration panel made a decision, called the Nicolau Award, that  
12 created a single integrated pilot seniority list. Under the  
13 procedures that the pilot representatives had agreed to, the single  
14 seniority list was submitted to the Airline and accepted by the  
15 Airline as the single integrated seniority list to be incorporated  
16 into a new collective bargaining agreement.

17 The East Pilots would not accept the Nicolau Award as the  
18 integrated seniority agreement. Several East Pilots created a new  
19 union, Defendant US Airline Pilots Association (USAPA). As a  
20 union, USAPA owes a duty to fairly represent all pilots with the  
21 utmost good faith. This trial will decide whether USAPA is in  
22 violation of its duty of good faith.

23 Defendant's Statement of the Case:

24 Two airlines, US Airways and America West, merged in 2005.  
25 The pilots who were employed by US Airways, and who were  
26 later joined by New Hires hired into East operations, are referred  
27 to as the "East Pilots." The pilots who were employed by  
28 America West Airlines, and who were later joined by New Hires  
hired into West operations, are referred to as the "West Pilots."  
The entity that resulted from the merger is also called "US  
Airways."

This case will address whether USAPA violated its duty of fair  
representation by adopting a constitutional objective of date-of-  
hire seniority integration with appropriate conditions and  
restrictions based on each pilot's unmerged career expectations  
instead of adopting the proposal of ALPA, its de-certified  
predecessor, that had been determined by an arbitrator pursuant to  
ALPA Merger Policy. The arbitrated proposal is referred to as  
the Nicolau Award.

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**N. JOINT PROPOSED VOIR DIRE QUESTIONS**

The Court’s proposed voir dire questions are located on the Court’s website at [www.azd.uscourts.gov](http://www.azd.uscourts.gov) under Judges & Courtrooms/Orders, Forms and Procedures/Judge Wake. Additional questions proposed by the parties shall be drafted in a neutral manner. Initial questions on a subject should call for a “yes” or “no” response. The parties are separately filing proposed voir dire questions.

**O. JOINT PROPOSED JURY INSTRUCTIONS**

The proposed jury instructions shall be accompanied by citations to legal authority. The instructions shall be in accordance with “Guidelines for Jury Instructions in Civil Cases” found at [www.azd.uscourts](http://www.azd.uscourts) under Judicial Officer Information and Judge Wake.

**P. PROPOSED FORMS OF VERDICT**

The proposed forms of verdict shall include any proposed special verdict forms or juror interrogatories. The Parties could not reach a satisfactory agreement to merge the two different proposed forms of verdict each side thought was appropriate, so each side has made a separate proposal submitted herewith.

**Q. DISAGREEMENTS ABOUT PROPOSED STATEMENTS, VOIR DIRE, INSTRUCTIONS, OR FORMS OF VERDICT**

If the parties disagree about any of the proposed statements, voir dire questions, jury instructions, or forms of verdict, the party in favor of the proposal shall set it forth in the joint pleading and the party opposing it shall state the reason for the objection and offer an alternative proposal.

**R. FORMAT OF SUBMISSIONS**

The joint statement of the case, proposed voir dire questions, proposed jury instructions, and forms of verdict shall be submitted in WordPerfect® 9.0 format either by email to [Wake\\_Chambers@azd.uscourts.gov](mailto:Wake_Chambers@azd.uscourts.gov) or on an IBM-PC compatible disk.

1           **S.     CERTIFICATIONS**

2           The undersigned counsel for each of the parties in this action do hereby certify  
3 and acknowledge the following:

- 4           **1.**     All permitted discovery has been completed as to the issue of class  
5                    certification.

6           Separate Statement of Defendant:

7           Defendant has not been able to complete all discovery necessary to  
8           prepare for trial, noting that the Court has considered and rejected motions  
9           to continue and for various discovery requests.

- 10          **2.**     The identity of each witness has been disclosed to opposing  
11                   counsel.

12          Plaintiffs' Separate Statement: On the last possible day, USAPA made a  
13          disclosure of approximately thirteen (13) trial witnesses, including three  
14          (3) previously undisclosed expert witnesses. USAPA also identified one  
15          witness, Robert Davison, who Plaintiffs just recently learned has been  
16          working for almost a year on analysis of each of the seniority proposals.  
17          USAPA first disclosed approximately 40 CD's of display material that  
18          had never been previously produced, including technical and fact analysis  
19          and lacked any reasonable identification to allow Plaintiff to fully analyze  
20          or rebut the testimony. Plaintiffs have been deprived of the right to  
21          adequately examine and rebut this testimony and have filed a Motion in  
22          Limine.

23          Defendant's Separate Statement: Defendant preserves its objection to  
24          Plaintiffs calling Tania Bziukiewicz, Brice LeCarre, and Al Hemenway on  
25          the ground that these witnesses were not disclosed by the April 1 deadline.

- 26          **3.**     Each exhibit listed herein: (1) is in existence; and (2) has been  
27                   disclosed and shown to opposing counsel.

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1 Plaintiff's Separate Statement: Despite numerous requests and efforts to  
2 resolve the discovery issues, Plaintiffs still have not been provided with  
3 full and fair disclosure of the contents of Mr. Bradford's flash drive,  
4 minutes of the governing Board of Pilot representatives, and the data on  
5 which exhibits prepared by Mr. Davison or Mr. Salamat are based. The  
6 latter issues are more fully briefed in Plaintiffs' Motion in Limine on this  
7 topic.

8 **4.** The parties have otherwise complied in all respects with the  
9 mandates of the Court's Rule 16 Scheduling Order and Order  
10 Setting Final Pretrial Conference.

11 **5.** The parties have made all of the disclosures required by the Federal  
12 Rules of Civil Procedure (unless otherwise previously ordered to  
13 the contrary).

14 Plaintiff's Separate Statement: Despite numerous requests and efforts to  
15 resolve the discovery issues, Plaintiffs still have not been provided with  
16 full and fair disclosure of the contents of Mr. Bradford's flash drive,  
17 minutes of the governing Board of Pilot representatives, and the data on  
18 which exhibits prepared by Mr. Davison or Mr. Salamat are based. The  
19 latter issues are briefed in Plaintiffs' Motion in Limine on this topic.

20 **6.** The parties acknowledge that once this Proposed Final Pretrial  
21 Order has been signed and lodged by the parties, no amendments to  
22 this Order can be made without leave of Court.

23 **T. INFORMATION FOR COURT REPORTER**

24 In order to facilitate the creation of an accurate record, please file a "Notice to  
25 Court Reporter" one week before trial containing the following information that may be  
26 used at trial:

- 27 **1.** Proper names, including those of witnesses.  
28 **2.** Acronyms.



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- 3. Geographic locations.
- 4. Technical (including medical) terms, names or jargon.
- 5. Case names and citations.

Please also send (or transmit electronically) to the court reporter a copy of the concordance from key depositions.

The parties have this information collected and will file the Notice on or before the date indicated.

DATED this 16th day of April, 2009.

*/s/ Andrew S. Jacob*

*/s/ Andrew S. Jacob (with permission)*

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**CERTIFICATE OF SERVICE**

I hereby certify that on April 16, 2009, I electronically transmitted the foregoing document to the U.S. District Court Clerk’s Office by using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing.

WordPerfect® 9.0 compatible files of the joint statement of the case, proposed voir dire questions, proposed jury instructions, and forms of verdict were submitted in by email to Wake\_Chambers@azd.uscourts.gov.

*/s/ Andrew S. Jacob*

Based on the foregoing,

**IT IS ORDERED** that this Proposed Final Pretrial Order jointly submitted by the parties is hereby **APPROVED** and **ADOPTED** as the official Pretrial Order of this Court.

DATED this \_\_\_ day of \_\_\_\_\_, 200\_.

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Neil V. Wake  
United States District Judge