

1 **WO**

2

3

4

5

6

IN THE UNITED STATES DISTRICT COURT

7

FOR THE DISTRICT OF ARIZONA

8

Don Addington; John Bostic; Mark)  
Burman; Afshin Iranpour; Roger Velez;)  
9 Steve Wargoeki,

No. CV 08-1633-PHX-NVW  
(consolidated)

10

Plaintiffs,

**ORDER**

11

vs.

12

US Airline Pilots Association; US)  
Airways, Inc.,

13

Defendants.

14

15

Don Addington; John Bostic; Mark)  
Burman; Afshin Iranpour; Roger Velez;)  
16 Steve Wargoeki, et al.,

CV08-1728-PHX-NVW

17

Plaintiffs,

18

vs.

19

Steven Bradford; Paul Diorio; Robert)  
20 Frear; Mark King; Douglas Mowery; John)  
Stephan, et al.,

21

Defendants.

22

23

24

Before the Court is Defendant’s Motion to Change Venue and Transfer to Another  
25 District, Pursuant to 28 U.S.C. § 1404 (doc. # 622). Defendant US Airline Pilots  
26 Association (“USAPA”) seeks to have this case transferred to the United States District  
27 Court for the District of Columbia.

28

1 **I. Legal Standard**

2 “For the convenience of parties and witnesses, in the interest of justice, a district  
3 court may transfer any civil action to any other district or division where it might have  
4 been brought.” 28 U.S.C. § 1404(a). Section 1404(a) places discretion in the district  
5 courts “to adjudicate motions for transfer according to an individualized, case-by-case  
6 consideration of convenience and fairness.” *Stewart Organization, Inc. v. Ricoh Corp.*,  
7 487 U.S. 22, 23 (1988). *Forum non conveniens* considerations, such as balancing the  
8 preference accorded the plaintiff’s choice of forum with the defendant’s burden of  
9 litigating in an inconvenient forum, are helpful in deciding a § 1404(a) motion. *Decker*  
10 *Coal Co. v. Commonwealth Edison Co.*, 805 F.2d 834, 843 (9<sup>th</sup> Cir. 1986). However,  
11 “[t]he defendant must make a strong showing of inconvenience to warrant upsetting the  
12 plaintiff’s choice of forum.” *Id.*

13 The court must weigh multiple factors in its determination of convenience and  
14 fairness, and it may consider the following:

- 15 (1) the location where the relevant agreements were  
16 negotiated and executed, (2) the state that is most familiar  
17 with the governing law, (3) the plaintiff’s choice of forum, (4)  
18 the respective parties’ contacts with the forum, (5) the  
19 contacts relating to the plaintiff’s cause of action in the  
chosen forum, (6) the differences in the costs of litigation in  
the two forums, (7) the availability of compulsory process to  
compel attendance of unwilling non-party witnesses, and (8)  
the ease of access to sources of proof.

20 *Jones v. GNC Franchising, Inc.*, 211 F.3d 495, 498-99 (9<sup>th</sup> Cir. 2000).

21 **II. Analysis**

22 This lawsuit involves the integration of pilot seniority lists upon the merger of US  
23 Airways and America West Airlines, now operating under the name “US Airways” with  
24 headquarters in Tempe, Arizona, and employing thousands of pilots residing in numerous  
25 states across the country. A jury found USAPA breached its duty of fair representation  
26 by abandoning an arbitrated seniority list in favor of a date-of-hire list solely to benefit  
27 one group of pilots at the expense of another. Plaintiffs seek injunctive relief and money  
28 damages.


1 Most of the *Jones* factors are not relevant and do not favor either forum. This  
2 case raises federal questions and will be decided under federal law. Neither side contends  
3 they have unwilling non-party witnesses who must be compelled to testify at trial. Where  
4 agreements were negotiated and the parties' contacts with the forum have no bearing on  
5 the issues to be decided. Whether the forum is Arizona or Washington, D.C., does not  
6 affect the ease of access to sources of proof.

7 The two relevant *Jones* factors, the plaintiff's choice of forum and the differences  
8 in the costs of litigation in the two forums, favor denying transfer. All six Plaintiffs  
9 reside in the Phoenix area. Plaintiffs are represented by a Phoenix law firm, and  
10 Plaintiffs' counsel all reside in Arizona. USAPA, headquartered in Charlotte, N.C.,  
11 estimates there are eighty to one hundred witnesses identified, many of whom reside  
12 closer to Washington, D.C., than to Phoenix, but few of whom actually reside in  
13 Washington, D.C. Litigating in Washington, D.C., instead of Arizona, may somewhat  
14 decrease USAPA's or individual witnesses' costs, but would substantially increase  
15 Plaintiffs' costs and deny Plaintiffs their choice of forum. Testimony of dispersed  
16 witnesses may be presented by deposition, if that is more convenient, regardless of the  
17 forum.

18 Finally, this litigation has proceeded in this forum for nearly a year and a half,  
19 including a lengthy jury trial on liability, numerous and extensive legal rulings, and great  
20 expenditure of judicial resources. The waste of judicial resources from transfer to a  
21 different judge in another district late in the litigation disfavors transfer. It would be a  
22 bad exercise of discretion and likely an abuse of discretion.

23 IT IS THEREFORE ORDERED that Defendant's Motion to Change Venue and  
24 Transfer to Another District, Pursuant to 28 U.S.C. § 1404 (doc. # 622) is denied.

25 DATED this 21<sup>st</sup> day of January, 2010.

26  
27  
28   
\_\_\_\_\_  
Neil V. Wake  
United States District Judge