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13 **UNITED STATES DISTRICT COURT**
14 **DISTRICT OF ARIZONA**

15 Don Addington, John Bostic, Mark
Burman, Afshin Iranpour, Roger Velez,
16 and Steve Wargock,

17 Plaintiffs,

18 and

19 US Airline Pilots Association; US
20 Airways, Inc.,

21 Defendants.

Case No. CV-08-1633-PHX-NVW

**US Airways, Inc.'s Response To Motion
To Transfer Related Case, Pursuant To
LRCiv 42.1**

Case No. CV-10-1570-PHX-ROS

1 **MEMORANDUM IN RESPONSE TO MOTION TO TRANSFER**

2 The Addington Defendants have filed a motion to transfer US Airways’ Complaint
3 for Declaratory Relief (Case No. CV-10-1570-PHX-ROS) from Judge Silver to Judge
4 Wake pursuant to LRCiv 42.1, and defendant U.S. Airline Pilots Association (“USAPA”)
5 has opposed that motion.¹ The Addington Defendants argue that Judge Wake “has
6 already expended substantial judicial resources familiarizing himself with all the parties,
7 issues and law that will be involved” in US Airways’ lawsuit, and that absent transfer, the
8 resolution of US Airways’ lawsuit “could entail substantial unnecessary duplication of
9 judicial effort.” (Motion to Transfer at pages 1-2.) In response, USAPA argues that
10 transfer should not be ordered because (i) the prior related case in Judge Wake’s court
11 (*Addington v. USAPA*, Case No. CV-08-1633-PHX-NVW) will soon be dismissed
12 pursuant to the mandate of the Ninth Circuit Court of Appeals, and because (ii) USAPA
13 believes that Judge Wake “is not impartial,” and thus transfer must be denied “in order to
14 preserve substantive justice, or, at minimum the *appearance* of justice.” (Opposition to
15 Motion to Transfer at pages 9, 16, 15.)

16 As alleged in its Complaint for Declaratory Relief, US Airways has not taken and
17 will not take sides in the seniority dispute between the East and West pilot groups. For
18 that reason, US Airways also will not take sides between the Addington Defendants and
19 USAPA regarding the motion to transfer. US Airways does not want to quarrel with the
20 defendants over which judge should resolve the seniority dispute. Rather, US Airways’
21 sole objective is to obtain, *as promptly as possible*, a declaratory judgment that will finally
22 allow the combination of East and West pilots into a single, unified workforce following
23 the merger of US Airways and America West Airlines which was completed nearly *five*
24 *years ago*. Thus, US Airways urges that the motion to transfer be resolved quickly so that
25 the merits of its complaint can then be squarely addressed and resolved.

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27 _____
28 ¹ The Defendants have filed their briefs before both Judge Wake and Judge Silver. For the convenience of the Court, US Airways does likewise.

1 That said, US Airways makes the following limited response to assertions made by
2 USAPA in its memorandum of law in opposition to the motion to transfer:

3 1. US Airways notes its disagreement with USAPA’s assertion (at page 10 of
4 its Opposition) that the “same contingent events that deprived . . . [the prior *Addington v.*
5 *USAPA* case] of ripeness deprive the US Airways matter of ripeness, i.e., negotiation,
6 tentative agreement, and ratification.” As alleged in the Complaint, US Airways’ “action
7 for declaratory judgment is ripe because, unlike the Ninth Circuit’s assessment of the
8 West Pilots’ claims against USAPA, US Airways’ Complaint seeks a declaration of the
9 parties’ legal rights, constraints, and obligations in the context of an actual, concrete and
10 substantial controversy in the midst of currently-ongoing collective bargaining
11 negotiations between US Airways and USAPA.” (Complaint ¶ 6.) Moreover, USAPA’s
12 assertion is not relevant to the motion to transfer. If and when USAPA makes such an
13 argument in an appropriate motion, US Airways will fully respond.

14 2. US Airways notes its disagreement with USAPA’s assertion (at page 5 of its
15 Opposition) that “the Company has sought to deliberately delay negotiations [for a single
16 new collective bargaining agreement] in order to promote its own economic gain by
17 prolonging the pilots’ wage rates, which are currently the lowest among all major airline
18 pilot groups.” To the contrary, the filing of the Complaint for Declaratory Relief reflects
19 US Airways’ strong desire for *prompt* completion of negotiations and, as alleged in the
20 Complaint, it is “[t]he uncertainty surrounding the lawfulness under the Railway Labor
21 Act of the entry into a collective bargaining agreement which does not include the Nicolau
22 Award” that has prevented the successful completion of negotiations. (Complaint ¶ 42.)
23 Moreover, USAPA’s assertion is not relevant to the motion to transfer. If and when
24 USAPA makes such an argument in an appropriate motion or hearing, US Airways will
25 fully respond.

26 3. US Airways must also address USAPA’s argument regarding Judge Wake’s
27 alleged lack of impartiality because US Airways cannot allow its neutrality regarding the
28 transfer motion to be misconstrued as acquiescence in that argument. As noted above, US

1 Airways will not take sides in the dispute between defendants over whether Judge Wake
2 or Judge Silver should resolve the seniority dispute. However, US Airways does not
3 condone or support in any manner USAPA's arguments (made by USAPA in its
4 Opposition to Motion to Transfer at pages 15-16) to the effect that Judge Wake is "not
5 impartial" or that transfer must be denied "in order to preserve substantive justice."
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8 Dated: August 13, 2010

O'Melveny & Myers LLP

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CERTIFICATE OF SERVICE

I hereby certify that on August 13, 2010, I electronically transmitted the foregoing document to the United States District Court Clerk’s Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing.

/s/ Teresa Ryan
Teresa Ryan