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9 US AIRLINE PILOTS ASSOCIATION

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

11 US AIRWAYS, INC., a Delaware
12 Corporation,

13 Plaintiff,

14 v.

15 Don ADDINGTON, an individual; John
BOSTIC, an individual; Mark BURMAN,
16 an individual; Afshin IRANPOUR, an
individual; Roger VELEZ, an individual;
17 and Steve WARGOCKI, an individual, on
behalf of themselves and all other similarly
18 situated individuals,

19 and

20 US AIRLINE PILOTS ASSOCIATION, an
unincorporated association,

21 Defendants.
22
23

Case No. 2:10-cv-01570-PHX-ROS

**DECLARATION OF RANDAL E.
MOWREY**

1 I, RANDAL "RANDY" E. MOWREY, declare that the following is true and
2 correct:

3 1. I make this declaration of my own free will, based on my personal, first-hand
4 knowledge, unless otherwise specifically indicated.

5 2. This declaration is made in support of USAPA's motion to dismiss the
6 Complaint in the above-cited matter.

7
8 **Declarant's Background**

9 3. I am currently a Captain and have been employed by US Airways as a Pilot
10 since May 9, 1985.

11 4. I am currently a member in good standing and the Vice President of USAPA.
12 My duties and responsibilities in this capacity include but are not limited to: managing the
13 internal USAPA Committee structure including the Negotiating Advisory Committee,
14 Merger Committee, Grievance Committee and others; planning all meetings of the Board of
15 Pilot Representatives ("BPR") (USAPA's governing body) including construction of the
16 agenda, conducting the meetings themselves in accordance with Robert's Rules of Order,
17 and managing the political process to gain consensus and develop a work plan for the
18 implementation of the governing body's decisions; maintaining constant contact with the
19 BPR when they are not in session to manage their input and needs from a variety of
20 representational aspects, including management of visits of individual pilots to the Chief
21 Pilot's office for disciplinary matters and contract enforcement. In addition, I perform any
22 work assigned by the President and act in his absence.
23

1 5. Prior to being elected as Vice President of the Association, I served as
2 Chairman of the Merger Committee from May 1, 2008 until May 24, 2009.

3 6. My duties and responsibilities as Chairman of the USAPA Merger
4 Committee included, but were not limited to, the following: contributing to and supporting
5 the development and implementation of all seniority-related positions of USAPA going
6 forward, coordinating Merger Committee activities with the other key committees within
7 the USAPA structure, interfacing with the Board of Pilot Representatives, and representing
8 USAPA with US Airways management on all seniority-related matters.

9 7. I am a former member of the Air Line Pilots Association (“ALPA”). When
10 ALPA was the certified bargaining representative of the US Airways Pilots, I served in the
11 following positions within the US Airways ALPA Master Executive Council (“MEC”):
12 Route Committee Chairman; Committee Member on two different Merger Committees; and
13 Committee Member on the Strategic Planning Committee.

14 8. Pursuant to my USAPA duties, and my past ALPA experience, I am familiar
15 with the content and application of the current pre-merger US Airways (“East”) and
16 America West Airlines (“America West” or “West”) pilot collective bargaining agreements
17 (“CBA”). In addition, I am familiar with the content and application of the Transition
18 Agreement.
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20 **The Merger and Formation of ALPA’s Seniority Proposal**

21 9. The 2005 merger of US Airways and America West raised the issue as to
22 how seniority would be integrated between the two airlines’ respective employee groups.
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1 With the exception of the pilots, every unionized employee group at the combined US
2 Airways proceeded with integration on the basis of date-of-hire seniority or “dovetailing.”

3 10. With respect to flight attendants, mechanics, baggage handlers, and stores
4 keepers, the corresponding union negotiated directly for date-of-hire seniority integration,
5 which the union and the carrier agreed to be a fair and equitable approach.

6 11. At the time of the merger, ALPA was the collective bargaining representative
7 of both the East and West pilots. ALPA maintained an internal union Merger Policy,
8 which, in the absence of an agreement between unelected Merger Representatives, provided
9 that ALPA’s seniority integration proposal would be determined by an internal Arbitration
10 Board composed of two non-voting ALPA members chosen from ALPA’s Master List of
11 Pilot Neutrals and an ALPA-approved arbitrator who acted as the Arbitration Board’s
12 Chairman.

13 12. The unelected ALPA Merger Representatives were subject to expulsion from
14 ALPA if they resisted the ALPA-governed merger process or criteria, and the Arbitration
15 Board was obligated to render a decision consistent with criteria set forth in ALPA Merger
16 Policy. Whereas these criteria had historically placed primary emphasis on date-of-hire
17 seniority, in 1991, ALPA Merger Policy had been amended, without a vote of rank-and-file
18 pilots, to eliminate any reference to date-of-hire seniority.

19 13. Subsequent to the seniority integration arbitration in this matter, however,
20 ALPA Merger Policy was altered again, this time to re-introduce “longevity” as a criteria
21 upon which seniority integration could be based. A true and correct copy of the most recent
22 version of ALPA Merger Policy is attached to this declaration as **Exhibit A**.
23

1 14. In September, 2005, US Airways, America West and ALPA entered into a
2 Transition Agreement, which addressed the process of the two airlines' operational merger
3 as it related to the pilots. As with ALPA Merger Policy and the ALPA Constitution, rank-
4 and-file pilots were never allowed to vote on the Transition Agreement.

5 15. Since rank-and-file pilots had no participation in the development of ALPA
6 Merger Policy or the Transition Agreement, their sole opportunity for democratic input
7 came at the tail end of the process, at which point they were permitted by ALPA to vote yes
8 or no on any contract incorporating the Nicolau Award. ALPA President John Prater, in a
9 March 14, 2008 letter to all US Airways pilots, advised the pilots that they were entitled to
10 employ their respective democratic rights to protect their interests and that there was "no
11 required timetable" for resolving the seniority dispute. A true and correct copy of that letter
12 is attached to this declaration as **Exhibit B**.

13 16. The ALPA seniority integration process culminated in a May 2007 decision
14 referred to as the Nicolau Award, which disregarded date-of-hire seniority principles in
15 favor of granting super seniority to more junior West pilots, based ostensibly on a snapshot
16 evaluation of the respective airlines' economic status at the time of the merger. It resulted,
17 for example, in the placement of probationary West pilots with under two months seniority,
18 who had never flown a revenue trip for the airline, above East pilots who had more than
19 sixteen years of credited length of service.

20 17. Captain James Brucia, a member of the Nicolau Arbitration Board, wrote a
21 dissent to the decision, which explained that the Nicolau Award improperly failed to
22 consider post-merger evidence confirming the economic opportunities inherent in the
23

1 vitality of East operations and higher East pilot attrition rates. A true and correct copy of
2 Captain Brucia's dissent is attached to this declaration as **Exhibit C**. Chairman Nicolau
3 responded in his opinion that ALPA Merger Policy prohibited him from considering this
4 evidence.

5 18. Prior to its decertification in April 2008, ALPA President John Prater, in a
6 March 19, 2008 letter to US Airways' CEO Doug Parker, presented the pursuit of interim
7 modification to the existing separate collective bargaining agreements on a two-contract
8 basis as a means of addressing the seniority dispute. A true and correct copy of that letter is
9 attached to this declaration as **Exhibit D**.

10 19. In an August 2007 letter to all US Airways' pilots, CEO Doug Parker
11 recognized, on behalf of the Company, that any single contract incorporating the Nicolau
12 seniority proposal "would be extremely difficult, if not impossible, to get ratified." A true
13 and correct copy of that letter is attached to this declaration as **Exhibit E**.

14 **The USAPA Seniority Proposal**

15 20. Consistent with its constitutional objective, the current USAPA seniority
16 integration proposal provides for a combined list based on date-of-hire, modified with
17 conditions and restrictions designed to protect each pilot's un-merged career expectations,
18 and in this sense is not a strict date-of-hire seniority integration proposal. USAPA's
19 seniority proposal was passed to the Company in September 2008, and to this day, the
20 Company has yet to respond.

21 21. Aside from Sections I and II of the USAPA seniority integration proposal,
22 which provide for the integration of the pre-merger East and pre-merger West certified pilot
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1 seniority lists on a date-of-hire basis, virtually every other provision contained within the
2 proposal is driven by USAPA's constitutional mandate to protect the career expectations of
3 the West Pilots.

4 22. The resulting limitations on the strict applicability of the date-of-hire
5 seniority integration are commonly referred to as conditions and restrictions. The
6 conditions and restrictions contained in the USAPA seniority integration proposal provide
7 protections for the West pilots, which include, but are not limited to:

- 8 • The Pilot positions that existed in Las Vegas, Nevada (LAS) and Phoenix,
9 Arizona (PHX) as of June 1, 2008, prior to recent system reductions, have
10 been designated as West protected positions. These protected positions are
11 preserved for West pilot bidding, and displaced West pilots have recapture
rights back to LAS or PHX throughout the term of the Conditions and
Restrictions with few exceptions.
- 12 • If the number of Pilot positions in LAS and PHX increases above the initial
13 protected positions count, then any additional future Captain vacancies in LAS
14 and PHX will be available to East and West pilots on a one for one basis, and
all promotional opportunities arising from West pilot attrition will be reserved
exclusively for West pilots.
- 15 • System-wide date-of-hire bidding will be available to all West pilots at any
16 time following the ratified contract signing date, thereby allowing senior West
17 pilots immediate access to premium widebody bids within East operations that
they do not have access to under the existing TA.
- 18 • West Pilots will be entitled to one-third of the Captain and one-third of the
First Officer positions on up to 25 EMB190 aircraft – on a vacancy basis only.
- 19 • Reductions of Captain Positions system-wide will be shared by both East and
20 West Pilots on a ratio basis. The ratios will be established upon ratified
21 contract signing and are aircraft and pay-group specific; the ratios will be
based on the actual staffing levels that exist at that time. The ratios will be
adjusted one year later to accurately reflect unified single-contract work rules.
- 22 • In the event that EMB190 flying replaces current flying in LAS or PHX,
23 EMB190 positions in LAS or PHX will be available to be designated as
protected positions for West Pilots.

1 23. USAPA’s seniority proposal was designed in 2008 and overall remains a
2 thoughtful, viable *proposal*, representing all of the pilots on the seniority list in an equitable
3 fashion.

4 24. The Merger Committee recognizes that a date-of-hire list without any
5 conditions and restrictions would run counter to the pre-merger career expectations of
6 junior West pilots due to the fact that the East pilots generally are a more senior group.

7 25. Without conditions and restrictions, the West pilot group potentially could be
8 disadvantaged in derogation of their pre-merger career expectations by East pilots bidding
9 ahead of West pilots for desirable pilot positions, vacation, schedules, etc., at least until
10 many older East pilots reach retirement age.

11 26. USAPA’s proposed conditions and restrictions were designed to protect West
12 pilots for an extended interim period, allowing them to capture West attrition, severely
13 restricting the East pilots’ ability to exercise their seniority in Phoenix, and ultimately
14 blending the pilot groups into an unrestricted seniority system as large numbers of East
15 pilot retirements occur, along with other specific protective provisions.

16 27. Ultimately, the USAPA seniority proposal, including its far-ranging
17 conditions and restrictions, is just that – a proposal subject to modification in response to:
18 the changes of circumstances since its inception, direction from the Board of Pilot
19 Representatives, as well as through negotiations with the Company.

20 28. West pilot input has been sought and continues to be sought for consideration
21 and possible implementation within the conditions and restrictions.
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1 29. This input has been sought through advertisement for additional Merger
2 Committee members, direct request during a BPR Merger Committee presentation, and
3 communications with rank-and-file West pilots.

4 30. Recent discussions and correspondence, with the former America West
5 ALPA MEC Merger Committee Chairman, concerning the possibility of serving on
6 USAPA's Merger Committee, were fruitless.

7 31. The historically intractable position of many West pilots – insisting on the
8 ALPA proposal (Nicolau) without modification – has led to their voluntary non-
9 participation in the formation of the existing conditions and restrictions, notwithstanding
10 the fact that those provisions were developed and are in place almost entirely for the benefit
11 of the West pilot group.

12 32. A concern voiced by West pilots during the *Addington* litigation and by West
13 (PHX) base representatives during the BPR Merger Committee presentation, is the potential
14 exposure of many West pilots to furlough due to their initial relative junior seniority
15 position on the combined date-of-hire seniority list. If it unfortunately becomes necessary
16 to furlough pilots, a pilot who was hired last should be furloughed first. However,
17 contractual provisions (minimum block hours), upcoming work rule changes requiring
18 more active pilots, and inevitable forthcoming retirements all add up to form a strong
19 furlough mitigating force that greatly diminishes this concern. With the merger of the two
20 seniority lists, West pilots will also enjoy the added protection of having approximately 80
21 more junior East pilots under them on the seniority list.
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1 33. With the exception of the foundational date-of-hire list, all provisions of the
2 conditions and restrictions remain under review. Undoubtedly, some of the sections will be
3 adjusted.

4 34. For example, the current conditions and restrictions will be changed to reflect
5 the fact that pilot bases have closed, and the duration of the conditions and restrictions will
6 need to be adjusted to allow for the additional time that has passed since the proposal was
7 presented to the Company in September 2008.

8 35. Other sections may change in response to additional input, suggestions, or
9 negotiations.

10 36. In addition to West pilot input, East pilot input has been received. Some of
11 this has strongly advocated in favor of a pure date-of-hire seniority integration without
12 significant conditions and restrictions so that the pilot integration will more closely
13 resemble the seniority integration of the other employee groups on the property. Some of
14 this East pilot input has included threatened future litigation over the proposed conditions
15 and restrictions. USAPA has already been subject to a federal lawsuit by East pilots who
16 alleged that USAPA has an obligation to retroactively apply date-of-hire principles.
17 *Breeger v. US Airline Pilots Ass'n*, 2009 U.S. Dist. LEXIS 40489 (W.D.N.C. May 12,
18 2009). The *Breeger* lawsuit was dismissed on ripeness grounds.

19 37. Attached to this declaration and labeled **Exhibit F** is a true and correct copy
20 of a recent e-mail from an East pilot, Kirk Habib, dated July 21, 2010, received by the
21 Merger Committee, opposing any conditions and restrictions, and threatening litigation
22 from East pilots. This is one of many similar e-mails that have been received by the
23

1 Merger Committee from East pilots threatening litigation over the conditions and
2 restrictions contained within USAPA's seniority proposal.

3 Further your Declarant sayeth not.

4 Pursuant to 29 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is
5 true and correct.

6 Executed on: September 5, 2010

7
8 *Randal E. Mowrey*
Randal E. Mowrey