

1 Lee Seham, Esq., *pro hac vice*
Lucas K. Middlebrook, Esq., *pro hac vice*
2 Nicholas P. Granath, Esq., *pro hac vice*
SEHAM, SEHAM, MELTZ & PETERSEN, LLP
3 445 Hamilton Avenue, Suite 1204
White Plains, NY 10601
4 Tel: 914 997-1346; Fax: 914 997-7125

5 Nick Enoch, Esq., State Bar No. 003076
nick@lubinandenoch.com
6 LUBIN & ENOCH, PC
349 North 4th Avenue
7 Phoenix, AZ 85003-1505
8 Tel: 602 234-0008; Fax: 602 626 3586

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

10 US Airways, Inc., a Delaware Corporation

11 Plaintiff,

12 vs.

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

15 and

16 US AIRLINE PILOTS ASSOCIATION,
17 US AIRWAYS, INC.,

18 Defendants,

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

**DECLARATION OF
PAUL DIORIO**

23

1 I, Paul DiOrio., declare as follows:

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

4 2. I am a commercial airline pilot and have been employed by US Airways, Inc.
5 (“US Airways” or “Company”) since 1989. I am a member of the US Airline Pilots
6 Association (“USAPA”), and currently serve as the Chairman of the USAPA Negotiating
7 Advisory Committee (“NAC”).

8 3. I have held the position of Chairman since May 2008 and am familiar with the
9 current round of bargaining between the pilots represented by USAPA and US Airways.

10 4. The objective of the USAPA NAC is to negotiate a new, single collective
11 bargaining agreement with the merged pilots groups at US Airways, an agreement covering
12 both “East” and “West” pilots.

13 5. Shortly after USAPA became the bargaining agent in April, 2008, the NAC
14 began face to face negotiations with US Airways’ Management. From the onset, USAPA
15 has adopted the approach that any single Collective Bargaining Agreement (“CBA”) must be
16 representative of the contracts at other comparable carriers (i.e., “Industry Standard”).

17 6. The USAPA NAC has defined Industry Standard as a post September 11th,
18 non-bankruptcy era contract. At our first negotiating session on June 24, 2008, we informed
19 the Company of our Industry Standard approach, stating that the longer it waited to reach
20 agreement, the higher the Industry Standard would be. This was a simple statement of fact,
21 but an important point to reiterate just the same. Recent contracts at Jet Blue, Southwest and
22 Alaska Airlines have illustrated the observation.
23

7. When negotiations commenced in June 2008, there were eleven (11) out of

1 thirty (30) contract sections that had been completed (referred to as “tentative agreements” or
2 “TA’s” in ALPA terminology.). Of those previously completed sections, USAPA reopened
3 the following sections: Section 6- Moving Expense; Section 8-Deadheading, Section 11-
4 training, Section 15-Physical Standards and Examinations, Section 19-Investigation,
5 Discipline, Witnesses and Representatives, Section 20-Non-Disciplinary Grievances, Section
6 21- System Board of Adjustment and Dispute Resolution, Section 22-Seniority, and Section
7 29- Union Security and Check Off. Of these reopened sections, USAPA and US Airways
8 have tentatively agreed to Sections 6, 8, 15, 19, and 20, and are very close to reaching
9 tentative agreements on Sections 11, 21, and 29. This will leave nineteen (19) sections
10 remaining, nine (9) of which can be described as relatively low cost.

11 8. Given the fact that USAPA was new to this particular negotiation it was
12 expected that we would review the work of the ALPA Joint Negotiating Committee (“JNC”).
13 In fact, the NAC was charged with this task by USAPA’s governing body, the Board of Pilot
14 Representatives (“BPR”), and given instructions to produce recommendations as to any
15 changes that we considered necessary. Conversely, the Company, even though they were not
16 new to these negotiations, has also reopened previously agreed to areas.

17 9. While USAPA and the Company have been negotiating for more than two (2)
18 years, and have made meaningful progress on many of the “minor” issues, the parties have
19 spent relatively little time and made little, if any, progress on what can be characterized as
20 the major high cost sections. These sections include Sections 1- Scope, which neither side
21 has yet to pass, Section 3- Compensation, Section 7- Vacation, Section 12- Hours of Service,
22 Section 14-Sick Leave, Section 25-Scheduling, Section 27- Health & Welfare Benefits, and
23 Section 28-Retirement.

1 10. One of the major obstacles that continues to plague the negotiating process is a
2 fundamental difference between USAPA and the Company in costing methodologies. The
3 most notable disparity involves determining the effect of specific productivity alterations on
4 staffing levels. In other words, how many, fewer or greater, pilots will be required as the
5 result of a given productivity modification. These costing discrepancies are highlighted in
6 Sections 4- Minimum Pay Guarantees, Rigs, Premiums, and Other Payment Provisions,
7 Section 7-Vacation and Section 12- Hours of Service.

8 11. With respect to Section 4, the Company refuses to provide USAPA with the
9 necessary information required for our costing expert to accurately determine what specific
10 contract changes will ultimately cost. Sections 7 and 12 encompass contractual changes that
11 may require additional pilots (more vacation and fewer hours worked per month). The
12 dispute centers around how many additional pilots will be required. The company insists on
13 using a staffing methodology that is significantly different than the one that is actually used
14 in the day-to-day operation to staff the airline. This artificial methodology greatly increases
15 the number of additional pilots required, thus, greatly overinflating the cost of USAPA's
16 proposals. Until there is a resolution to our costing differences, the parties will be unable to
17 reach agreement on any of these sections.

18 12. Another major obstacle that has proven to be extremely difficult to overcome
19 is reconciling the different sick sections, East and West respectively. Specifically, West
20 pilots have a 500 hour maximum bank and a short term disability plan that they are unwilling
21 to concede while East pilots have a higher 1500 sick bank that they are unwilling to cash out
22 for anything less than full value and no short term disability plan. Because we fully
23 recognize the practical impediment that this issue represents, USAPA has worked in earnest

1 to offer at least two proposals that reconcile the East/West differences only to have the
2 Company reject our proposals out of hand. Unfortunately, our attempts to engage the
3 Company in meaningful discussions on this issue have not been reciprocated.

4 13. Most frustrating for USAPA is that the Company rarely responds to our
5 solutions other than responding with their original position. They negotiate solely with a
6 take-it-or-leave-it approach. Adding to the complexity is the fact that sections 14, 13 and 27
7 are all affected by whether or not short term disability is retained. Until the Company is
8 ready to acknowledge that the salient issues must be adequately addressed and until they are
9 willing to do so in a constructive, forthright, manner there is no possibility of resolving
10 Section 14.

11 14. In reviewing the past two years of negotiations, the word that most often
12 comes to mind is frustration. The USAPA NAC is not as frustrated with the lack of progress
13 as we are about the underlying cause - an unwillingness on the part of the Company to
14 engage in a constructive, solution based dialogue. For two years the Company has generally
15 done nothing but say no to USAPA's proposals, a method that lacks any constructive quality
16 whatsoever. This serves no purpose other than to delay the process. In fact, there have been
17 several occasions when USAPA has directly addressed the Company's stated concerns only
18 to have the Company either flatly refuse our solution or raise entirely new and unrelated
19 objections. Unfortunately, with the breadth of differences that still remain within key
20 Sections of the contract, it is unlikely that a new CBA will be reached for quite some time.
21 When you consider that the root of the problem lies in the lack of constructive methodology,
22 the blame can be squarely laid on the Company for the substantial delay as it is consistently
23 unwilling to reciprocate USAPA's overtures.

1 15. As evidence of its ongoing delay tactics, US Airways actually opposed
2 USAPA's request that the National Mediation Board invoke jurisdiction over the
3 negotiations and assign a mediator to the process. Attached as **Exhibit A** to this declaration
4 is a true and correct copy of the Company's December 4, 2009 letter to the NMB opposing
5 invocation of the Board's mediation services.

6 16. Any tentative agreement reached between USAPA and US Airways is subject
7 to membership ratification. USAPA's balloting process permits a breakdown of the pilot
8 ratification process on a domicile by domicile basis. All West pilots are based at the Phoenix
9 (PHX) domicile.

10 Further your Declarant sayeth not.

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

13 Executed on: September 4, 2010

14 /s/ Paul DiOrio