

1 Karen Gillen  
2 US Airways, Inc.  
3 111 West Rio Salado Parkway  
4 Tempe, AZ 85281  
5 State Bar No. 018008  
6 Facsimile: (480) 693-5932  
7 karen.gillen@usairways.com  
8 Telephone: (480) 693-0800

9 Robert A. Siegel (*pro hac vice*)  
10 Chris A. Hollinger (*pro hac vice*)  
11 Ryan W. Rutledge (*pro hac vice*)  
12 O'Melveny & Myers LLP  
13 400 South Hope Street  
14 Los Angeles, CA 90071-2899  
15 Facsimile: (213) 430-6407  
16 rsiegel@omm.com; chollinger@omm.com  
17 rrutledge@omm.com  
18 Telephone: (213) 430-6000

19 Attorneys for Plaintiff  
20 US Airways, Inc.

21 **UNITED STATES DISTRICT COURT**  
22 **DISTRICT OF ARIZONA**

23 US Airways, Inc., a Delaware  
24 Corporation,

25 Plaintiff,

26 v.

27 Don Addington, an individual; John  
28 Bostic, an individual; Mark Burman, an  
individual; Afshin Iranpour, an  
individual; Roger Velez, an individual;  
and Steve Wargocki, an individual, on  
behalf of themselves and all other  
similarly-situated individuals,

and

US Airline Pilots Association, an  
unincorporated association,

Defendants.

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

**PLAINTIFF US AIRWAYS, INC.'S  
NOTICE OF FILING OF PROPOSED  
CLASS NOTICE PURSUANT TO  
CERTIFICATION ORDER**

1           **PLEASE TAKE NOTICE THAT:**

2           1.       Pursuant to this Court’s Order dated November 2, 2011 [Doc. No. 125] (the  
3 “Certification Order”), counsel for plaintiff US Airways and the counsel for the defendant  
4 West Pilot Class have met and conferred regarding a proposed class notice containing the  
5 information required by the Certification Order.

6           2.       Attached hereto as Exhibit A is the proposed class notice US Airways and  
7 the West Pilot Class have agreed to.

8           3.       The Certification Order also required US Airways and the West Pilot Class  
9 to indicate their preferred method for delivering the notice. US Airways and the West  
10 Pilot Class believe that service via first class U.S. Mail to the last known postal address in  
11 US Airways’ records is appropriate.

12           4.       A list of names and last known addresses of the West Pilot Class is currently  
13 being assembled. US Airways suggests that a schedule for providing notice be discussed  
14 at the December 2, 2011, Scheduling Conference.

15  
16           Respectfully:

17           Dated: November 18, 2011.

O’Melveny & Myers LLP

18  
19           By: Robert A. Siegel  
20 Robert A. Siegel (*pro hac vice*)  
21 Chris A. Hollinger (*pro hac vice*)  
22 Ryan W. Rutledge (*pro hac vice*)  
400 South Hope Street, Suite 1500  
Los Angeles, CA 90071-2899

23 US Airways, Inc.  
24 Karen Gillen, State Bar No. 018008  
111 West Rio Salado Parkway  
25 Tempe, AZ 85281

26 Attorneys for Plaintiff US Airways, Inc.

**CERTIFICATE OF SERVICE**

I hereby certify that on November 18, 2011, the foregoing document was electronically transmitted to the United States District Court Clerk's Office using the CM/ECF System for filing and transmittal.

\_\_\_\_\_  
/s/ Robert A. Siegel

Robert A. Siegel

70127684

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**UNITED STATES DISTRICT COURT  
DISTRICT OF ARIZONA**

US Airways, Inc., a Delaware Corporation,  
  
Plaintiff,

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

**[PROPOSED] NOTICE OF PENDING CLASS ACTION**

v.

Don Addington, an individual; John Bostic, an individual; Mark Burman, an individual; Afshin Iranpour, an individual; Roger Velez, an individual; and Steve Wargocki, an individual, on behalf of themselves and all other similarly-situated individuals,

and

US Airline Pilots Association, an unincorporated association,  
  
Defendants.

**TO ALL PILOTS EMPLOYED BY US AIRWAYS IN SEPTEMBER 2008 WHO WERE ON THE AMERICA WEST SENIORITY LIST ON SEPTEMBER 20, 2005:**

**PLEASE TAKE NOTICE** that, as a pilot employed by US Airways in September 2008 who was on the America West seniority list on September 20, 2005, you are a member of the defendant class described in this Notice and may be affected by the litigation referenced in the above caption . This defendant class is being sued in a court action seeking one of three alternative judicial declarations clarifying whether the defendant US Air Line Pilots Association (“USAPA”) may lawfully insist on a collective bargaining agreement that incorporates a non-Nicolau seniority list or – regardless of whether defendant USAPA may lawfully insist on such an agreement – whether plaintiff

1 US Airways could be liable for accepting such an agreement. The three alternative  
2 declarations at issue are discussed in more detail in Section 2, below.

3 **1. Why this Notice is Being Sent to You.**

4 The United States District Court for the District of Arizona (the “Court”) has  
5 determined that the named defendants listed in the caption above – Don Addington, John  
6 Bostic, Mark Burman, Afshin Iranpour, Roger Velez, Steve Wargoeki, Michael J. Soha,  
7 Rodney Albert Brackin, and George Maliga, as well as any other individuals the Court  
8 may allow (the “Named West Pilots”) – will represent not only themselves but a class  
9 consisting of all pilots employed by US Airways in September 2008 who were on the  
10 America West seniority list on September 20, 2005 (the “West Pilot Class”). This Notice  
11 is being sent to you because available information indicates that you are member of the  
12 West Pilot Class and, accordingly, your rights may be affected by this litigation.

13 **2. Relief Sought**

14 US Airways seeks one of three alternative judicial declarations:

15 (i) USAPA’s continued insistence on a collective bargaining agreement that does not  
16 incorporate a seniority list consistent with the Nicolau Award as required by the  
17 Transition Agreement violates its duty under Section 2, First, of the Railway Labor Act to  
18 “exert every reasonable effort to make and maintain agreements concerning rates of pay,  
19 rules, and working conditions..., in order to avoid any interruption to commerce or to the  
20 operation of any carrier,” and entry into a collective bargaining agreement that does not  
21 incorporate a seniority list consistent with the Nicolau Award as required by the  
22 Transition Agreement constitutes a breach of USAPA’s duty of fair representation to the  
23 West Pilots and therefore US Airways is prohibited from accepting or implementing a  
24 non-Nicolau seniority list; *or, in the alternative,*

25 (ii) USAPA’s continued insistence on and/or entry into a collective bargaining  
26 agreement which does not incorporate a seniority list consistent with the Nicolau Award  
27 would not constitute a breach of USAPA’s obligations under Section 2, First, of the  
28 Railway Labor Act and/or its duty of fair representation to the West Pilots and therefore

1 US Airways is not prohibited from accepting or implementing a non-Nicolau seniority  
2 list; *or, in the alternative,*

3 (iii) Regardless of whether or not USAPA's insistence on and/or entry into a collective  
4 bargaining agreement which does not incorporate a seniority list consistent with the  
5 Nicolau Award would constitute a breach of USAPA's obligations under Section 2, First,  
6 of the Railway Labor Act and/or its duty of fair representation to the West Pilots, US  
7 Airways would not be liable to the West Pilots under the Railway Labor Act or otherwise  
8 if it were to enter into a collective bargaining agreement with USAPA that did not  
9 incorporate a seniority list consistent with the Nicolau Award.

### 10 **3. Background of the Litigation.**

11 US Airways seeks to obtain one of the three judicial declarations set out above to  
12 define its potential liability stemming from a dispute between (i) the named individual  
13 defendants, individually and as representatives of the defendant West Pilot Class, and (ii)  
14 defendant USAPA, the labor union representing all US Airways pilots. The underlying  
15 dispute between the West Pilot Class and USAPA concerns the integration of two pilot  
16 seniority lists subsequent to an airline merger that occurred in 2005.

17 The predecessor to the current US Airways, Inc. merged with America West  
18 Airlines, Inc. ("America West") in September 2005. Approximately 5,000 pilots, known  
19 as "East Pilots," were on the pre-merger US Airways seniority list. Approximately 1,900  
20 pilots, known as "West Pilots," were on the pre-merger America West seniority list. At  
21 the time of the merger, both airlines' pilot groups were represented by the Air Line Pilots  
22 Association ("ALPA") – the East Pilots through the US Airways Master Executive  
23 Council ("East MEC") and the West Pilots through the America West Master Executive  
24 Council ("West MEC"). Pursuant to ALPA's Merger Policy, if two ALPA-represented  
25 pilot groups in an airline merger could not agree on an integrated seniority list through  
26 direct negotiations or mediation, the next step was integration of the pre-merger seniority  
27 lists through an arbitration which the Named West Pilots contend was "final and  
28 binding." The East Pilots and West Pilots could not agree on an integrated seniority list,

1 so – consistent with ALPA’s Merger Policy and a September 23, 2005 Transition  
2 Agreement negotiated between ALPA, the East MEC, the West MEC, pre-merger US  
3 Airways, Inc., and America West Airlines, Inc. – the East Pilots and West Pilots  
4 participated in a seniority-integration arbitration before neutral arbitrator George Nicolau.

5 Arbitrator Nicolau rendered his decision in May 2007 (the “Nicolau Award”). The  
6 East Pilots perceived the Nicolau Award to be far less favorable to them as a group than  
7 the “date-of- hire” integrated seniority list they had sought from Arbitrator Nicolau.  
8 Subsequently, the East Pilots formed defendant USAPA. The East Pilots significantly  
9 outnumbered the West Pilots, and, following a representation election between USAPA  
10 and ALPA, the National Mediation Board (“NMB”) certified USAPA as the new  
11 collective bargaining representative for both the East Pilots and West Pilots. USAPA’s  
12 constitution expressly mandates a “date-of-hire” seniority list and prohibits  
13 implementation of the Nicolau Award. Thereafter, USAPA and US Airways engaged in  
14 collective bargaining negotiations for a single labor contract, the predicate under the  
15 Transition Agreement for implementation of an integrated seniority list, but no agreement  
16 was (or has been) reached. During these negotiations USAPA proposed an integrated  
17 seniority list which the Named West Pilots contend is based on “date-of-hire” consistent  
18 with USAPA’s constitutional mandate and therefore is contrary to the Nicolau Award.

19 **4. Potential Impact of the Litigation on Your Legal Rights.**

20 As a member of the defendant class, you will be legally bound by any future orders  
21 of this Court in this action. By way of example, but not of limitation, this means that you  
22 could be: 1) bound by a judgment that USAPA’s entry into a collective bargaining  
23 agreement with US Airways that does not implement a seniority list consistent with the  
24 Nicolau Award *would* constitute a breach of its duty of fair representation to you as a  
25 West Pilot; *–or–* 2) bound by a judgment that USAPA’s entry into a collective bargaining  
26 agreement with US Airways that does not implement a seniority list consistent with the  
27 Nicolau Award *would not* constitute a breach of its duty of fair representation to you as a  
28 West Pilot; *–or–* 3) bound by a judgment that US Airways would not be liable to you as a

1 West Pilot if it were to enter a collective bargaining agreement with USAPA that did not  
2 implement a seniority list consistent with the Nicolau Award, regardless of whether  
3 USAPA's entry into the agreement would violate its duty of fair representation.

4 **5. Potential Conflicts of Interest.**

5 This Court has determined that currently available evidence indicates that your  
6 rights will be adequately represented by the Named West Pilots, notwithstanding  
7 USAPA's contentions that the interests of the junior and senior West Pilots may differ  
8 and that a conflict of interest may exist to the extent that some or all of the Named West  
9 Pilots may be affiliated with Leonidas, LLC. The Named West Pilots themselves dispute  
10 this allegation, and contend that they can and will adequately protect the interests of all  
11 members of the West Pilot Class.

12 **6. What You Should Do in Response to This Notice.**

13 Option One: If you are satisfied that your interests will be adequately represented  
14 by the Named West Pilots, you do not have to take any action at the present time. You  
15 will be advised of any final orders of this Court by a subsequent notice.

16 Option Two: If you are not satisfied that your interests will be adequately  
17 represented by the persons described above, you have a right to request leave of court to  
18 intervene as a defendant in this action and to present any defenses you might have. In the  
19 event you desire to intervene, you should retain your own attorney. Any request to  
20 intervene in this action must be filed with the Clerk of this Court within thirty (30) days  
21 of receipt of this Notice.

22 **7. Class Counsel.**

23 The West Pilot Class is represented by the following court-appointed class counsel:  
24 Marty Harper, Kelly J. Flood, Andrew S. Jacob, and Katherine V. Brown, of Polsinelli  
25 Shughart, P.C. In the event you have any questions concerning this Notice, or the  
26 litigation generally, you may contact them at One East Washington Street, Suite 1200,  
27 Phoenix, Arizona, 85004, 602-650-2000.

28



\* \* \* \* \*

1  
2 The Clerk of the Court is not allowed to give you any legal advice on this matter or  
3 to provide any additional information on the underlying facts and arguments of this case  
4 other than what is set forth in this Notice. The pleadings and other papers filed in this  
5 action are available for inspection at the offices of the Clerk of the Court. These  
6 documents are also available at <https://ecf.azd.uscourts.gov/>. (Depending on the specific  
7 document, there may be a nominal fee imposed for accessing documents through this  
8 website.)

9 This Notice is not an expression of any opinion by the Court as to the merits of the  
10 claims or defenses asserted by any party in this litigation.

11 **As indicated above, this Notice does not require any action on your part at the**  
12 **present time unless you wish to intervene; however, please consider the contents of**  
13 **this Notice carefully, because you will be legally bound by future orders of this**  
14 **Court.**

15  
16 Dated: November \_\_\_\_, 2011

BY ORDER OF THE COURT

17 \_\_\_\_\_  
18 Clerk of the Court, United States District Court,  
19 District of Arizona

20  
21 70122246  
22  
23  
24  
25  
26  
27  
28