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**UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA**

US Airways, Inc., a Delaware Corporation,

Plaintiff,

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.

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

RULE 16 SCHEDULING ORDER

1. Pursuant to the terms of the Case Management Plan and the representations made by the parties at the Rule 16 Scheduling Conference, all parties shall comply with the deadlines established in this Order.

A. All proceedings concerning this case shall be in accordance with the Federal Rules of Civil Procedure.

B. All Initial Disclosures as defined in FRCP 26(a)(1), if not already disclosed prior to the Scheduling Conference, shall be made **no later than December 15, 2011**.

C. To satisfy the requirements of FRCP 26(a)(1), the parties shall file with the Clerk of the Court a Notice of Initial Disclosure, rather than copies of the actual disclosures.

1 D. Procedural motions including Motions to Amend the Complaint or Answer,
2 and Motions to Join Additional Parties shall be filed no later than sixty (60) days
3 following service of the Class Notice. All Motions to Amend shall attach a copy of the
4 proposed complaint or answer.
5

6 E. The parties shall disclose the identity of all persons who may be used at
7 trial to present evidence under Federal Rules of Evidence (FRE) 701, 702, 703, 704, and
8 705 no later than
9

10 **[US Airways and the West Pilot Class contend that no expert discovery or**
11 **expert disclosures are necessary during Phase I in advance of the expedited**
12 **cross motions for summary judgment by the defendants on Counts I and II.**
13 **If both motions are denied and Phase II becomes necessary, then this date**
14 **should be set at the Interim Rule 16 Status Hearing.]**
15

16 **[USAPA proposes April 30, 2012].**

17 The parties shall disclose the identity of all persons who may be used at trial to
18 provide rebuttal evidence under FRE 701, 702, 703, 704, or 705 no later than:
19

20 **[US Airways and the West Pilot Class contend that no expert discovery or**
21 **expert disclosures are necessary during Phase I. If both motions are denied and**
22 **Phase II becomes necessary, then this date should be set at the Interim Rule 16**
23 **Status Hearing.]**
24

25 **[USAPA proposes June 1, 2012].**

26 The parties shall disclose reply expert disclosures no later than:

27 **[US Airways and the West Pilot Class contend that no expert discovery or**
28 **expert disclosures are necessary during Phase I. If both motions are denied**

1 **and Phase II becomes necessary, then this date should be set at the Interim**
2 **Rule 16 Status Hearing.]**

3 **[USAPA proposes June 29, 2012].**

4
5 No deposition of any expert witness shall occur before the disclosures concerning
6 expert witnesses mandated by this Order have been made.

7 The disclosures of the identities of all persons who may be used at trial to present
8 evidence under FRE 701,702, 703, 704, or 705 shall also include all of the disclosures
9 required by FRCP 26(a)(2)(B) if the witness is either (1) retained or specifically
10 employed to provide expert testimony in the case, or (2) is an agent or employee of the
11 party offering the testimony whose duties regularly involve giving expert testimony.¹

12
13 F. All discovery, including answers to interrogatories, production of
14 documents, depositions and requests to admit shall be completed by:

15
16 **[US Airways and the West Pilot Class contend that no discovery is necessary**
17 **during Phase I. If both motions are denied and Phase II becomes necessary, then**
18 **this date should be set at the Interim Rule 16 Status Hearing.]**

19 **[USAPA proposes July 27, 2012].**

20
21 G. The parties shall finally supplement all discovery, including material
22 changes in expert witness opinions and material disclosures, pursuant to FRCP 26(a)(3),
23 of all exhibits to be used and all witnesses to be called at trial, on or before
24

25 **[US Airways and the West Pilot Class contend that no discovery (including**
26 **expert discovery) is necessary during Phase I. If both motions are denied and Phase**

27 _____
28 ¹The parties are on notice that this Order requires disclosure different than that
required by FRCP 26(a)(2).

1 **II becomes necessary, then this date should be set at the Interim Rule 16 Status**
2 **Hearing.]**

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5 **[USAPA proposes August 17, 2012.]²**

6 H. Discovery by interrogatory shall be governed by the national uniform
7 requirements set forth in FRCP 33.

8 I. Depositions shall be limited by the national uniform requirements set forth
9 in Rules 30, 31, and 32 of the FRCP.

10
11 J. Motions on discovery matters are prohibited. Should a discovery dispute
12 arise Counsel shall consult and make a sincere effort to resolve the matter(s). If the
13 parties cannot reach a resolution, they are directed to jointly file and fax, (602)322-7529,
14 a joint statement of the issue(s), limited to one page per issue. Upon review of the
15 statement an Order will issue regarding further action required by the parties. This
16 procedure differs from the procedure set forth in Local Rule 7.2(j). The parties shall also
17 consult the Court's Standing Order concerning discovery disputes to ensure full
18 compliance with the Court's discovery dispute procedures, some of which are not
19 included here. The Standing Order is available on the District of Arizona website:
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24 ² **The parties are on notice that this order supersedes the “30 days before trial”**
25 **disclosure deadline contained in FRCP 26(a)(3). Therefore, failure to timely**
26 **supplement pursuant to Rule 26(e), including attempts to include witnesses and**
27 **exhibits in the Proposed Final Pretrial Order or at trial that were not previously**
28 **disclosed in a timely manner may result in the exclusion of such evidence at trial or**
the imposition of other sanctions including dismissal and the imposition of default
pursuant to FRCP 37, the Local Rules of Civil Procedure of the District Court, and
the inherent power of the Court.

1 [http://www.azd.uscourts.gov/azd/contacts.nsf/125a095259a5393407256ec10063ad7d?Op](http://www.azd.uscourts.gov/azd/contacts.nsf/125a095259a5393407256ec10063ad7d?OpenView)
2 enView

3 K. This Order contemplates that each party will conduct discovery to permit
4 completion within the deadline. Any discovery which results in insufficient time to
5 undertake necessary additional discovery and which requires an extension of the
6 discovery deadline will be met with disfavor, will only be granted for good cause or only
7 to prevent manifest injustice pursuant to FRCP 16(b) and (e), and may result in denial of
8 an extension, exclusion of evidence, or the imposition of other serious sanctions pursuant
9 to FRCP 37(b),(c),(d).
10

11 L. All dispositive motions shall be filed no later than:

12 **[US Airways proposes that the West Pilot Class and USAPA file motions for**
13 **summary judgment no later than January 12, 2012, Oppositions no later than**
14 **February 20, 2012 and Replies no later than March 9, 2012.]**
15

16 **[The West Pilot Class proposes that US Airways and USAPA serve objections**
17 **to the West Pilots' exhibits and transcripts by 5:00 PM (Pacific) on December 9,**
18 **2011, that the West Pilots file their motion for summary judgment by 5:00 PM on**
19 **December 23, 2011, that US Airways and USAPA file responses and motions by 5:00**
20 **PM Pacific on January 23, 2012 and that the West Pilots file Replies by 5:00 PM**
21 **Pacific on February 10, 2012.]**
22

23 **[USAPA proposes September 21, 2012; If US Airways and the West Pilot**
24 **Class advise at the Scheduling Conference that they will not be conducting any**
25 **discovery or serving expert disclosures, then USAPA proposes April 30, 2012.]**
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1 **[In the event that the Court orders discovery prior to filing dispositive**
2 **motions, the West Pilots reserve the right to conduct discovery and serve expert**
3 **disclosures to the full extent necessary.]**Unless permitted by Order of the Court, only
4 **one** dispositive motion is allowed to be filed by each party.

6 M. All parties are specifically admonished that pursuant to LRCiv 7.2(i), "[i]f a
7 motion does not conform in all substantial respects with the requirements of this Rule, or
8 **if the opposing party does not serve and file the required answering memoranda, or**
9 **if counsel for any party fails to appear at the time and place for oral argument, such**
10 **non-compliance may be deemed a consent to the denial or granting of the motion**
11 **and the Court may dispose of the motion summarily."**

13 N. The parties shall keep the Court apprised of settlement negotiations and the
14 progress of discovery. A joint statement to the Court concerning the status of settlement
15 discussions (containing no specific settlement terms or offers) and the progress of
16 discovery shall be filed by

18 **[US Airways and the West Pilot Class contend that since neither discovery**
19 **nor settlement negotiations will be conducted during Phase I, this date should be set**
20 **at the Interim Rule 16 Status Hearing (should Phase II become necessary).]**

22 **[USAPA proposes May 15, 2012.]**
23 and initially labeled 'FIRST NOTICE OF DISCOVERY AND SETTLEMENT,' and
24 shall be subsequently filed every FOUR (4) months thereafter. If settlement is reached the
25 parties shall file a Notice of Settlement with the Clerk of the Court with a copy to Judge
26 Silver's Chambers.
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1 **O. A Joint Proposed Pretrial Order, all Motions in Limine, a Joint Statement**
2 **of the Case, Joint Jury Instructions, Verdict Form, and Stipulated *Voir Dire***
3 **Questions** to be added to the Court’s standard Jury Questionnaire shall be lodged and
4 filed by
5

6 **[US Airways and the West Pilot Class contend that this date should be set at**
7 **the Interim Rule 16 Status Hearing (should Phase II become necessary).]**

8 **[USAPA proposes November 15, 2012.]**

9
10 If dispositive motions have been filed, the Joint Proposed Pretrial Order and Motions in
11 Limine and other documents shall be due either on the above date or no later than three
12 weeks before the trial commences, whichever is later. The content of the Joint Proposed
13 Pretrial Order is that prescribed in the Court’s form of Joint Proposed Pretrial Order. [See
14 Court’s website: www.azd.uscourts.gov under “Judges and Courtrooms/Orders, Forms &
15 Procedures”). Responses to Motions in Limine are due 15 days after the Motions are
16 filed, and no Replies are permitted unless specifically ordered by the Court.
17

18 P. If the case will be tried to the Court, rather than to a jury, in addition to
19 filing a **Joint Proposed Pretrial Order**, each party shall file **Proposed Findings of Fact**
20 **and Conclusions of Law** on the same date the Joint Proposed Pretrial Order is due.
21

22 Q. The attorneys who will be trying the case for each of the parties shall
23 appear at the **Final Pretrial Conference** that will be scheduled as promptly as possible
24 after the filing of the Joint Proposed Pretrial Order. The attorneys appearing at the
25 conference shall be prepared to address the merits of all issues raised in the Joint
26 Proposed Pretrial Order and fully briefed Motions in Limine. Unless one has already been
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1 established, the Court will set a firm trial date at the **Pretrial Conference**, and will sign
2 the **Final Pretrial Order** with any additional instructions for trial preparation.

3 R. Any other final pretrial matters required pursuant to FRCP 26(a)(3) are due in
4 accordance with this Order prior to the preparation and filing of the **Joint Proposed**
5 **Pretrial Order**.

6
7 S. The parties shall file their proposed voir dire questionnaire and questions,
8 statement of the case, jury instructions, and form of verdict in WordPerfect 9.0 format in
9 addition to other written materials filed with the Clerk of the Court.

10
11 T. An Interim Rule 16 Status Hearing is scheduled for

12 **[The parties propose 45 days after the Court issues its decision on defendants’**
13 **cross motions for summary judgment.]**

14
15 Prior to the Interim Hearing, counsel are to prepare and file a Joint Status Report
16 by

17 **[The parties propose 30 days after the Court issues its decision on**
18 **defendants’ cross motions for summary judgment.]**

19
20 This Court views compliance with the provisions of this Order as critical to its
21 case management responsibilities and the responsibilities of the parties under FRCP 1.