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

12 US AIRWAYS, INC., a Delaware  
 corporation, *et al.*,

13 *Plaintiff,*

14 vs.

15 Don ADDINGTON; John BOSTIC;  
 Mark BURMAN; Afshin IRANPOUR;  
 Roger VELEZ; Steve WARGOCKI;  
 16 Michael J. SOHA; Rodney Albert  
 BRACKIN; and George MALIGA, on  
 17 behalf of themselves and the certified  
 WEST PILOT CLASS,

18 and

19 US AIRLINE PILOTS ASS'N, an  
 unincorporated association,

20 *Defendants.*

CASE NO. 2:10-cv-01570-PHX-ROS

21 **WEST PILOTS' RESPONSE TO:**

22 **(1) PLAINTIFF US AIRWAYS,  
 INC.'S SEPARATE STATEMENT  
 OF UNDISPUTED FACTS . . .  
 (Doc. 156-1)**

**And  
 (2) US AIRLINE PILOTS  
 ASSOCIATION'S SEPARATE  
 STATEMENT OF FACTS . . .  
 (Doc. 153)**

23 Don ADDINGTON, John BOSTIC, Mark BURMAN, Afshin IRANPOUR,  
 24 Roger VELEZ, Steve WARGOCKI, Michael J. SOHA, Rodney Albert BRACKIN,  
 25 and George MALIGA, on behalf of themselves and the certified WEST PILOT  
 26 CLASS (collectively, the "West Pilots"), respond to the separate statements of  
 27 facts filed by US Airways (Doc. 156-1) and by USAPA (Doc. 153).

1 **I. Response to US Airways Statement of Facts**

2 The West Pilots only contest part of paragraph 30 of the US Airways  
3 Statement of Facts (156-1). The Hemenway Declaration at ¶ 5 (Doc. 108) does  
4 not support the reason stated by US Airways as to why negotiation of a single  
5 collective bargaining agreement has not occurred. Regardless, that point is not  
6 material to deciding the motions at issue. The West Pilots otherwise do not  
7 dispute the facts stated in this or any other paragraph in the US Airways  
8 statement of facts.

9 **II. Response to USAPA Statement of Facts**

10 For purposes of deciding the pending competing summary judgment  
11 motions (Docs. 150, 152), the West Pilots state as follows in regard to the  
12 paragraphs in USAPA's Statement of Facts (Doc. 153):

- 13 1. Contested but immaterial to deciding the motions at issue.<sup>1</sup>  
14 2. Uncontested, but largely immaterial to deciding the motions at  
15 issue.  
16 3. Contested in part, but immaterial to deciding the motions at  
17 issue.<sup>2</sup>  
18 4. Uncontested.

19 \_\_\_\_\_  
20 <sup>1</sup> A Standard and Poors report, attached hereto as Exhibit "A," states: "On  
21 September 27, 2005, US Airways Group, Inc. was formed by merging the  
22 former US Airways Group, which was operating under Chapter 11 bankruptcy  
23 protection, with AmericaWest Holdings. AmericaWest was the surviving  
24 company in the merger, and adopted the US Airways name upon completion of  
25 the transaction" and noting that AmericaWest stockholders received an equity  
26 interest in the new entity while "[e]quity stakes in the former US Airways were  
cancelled."). Available online on Feb. 10, 2012, at << [http://solutions.standard  
andpoors.com/SP/stkscreener/Overview.do?ticker=LCC&pc=JAN&auth=08515  
0196224055233187040139188220016243096142070&tracking=JAN](http://solutions.standardandpoors.com/SP/stkscreener/Overview.do?ticker=LCC&pc=JAN&auth=085150196224055233187040139188220016243096142070&tracking=JAN) >>

27 <sup>2</sup> On May 19, 2005, America West also operated flights into Canada,  
28 Mexico, Costa Rica and Alaska. *Stockdell Decl.* at ¶ 5 (filed concurrently).

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5. Uncontested.

6. Uncontested.

7. Contested in part but immaterial to deciding the motions at issue.<sup>3</sup>

8. Contested in part but immaterial to deciding the motions at issue.<sup>4</sup>

9. Uncontested.

10. Uncontested.

11. Uncontested.

12. Uncontested.

13. Uncontested.

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<sup>3</sup> The USAPA seniority proposal shows that the East Pilot seniority list itself is not strictly based on date of hire because the seniority of former Empire pilots is governed by a 1986 agreement, not their dates of hire. See Doc. 151-2 at 28 [App. 187] (“Notwithstanding any of the foregoing and section VII below, for purposes of determining furlough, the former Empire pilots shall be governed by § 20.B of the Piedmont/ALPA Letter of Agreement dated February 12, 1986.”).

In addition, mergers of ALPA airlines have resulted in pilots with more recent date of hire at one merged airline placed ahead of pilots at another merged airline. See *Air Wisconsin Pilots Protection Committee v. Sanderson*, 909 F.2d 213 (7th Cir. 1990) (explaining that the seniority integration at issue and enforced by ALPA “gave Mississippi Valley's pilots greater seniority than they would have obtained if only length of service had been considered, but less than they had asked for.”).

<sup>4</sup> More complete information on the furloughed East Pilots who were working for Mid Atlantic is found in the Nicolau Award at p. 20-21, explaining why these pilots were put at the bottom of the integrated list. Doc. 151-1 at 22 [ADD 024-025; App 020-021].

1 14. Contested in part but immaterial to deciding the motions at  
2 issue.<sup>5</sup>

3 15. Uncontested.

4 16. Contested but immaterial to deciding the motions at issue.<sup>6</sup>

5 17. Uncontested.

6 18. Uncontested.

7 19. Uncontested but immaterial to deciding the motions at issue.<sup>7</sup>

8 20. Uncontested.

9 21. Contested but immaterial to deciding the motions at issue.<sup>8</sup>

10 22. Uncontested but immaterial to deciding the motions at issue.

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13 <sup>5</sup> The restrictions in the Transition Agreement on flight routes during  
14 separate operations should be read in their entirety.

15 <sup>6</sup> The assertion: “The pilot neutrals serve as independent decision makers  
16 and do not act as representatives of the respective Merger Committees.” This is  
17 not supported by the text of ALPA Merger Policy and Mr. Mowrey has no  
18 foundation for having such knowledge. Regardless, it is immaterial to the  
19 motions at issue.

20 <sup>7</sup> Captain Brucia’s dissent should be read in its entirety to fully  
21 understand his position and should be read along with Mr. Nicolau’s  
22 explanation why that position was rejected by the majority of the board. Doc.  
23 151-1 at 33 [ADD 035; App. 031].

24 <sup>8</sup> The reasons why the US Airways MEC demanded that ALPA set aside the  
25 Nicolau Award are speculative. The evidence provided by USAPA merely shows  
26 the fact that US Airways MEC made certain arguments to ALPA. It does not  
27 establish the validity of those arguments. Furthermore, the MEC’s challenge to  
28 the Nicolau Award was rejected by ALPA on the merits. Doc. 151-1 at 137  
[ADD 2152; App. 135 (ALPA president stating, “the Executive Council has  
determined that there is no ground under ALPA Merger Policy to set aside the  
seniority award.”)].

- 1 23. Contested but immaterial to deciding the motions at issue.<sup>9</sup>
- 2 24. Uncontested.
- 3 25. Contested but immaterial to deciding the motions at issue.<sup>10</sup>
- 4 26. Uncontested.
- 5 27. Uncontested.
- 6 28. Uncontested.
- 7 29. Uncontested.
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<sup>9</sup> The full text of the West MEC filing in the D.C. District Court states: “the final product of ALPA Merger Policy is not a binding seniority list; a seniority list can be binding and enforceable only after ALPA proposes the list and the employer agrees to it so that it becomes part of the collective bargaining agreement governing the employees’ terms and conditions of employment.” Doc. 11-2 at 4 in Case 1:07-cv-01309-EGS (D.D.C. Sep. 9, 2007) (emphasis added) [USAPA’s Exhibit 9]. It should be noted that US Airways agreed to the list on December 20, 2007. Doc. 151 at ¶ 34.

<sup>10</sup> The evidence merely shows that the US Airways MEC stated that the East Pilots would not ratify a contract that incorporated the Nicolau Award. The MEC had no reliable foundation to make such a determination. The statement by Mr. Mowrey concerning career expectation is ambiguous, self serving, and conclusory. Moreover, even if true the degree of East Pilot intransigence is immaterial. *See Addington v. US Airline Pilots, Ass’n*, 2009 WL 2169164, \*18 (Jul. 17, 2009) (“In effect, USAPA claims that the East Pilots hold such strong objections to the Nicolau Award that they always will vote as a bloc against any new CBA with it, enjoying the self-denial of a single CBA with improved wages and working conditions into perpetuity. Even if this unbelievable story is believed, it only means that the East Pilots have the power of self-inflicted harm. It does not mean that the union’s duty of fair representation falls victim to self-hostagetaking.”).

1 34. Contested but immaterial to deciding the motions at issue.<sup>11</sup>

2 35. Uncontested but incomplete and misleading, yet immaterial to  
3 deciding the motions at issue.<sup>12</sup>

4 36. Contested but immaterial to deciding the motions at issue.<sup>13</sup>

5 37. Uncontested.

6 38. Contested. This is incomplete and misleading because it omits  
7 the following facts:

8 • The USAPA List makes no adjustment for whether a pilot was on  
9 furlough at the time of the merger.<sup>14</sup>

10 • The USAPA List puts a majority of West Pilots at or close to the  
11 bottom of the list.<sup>15</sup>

12 • The West Pilot protections disappear if the Airline were to reduce  
13 the total number of pilot positions by 25% or more.<sup>16</sup>

14 • The USAPA List offers no West Pilot protections against  
15 furloughs because the Airline would implement all furloughs  
16 and recalls on a date-of-hire basis.<sup>17</sup>

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17 <sup>11</sup> USAPA could have established representatives of the East and West  
18 Pilots to substitute in for the MECs. *See* Fed. R. Civ. P. Rule 17.

19 <sup>12</sup> All west pilots who were furloughed in 2008 had jobs at time of merger  
20 in 2005. In contrast, all East pilots who were furloughed in 2008 were hired  
21 after the 2005 merger.

22 <sup>13</sup> Statements made in US Airways SEC filings are hearsay where offered to  
23 prove the truth of the matter asserted. Without additional information, these  
24 filings do not establish that America West was actually operated at a loss. They  
25 merely establish that it was “booked” by US Airways as operating at a loss.

26 <sup>14</sup> RT at 766:9 to 766:11 [App. 301] (West Pilot Brian Stockdell).

27 <sup>15</sup> *Id.*

28 <sup>16</sup> *US Airways Seniority Integration* at § VIII [USAPA 2514-2515; App. 191-  
192].

<sup>17</sup> *Id.* at § VII [USAPA 2514; App. 191].

1 39. Uncontested but incomplete and misleading, yet immaterial to  
2 the motions at issue.<sup>18</sup>

3 40. Uncontested but immaterial to the motions at issue.

4 41. Uncontested.

5 42. Uncontested.

6 43. Uncontested.

7 44. Uncontested.

8 45. Uncontested.

9 46. Contested but immaterial to deciding the motions at issue.<sup>19</sup>

10 47. Uncontested but immaterial to deciding the motions at issue.

11 48. Uncontested but immaterial to deciding the motions at issue.<sup>20</sup>

12 49. Uncontested but immaterial to deciding the motions at issue.

13 50. Uncontested but immaterial to deciding the motions at issue.

14 51. Contested but immaterial to deciding the motions at issue.<sup>21</sup>

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15 <sup>18</sup> There is no evidence that ALPA changed its policy in response to  
16 perceived problems with the Nicolau Award. Moreover, there is no evidence that  
17 the arbitration of this seniority integration would have had a different result if  
18 it had been conducted under the current version of ALPA Merger Policy.

19 <sup>19</sup> There is no evidence supporting footnote 4. It is not even clear who is  
20 claiming to have the information and belief stated in this footnote. The facts  
21 stated in the body of this paragraph are otherwise uncontested.

22 <sup>20</sup> Presently, USAPA has 1096 West Pilot members and 2643 East Pilot  
23 members. *Stockdell Decl.* at ¶ 6. Consequently, assuming 100% approval by  
24 West Pilots, a contract incorporating the Nicolau Award would pass ratification  
25 if it had 30% approval by East Pilots. *See id.*

26 <sup>21</sup> USAPA is not open to negotiation. A November 2011 update from the  
27 USAPA negotiation committee, attached hereto as Exhibit "B," states in regard  
28 to USAPA's latest contract proposal: "this document incorporates the  
Association's September 2008 seniority proposal. In doing so, we reject the  
statements that have been made by senior management that a solution on  
seniority must be reached before there can be an agreement." *NAC Update*, 8  
(Nov. 16, 2011).

1 52. Contested but immaterial to deciding the motions at issue.<sup>22</sup>

2 53. Uncontested but immaterial to deciding the motions at issue.

3 54. Uncontested but immaterial to deciding the motions at issue.

4 55. Uncontested.

5 56. Contested.<sup>23</sup>

6 Dated this 21st day of February, 2012.

7 **POLSINELLI SHUGHART, PC**

8 /s/ Andrew S. Jacob

9 By \_\_\_\_\_

10 Marty Harper

11 Kelly J. Flood

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15 One East Washington St., Ste. 1200

16 Phoenix, AZ 85004

17 *Attorneys for Addington Pilots*

18 A November 2011 letter to pilots from USAPA President Cleary, attached  
19 hereto as Exhibit "C," states: "Regardless of the hyperbolic claims of those who  
20 could benefit from the weakening of your resolve to achieve a seniority  
21 integration that is respectful of a worker's history of service to a merged airline,  
22 we have proven one thing for certain – that an unratifiable bargaining proposal  
from a predecessor union remains something that moves none of us towards a  
practical, real world solution to the seniority issue. [O]ur goal. . . remains  
unchanged." *President's Message*, 2 (Nov. 8, 2011).

23 <sup>22</sup> This is an incomplete statement of fact that fails to explain the  
24 consequences to a West Pilot accepting recall to the bottom of the East  
Seniority list. See Doc. 151 at ¶¶ 69-70.

25 <sup>23</sup> On November 10, 2010, USAPA issued a press release attached hereto  
26 as Exhibit "D," wherein it quoted Michael Cleary as stating, "Everyone has their  
27 breaking point, and we are prepared to strike as soon as we are legally  
28 permitted to do so by the Railway Labor Act."



**CERTIFICATE OF SERVICE**

I hereby certify that on this 21st day of February 2012, I electronically transmitted the foregoing document to the U.S. District Court Clerk's Office by using the ECF System for filing and transmittal.

*/s/ Andrew S. Jacob*

By \_\_\_\_\_

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