

CV-10-01570-PHX-ROS, February 9, 2011

1 UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF ARIZONA

3 US Airways, Inc., a Delaware)
4 corporation,)
5)
6 Plaintiff,)
7)
8 vs.) CV 10-01570-PHX-ROS
9)
10 Don Addington, an individual, et)
11 al.,)
12)
13 Defendant.) Phoenix, Arizona
14) February 9, 2011
15) 2:10 p.m.
16 and)
17)
18 US Airline Pilots Association,)
19)
20)
21 Defendants.)
22)
23)
24)
25)

15 BEFORE: THE HONORABLE ROSLYN O. SILVER, JUDGE

16 REPORTER'S TRANSCRIPT OF PROCEEDINGS

17 MOTION HEARING

18
19
20 Official Court Reporter:
21 **Elaine Cropper, RDR, CRR, CCP**
22 Sandra Day O'Connor U.S. Courthouse
23 401 West Washington Street,
24 Suite 312, Spc. 35
25 Phoenix, Arizona 85003-2150
(602) 322-7245

Proceedings Reported by Stenographic Court Reporter
Transcript Prepared by Computer-Aided Transcription

CV-10-01570-PHX-ROS, February 9, 2011

1
2 APPEARANCES

3 For the Plaintiff US Airways, Inc., a Delaware corporation:

4 **ROBERT A. SIEGEL, ESQ.**

5 O'Melveny & Myers, L.L.P.
6 400 Hope Street, Suite 1227
7 Los Angeles, CA 90071-2899
8 213.430.6005/(fax) 213.430.8144

9 **CHRIS A. HOLLINGER, ESQ.**

10 O'Melveny & Myers, L.L.P.
11 275 Battery Street, Suite 2600
12 San Francisco, CA 94111-3344
13 415.984.8906/(fax) 415.984.8701

14 **KAREN GILLEN, ESQ.**

15 US Airways, Inc.
16 111 W. Rio Salado Parkway
17 Tempe, AZ 85281
18 480.693.5835/(fax) 602.778.3750

19 For the Defendant US Airline Pilots Association:

20 **LEE SEHAM, ESQ.**

21 **LUCAS K. MIDDLEBROOK, ESQ.**

22 Seham, Seham, Meltz & Petersen, L.L.P.
23 445 Hamilton Avenue, Suite 1204
24 White Palins, NY 10601
25 914.997.1346/(fax) 914.997.7125

NICHOLAS P. GRANATH, ESQ.

Seham, Seham, Meltz & Petersen, L.L.P.
2915 Wayzata Boulevard
Minneapolis, MN 55405
612.341.9080/(fax) 612.341.9079

STANLEY LUBIN, ESQ.

Lubin & Enoch, P.C.
349 N. 4th Avenue
Phoenix, AZ 85003
602.234.0008/(fax) 602.626.3586

(Next page, please.)

CV-10-01570-PHX-ROS, February 9, 2011

APPEARANCES (Continued)

For the Defendants US Airways West Pilots:

MARTY HARPER, ESQ.

ANDREW S. JACOB, ESQ.

KELLY J. FLOOD, ESQ.

KATHERINE V. BROWN, ESQ.

Polsinelli Shughart, P.C.

1 E. Washington Street, Suite 1200

Phoenix, AZ 85004

602.650.2000/(fax) 602.264.7033

CV-10-01570-PHX-ROS, February 9, 2011

P R O C E E D I N G S

(Court was called to order by the courtroom deputy.)

(Proceedings begin at 2:10.)

THE COURT: Please be seated.

COURTROOM DEPUTY: This is case number CV-10-1570, *US Airways, Inc., vs. Don Addington, et al.*, on for oral argument. 02:10:53

Counsel, please announce for the record.

MR. SIEGEL: Good afternoon, Your Honor. Robert Siegel of O'Melveny & Myers for US Airways.

THE COURT: Thank you. 02:11:11

MR. HOLLINGER: Chris Hollinger, O'Melveny & Myers, for US Airways.

THE COURT: Thank you.

MS. GILLEN: Karen Gillen from US Airways.

MR. LUBIN: Stanley Lubin, Lubin & Enoch, for USAPA. 02:11:21

MR. SEHAM: Lee Seham, Seham, Seham, Meltz & Petersen, for USAPA.

MR. GRANATH: Nick Granath for USAPA.

MR. MIDDLEBROOK: Lucas Middlebrook of Seham, Seham, Meltz & Petersen, for USAPA. 02:11:36

MR. HARPER: Marty Harper from Polsinelli Shughart. We are here on behalf of the West Pilots, US Airways.

MR. JACOBS: Your Honor, Andrew Jacob of Polsinelli Shughart.

MS. FLOOD: And Kelly Flood of Polsinelli Shughart 02:11:56

CV-10-01570-PHX-ROS, February 9, 2011

1 because we've already been sued by East Pilots who say we 03:10:16
2 should be doing what AFA did and what the IAM did and what the
3 TWU did and we said we're not going to do that. We're not
4 going to apply this seniority retroactively.

5 And that case was dismissed on ripeness. And we have 03:10:33
6 been threatened by other East Pilots who said, "You stand for
7 date of hired and I'm not going to be able to use my seniority
8 in West operations? How dare you?"

9 We're not going to solve anything today. We're just
10 going to have different lawsuits. 03:10:45

11 One of the lawsuits we're going to have if this court
12 imposes the Nicolau award is the *Naugler* case that we've
13 referenced in our papers. ALPA is accused of having
14 deliberately committed a falsified seniority list because part
15 of Nicolau's decision was to say pilots on furlough back in 03:11:02
16 2005, even with 16 years of seniority, get zero. It became all
17 important who was actually on furlough and who was not.

18 There were hundreds of pilots working in the
19 Mid-Atlantic Division of US Airways who were US Airways pilots.
20 So Nicolau got it wrong, as far as we're concerned, but he 03:11:22
21 couldn't even get it wrong right because his whole logic based
22 on furloughs was misapplied. And it was misapplied allegedly
23 according to a lawsuit pending in the Eastern District of New
24 York. It was misapplied because ALPA lied.

25 ALPA's argument in that litigation is, Your Honor, 03:11:42

United States District Court

CV-10-01570-PHX-ROS, February 9, 2011

1 this case is not ripe because Nicolau may not be implemented; 03:11:44
2 but if Nicolau is implemented, then the company is just in
3 another lawsuit about whether the Nicolau award was corrupted
4 by ALPA's forged seniority list.

5 THE COURT: So you're going to have once -- assuming 03:12:01
6 it ever occurs -- the collective bargaining agreement is
7 entered into, then you are projecting lawsuits?

8 MR. SEHAM: We've already been threatened with
9 lawsuits. One that was declared unripe in the -- in Charlotte,
10 North Carolina, in a Federal District Court, that USAPA would 03:12:29
11 be sued for not more aggressively applying the concept of date
12 of hire. And we've also received e-mails saying that the
13 conditions and restrictions are too onerous with respect to the
14 restriction on East Pilots' exercise of seniority.

15 THE COURT: So no matter how much you do for them and 03:12:50
16 how, from your perspective, you engage in good faith through
17 these negotiations, you expect to still be sued by the
18 Addington group?

19 MR. SEHAM: I think, frankly, if the Addington -- if
20 you're referring to the Addington group, that we have a 03:13:13
21 situation where we put together a package -- and this is our
22 goal, to live and let live. What you brought to the operation
23 is yours. What we brought to the operation -- because that was
24 the problem with Nicolau was that it was going to give pilots
25 with five months' seniority the ability to bid over someone 03:13:31

CV-10-01570-PHX-ROS, February 9, 2011

C E R T I F I C A T E

03:28:50

I, ELAINE M. CROPPER, do hereby certify that I am
duly appointed and qualified to act as Official Court Reporter
for the United States District Court for the District of
Arizona.

03:28:50

I FURTHER CERTIFY that the foregoing pages constitute
a full, true, and accurate transcript of all of that portion of
the proceedings contained herein, had in the above-entitled
cause on the date specified therein, and that said transcript
was prepared under my direction and control, and to the best of
my ability.

03:28:50

DATED at Phoenix, Arizona, this 14th day of February,
2011.

03:28:50

s/Elaine M. Cropper

03:28:50

Elaine M. Cropper, RDR, CRR, CCP

United States District Court