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11 Attorneys for Plaintiff  
12 US Airways, Inc.

13 **UNITED STATES DISTRICT COURT**  
14 **DISTRICT OF ARIZONA**

15 US Airways, Inc., a Delaware  
16 Corporation,

17 Plaintiff,

18 v.

19 Don Addington, an individual; John  
20 Bostic, an individual; Mark Burman, an  
21 individual; Afshin Iranpour, an  
22 individual; Roger Velez, an individual;  
23 and Steve Wargocki, an individual, on  
24 behalf of themselves and all other  
25 similarly-situated individuals,

23 and

24 US Airline Pilots Association, an  
25 unincorporated association,

26 Defendants.

Case No. 2-10-cv-1570-PHX-ROS

**DECLARATION OF ROBERT A.  
SIEGEL IN SUPPORT OF PLAINTIFF  
US AIRWAYS, INC.'S MOTION FOR  
RELIEF FROM JUDGMENT  
PURSUANT TO FEDERAL RULE OF  
CIVIL PROCEDURE 60(b)(6) -- BASED  
ON NEW DEVELOPMENTS**

26  
27  
28

1 I, Robert A. Siegel, pursuant to 28 U.S.C. § 1746, declare and state as follows:

2 1. I am submitting this Declaration in connection with Plaintiff US Airways,  
3 Inc.'s ("US Airways") Motion for Relief from Judgment Pursuant to Federal Rule of Civil  
4 Procedure 60(b)(6) in *US Airways, Inc. v. Don Addington, et al. and US Airline Pilots*  
5 *Association*, Case No. 2-10-cv-1570-PHX-ROS (D. Ariz.). I am a partner with the law  
6 firm of O'Melveny & Myers LLP and am one of the attorneys principally responsible for  
7 the representation of US Airways in that case. I have personal knowledge of the facts set  
8 forth below, and, if called as a witness, I could and would competently testify thereto.

9 2. On October 30, 2012, I received a letter from Marty Harper, an attorney  
10 representing the West Pilots Class in this litigation. This letter referenced and attached  
11 recent correspondence between Mr. Harper and Patrick Szymanski, general counsel of the  
12 US Airline Pilots Association. A true and correct copy of Mr. Harper's October 30, 2012  
13 letter is attached hereto as Exhibit A.

14 3. Attached to Mr. Harper's October 30, 2012 letter were the three letters  
15 referenced therein: a letter dated October 12, 2012 from Mr. Harper to Mr. Szymanski; a  
16 letter dated October 15, 2012 from Mr. Szymanski to Mr. Harper; and a letter dated  
17 October 17, 2012 from Mr. Harper to Mr. Szymanski. True and correct copies of those  
18 letters are attached hereto as Exhibits A-1, A-2, and A-3, respectively.

19 I declare under penalty of perjury, under the laws of the United States of America,  
20 that the foregoing is true and correct.

21 Executed this 30th day of October 2012, at Los Angeles, California.

22  
23 /s/ Robert A. Siegel  
24 Robert A. Siegel

25 OMM\_US:71092630.1

# **EXHIBIT A**

**EX. A**



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October 30, 2012

**VIA EMAIL AND US MAIL**  
**rsiegel@omm.com**

Robert Siegel  
O'Melveny & Myers  
400 South Hope Street  
Los Angeles, CA 90071

**Re: *US Airways, Inc. v. Don Addington, et al.* and the Nicolau Award**

Dear Bob,

Attached please find correspondence between Patrick Szymanski and myself about the effect of the Court's final order and judgment in the *US Airways v. Don Addington, et al.* litigation. This correspondence follows Andy Jacob's letter to you dated October 12, 2012, and is sent to you so that you can see the ongoing communication amongst the US Airways pilot groups about the Court's decision and the Nicolau Award.

Regards,

A handwritten signature in black ink that reads "Marty Harper". The signature is written in a cursive style with a large initial "M".

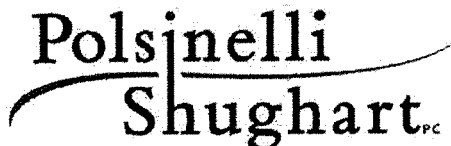
Marty Harper

Enclosures:

Letter dated October 12, 2012 from Marty Harper to Patrick J. Szymanski;  
Letter dated October 15, 2012 from Patrick Szymanski to Marty Harper; and  
Letter dated October 17, 2012 from Marty Harper to Patrick J. Szymanski.

# **EXHIBIT A-1**

**EX. A-1**



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October 12, 2012

Patrick J. Szymanski  
PATRICK J. SZYMANSKI, PLLC  
1900 L Street, NW, Ste. 900  
Washington, DC 20036

**Re: The Nicolau Award**

Dear Pat:

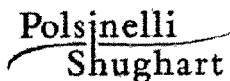
We now have Judge Silver's final Order and Judgment in the *US Airways, Inc. v. Don Addington, et al.* litigation. The Order and Judgment are quite informative. Judge Silver found that USAPA is bound by the Transition Agreement, a point USAPA has been disputing for a number of years. (See Order at pp. 6-7.) Judge Silver also found that when USAPA became the pilots' new collective bargaining representative, "it succeeded 'to the status of the former representative without alteration in the contract terms.'" (Order at p. 7.) Again, USAPA has been contending for years that it was not ALPA's successor. Finally, the Court unequivocally found that for USAPA to deviate from the Nicolau Award, it can do so only if the deviation is "supported by a legitimate union purpose." (See Judgment.)

In my opinion, the most instructive paragraph in the Order for everyone, USAPA, the East Pilots, the West Pilots and US Airways is found on page 8 of the Order. It reads in full as follows:

"Of course, in negotiating for a particular seniority regime, USAPA must not breach its duty of fair representation. Accordingly, if USAPA wishes to abandon the Nicolau Award and accept the consequences of this course of action, it is free to do so. By discarding the result of a valid arbitration in negotiating for a different seniority regime, USAPA is running the risk that it will be sued by the disadvantaged pilots when the new collective bargaining agreement is finalized. An impartial arbitrator's decision regarding an appropriate method of seniority integration is

Chicago Dallas Denver Edwardsville Jefferson City Kansas City Los Angeles New York  
Overland Park Phoenix St. Joseph St. Louis Springfield Topeka Washington, DC Wilmington

*In California, Polsinelli Shughart LLP.*



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powerful evidence of a fair result. Disregarding the Nicolau Award places USAPA on dangerous ground.”

The Communication Committee just issued a release on Judge Silver’s order that is yet another example of USAPA’s failure to fully and fairly inform the pilots (both East and West) on this subject. This release totally ignores that Judge Silver made it very clear that USAPA takes great risk if it implements a contract that deviates from the Nicolau Award. The pilots deserve better.

The time has come for USAPA and the East Pilots to be fully and fairly informed about the status of the Nicolau Award and the significant risk USAPA runs if it deviates from that Award without legal justification. We understand that the leadership of USAPA and others, perhaps even including yourself, have been telling the East Pilots that USAPA is now free to either use or propose any seniority list it wants. Those statements are not true and it is time that USAPA and the East Pilots fully understand this.

The parties to the Transition Agreement agreed in advance that the Nicolau Award would be the final resolution of the seniority dispute. USAPA can deviate from the Nicolau Award if, and only if, the deviation is “supported by a legitimate union purpose.” USAPA has now had almost 50 months of litigation to propose a “legitimate union purpose” for deviating from the Nicolau Award. The reasons proposed by USAPA in the Addington trial were rejected by a civil jury. In the current *US Airways, Inc.* litigation, USAPA failed to come forward with an argument that was acceptable to Judge Silver for deviating from the Nicolau Award. The reason for USAPA’s failure is that there is no “legitimate union purpose” for deviating from the Nicolau Award. There never has been and there never will be.

This in fact is the current state of affairs and USAPA and the East Pilots need to understand that. This will pose grave problems for USAPA when it restarts negotiations with US Airways pursuant to Section 6 of the RLA. It will also be a looming problem for USAPA if the merger with American Airlines is concluded and the overall pilot seniority integration issue is resolved through a McCaskill-Bond arbitration. In either scenario, USAPA must use the Nicolau Award unless deviating from the Award is “supported by a legitimate union purpose.” That appears to be an impossibility.

Judge Silver’s Order contains powerful language on many issues but especially if the final integrated pilot seniority list is eventually decided through McCaskill-Bond arbitration. Yesterday Judge Silver wrote that an “impartial arbitrator’s decision regarding an appropriate method of seniority integration is powerful evidence of a fair result.” Judge Silver’s words have significance now but surely will have significance later for whatever panel of federal arbitrators eventually decides the final pilot seniority list after a merger. That panel of arbitrators, more

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**Shughart**

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likely than not, will be contemporaries of George Nicolau, so Judge Silver's words of endorsement will, more likely than not, have a meaningful effect on those future arbitrators.

USAPA's desire to depart from the Nicolau Award is even more complicated now than before. Now, US Airways "must evaluate any proposal by USAPA with some care to ensure that it is reasonable and supported by a 'legitimate union purpose.'" In other words, US Airways cannot remain neutral with respect to whatever it is that USAPA proposes by way of a seniority list if US Airways wants to avoid potential liability for USAPA's future DFR. US Airways now has a duty, imposed by Judge Silver, to evaluate USAPA's proposal "with some care to ensure that it is reasonable and supported by a legitimate union purpose." That was not the case before yesterday.

The East Pilots have not had an improvement in pay, benefits, etc., for almost ten years. The West Pilots have gone without similar adjustments for more than seven years. The experiment initiated by Steve Bradford and others in May of 2007 has proved to be an utter failure. It has done nothing but wreak financial hardship on all of the pilots – both East and West. The time has now come to put the dispute over the Nicolau Award behind so our clients, their families and others impacted by this dispute can start to receive the benefits that are long overdue.

I urge you to make sure that USAPA and the East Pilots are fully and fairly informed of the current state of affairs. The Nicolau Award is the current pilot seniority list, because it was submitted by ALPA, USAPA's predecessor, to US Airways in December, 2007, which then accepted it. There is no "legitimate union purpose" for deviating from the Nicolau Award. As noted above, there never has been nor will there ever be one.

USAPA needs to put the Nicolau dispute aside once and for all by facing reality and accepting the fact that it cannot dishonor the Award because there is no "legitimate union reason" for doing so. Please urge USAPA to bargain the best CBA it can with US Airways, then put the Nicolau Award in Section 22 unaltered, and then let the pilots vote on it. In other words, let the chips fall where they may. It is the only way to end their dispute.

Sincerely,

  
Marty Harper

MH:kh



# **EXHIBIT A-2**

**EX. A-2**

PATRICK J SZYMANSKI, PLLC

October 15, 2012

Marty Harper, Esq.  
Polsinelli Shughart PC  
City Scape  
One E. Washington St, Ste 1200  
Pheonix, AZ 85004

Re: US Airways v. Don Addington et al.  
No. CV-10-01579-PHX-ROS (D. Ariz.)

Dear Marty,

It's difficult to believe you read the same decision I did. And it's apparent that in spending so much effort trying to spin the Court's Order as a "victory" for your clients you overlooked the fact that the Court dismissed Counts I and III of the Complaint and entered judgment in favor of US Airline Pilots Association on Count II.

I remind you that Count II requested a declaration that:

entry into a collective bargaining agreement between US Airways and USAPA which does not incorporate the Nicolau Award would *not* constitute a breach of USAPA's duty of fair representation to the West Pilots in violation of the Railway Labor Act; and (b) USAPA would therefore *not* violate its duty under Section 2, First, of the Railway Labor Act "to exert every reasonable effort to make and maintain agreements concerning rates of pay, rules, and working conditions" if it continues to demand that US Airways agree to an integrated seniority list other than as reflected in the Nicolau Award, and therefore US Airways is *not* prohibited from accepting or implementing a non-Nicolau seniority list;

The Court therefore clearly declares that USAPA may pursue a seniority proposal that does not incorporate the Nicolau Award. And that is exactly what USAPA intends to do.

If and when a duty of fair representation claim is filed, the usual standards will apply. Plaintiffs will be required to show that USAPA's conduct "can fairly be characterized as so far outside a 'wide range of reasonableness,' *Ford Motor Co. v. Huffman*, 345 U.S. 330, 338, 73 S.Ct. 681, 686, that it is wholly 'irrational' or 'arbitrary.'" *Air Line Pilots*

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Marty Harper, Esq.  
October 15, 2012  
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*Ass'n v. O'Neill*, 499 U.S. 65, 78 (1991). Your notion that the fairness of any future seniority integration will be measured against the Nicolau award is a sheer fabrication. And, quite frankly, your assumption that US Airways will delay bargaining on the pretext that any non-Nicolau integration is not supported by a "legitimate union purpose" is a disservice to all US Airways pilots and an interference with USAPA's bargaining authority under the RLA.

I am not going to respond to every statement in your letter, but it is absolutely clear that USAPA has legitimate reasons for pursuing something other than the Nicolau Award. USAPA's duty is to represent all the US Airways pilots fairly. There is nothing arbitrary, discriminatory or in bad faith about integrating seniority based on date of hire. USAPA's 2008 proposal includes several conditions and restrictions protecting the legitimate pre-merger career expectations of former America West pilots. Each of the other crafts on the property integrated their seniority based on DOH. No case holds that DOH integration violates the duty of fair representation. And, in fact, pilot seniority has almost always been integrated at US Airways based on DOH. As we explained in the various briefs filed with the Court, it is legitimate to place pilots with 15 years of seniority above pilots who are still on probation or still in ground school; to respect pre-merger career expectations; and to consider changed circumstances including the relative economic viability of US Airways vs. America West and the fact that East flying has remained stable or has increased while West flying has significantly diminished. It is legitimate to integrate seniority on a basis that is "fair and equitable" rather than on the basis of an ALPA Merger Policy which, at the time, had removed date of hire and longevity as primary factors but has since been changed to once again include them. This is only a partial list. The many reasons for pursuing something different were set forth in our papers before the Court on the cross-motions for summary judgment, and there may yet be others due to subsequent developments given that the union's action must be judged on all the facts and circumstances as they exist at the time the claim is filed.

The way to resolve this dispute is – as we have said repeatedly – for your clients to join in genuine, good faith discussions concerning USAPA's seniority proposal. This is serious request. USAPA wants and solicits the participation of the West Pilots through you or however your clients believe appropriate in determining the course of negotiations with US Airways over an integrated seniority list.

Your letter strongly suggests that you will reject this request, as do postings by the Army of Leonidas that continue to say "Nic or Nothing." We hope we are mistaken. We believe that such an "all-or-nothing" proposal does not fairly represent the interests of the

Marty Harper, Esq.  
October 15, 2012  
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West Pilot Class as a whole and that, if you are honest, you and your clients will understand the wisdom, and indeed the necessity, of genuinely discussing a mutually agreeable resolution of this dispute. The division among the pilots has been used by the Company as an excuse for the lack of meaningful progress in Section 6 negotiations and that excuse has been cited by the National Mediation Board to explain its failure to schedule further mediation sessions. It is a major reason for the fact that our pilots have gone for so long without any wage increase and why they continue to fall farther behind the industry standard. The need to fashion a common ground on this issue is even more important given the possibility of a merger between US Airways and American and a possible seniority integration proceeding with the Allied Pilots Association. We will be better able to protect our seniority in such a proceeding if we are working together.

I understand that you and your clients cling to the Nicolau decision because it gives former America West pilots a very significant seniority windfall, but USAPA simply is not required to follow what ALPA itself described as a "proposal" given the change in bargaining representative, what has transpired over the past 5 years and the legitimate interests of all its members.

After five years of litigation and millions dollars of legal expenses, you and your allies at US Airways have succeeded in obtaining an order that declares, in line with well-established precedent, that the lawful collective bargaining representative has the authority to advance a seniority proposal that will fairly represent the interests of all its members. What you describe as Captain Bradford's experiment has not failed but has succeeded and, in fact, provides the vehicle for resolving this longstanding dispute. While USAPA has no intention of following the suggestion made in your letter, we hope you will reconsider and agree to sit down and seriously discuss a mutually agreeable seniority proposal.

Please let me have a prompt response.

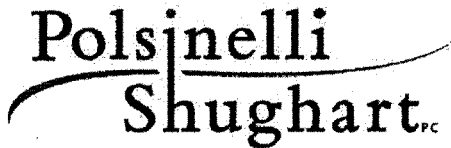
Very truly yours,



Patrick J. Szymanski

# **EXHIBIT A-3**

**EX. A-3**



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October 17, 2012

Patrick J. Szymanski  
PATRICK J. SZYMANSKI, PLLC  
1900 L Street, NW, Ste. 900  
Washington, DC 20036

**Re: US Airways v. Don Addington, et al.**

Dear Pat:

I have your letter of October 15, 2012 which, obviously, is in response to my letter on the 12<sup>th</sup> of October.

Yes, I have read the Court's Order. That's why I wrote you on the 12<sup>th</sup>, pointing out both you and your client apparently fail to understand the significance of Judge Silver's Order and Judgment.

Contrary to your contention, the Court clearly observed that USAPA will expose itself to substantial risk if it tries to implement a seniority list other than the Nicolau Award.

You say, "USAPA has legitimate reasons for pursuing something other than the Nicolau Award." If that were true, why does USAPA want West Pilot representatives "to join in genuine, good faith discussions concerning USAPA's seniority proposal." If that were true, why didn't USAPA prevail in the Addington litigation? Why didn't you stand up and claim as much in front of Judge Silver?

Your letter to me (and a very similar letter recently sent by President Gary Hummel to John Scherff) asks the West Pilots to negotiate. Yet, there is not a lot to negotiate because USAPA insists it will never implement the Nicolau Award. Any date-of-hire seniority list (whatever conditions and restrictions it may have) is unacceptable. Implementation of any such seniority list would be a DFR breach. As I'm sure you know, neither John Scherff nor any group of West Pilots can waive an individual pilot's claim arising from such breach. At best, such "negotiations" can only create a false appearance of fair representation. Our clients will have no part of that.

Chicago Dallas Denver Edwardsville Jefferson City Kansas City Los Angeles New York  
Overland Park Phoenix St. Joseph St. Louis Springfield Topeka Washington, DC Wilmington

*In California, Polsinelli Shughart LLP.*

**Polsinelli  
Shughart**

October 17, 2012

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“Captain Bradford’s experiment” is not, as you state, a “success.” To the contrary, it is an utter failure. US Airways pilots on both sides are grossly underpaid and will continue to be so until they get a new contract. But because of Bradford’s experiment, the East Pilot majority thinks it can get a new contract that does not use the Nicolau Award. If you agree with that, you should tell USAPA to negotiate and try to implement such a contract. We then can litigate whether USAPA has a “legitimate union purpose.” Otherwise, you must tell USAPA in no uncertain terms that it has no legitimate reason to dishonor the Nicolau Arbitration, that it can get a new contract only if that contract implements the Nicolau Award.

Very truly yours,

  
Marty Harper

MH:kh