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**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA**

13 US AIRWAYS, INC., a Delaware  
14 corporation, *et al.*,

*Plaintiff,*

15 vs.

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

and

US AIRLINE PILOTS ASS'N, an  
unincorporated association,

*Defendants.*

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

**DECLARATION OF  
ANDREW S. JACOB**

23 I, Andrew S. Jacob, counsel for Defendants the West Pilot Class, based  
24 upon my personal knowledge declares as follows:

25 1. The document attached hereto is a true and correct copy of a pdf file  
26 provided to me by a member of the US Airline Pilots Association (USAPA) as  
27 information that USAPA circulated to its members on or about October 29,  
28 2012.

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2. I declare under penalty of perjury that the forgoing statement is true.  
Dated this 1st day of November, 2012.

**POLSINELLI SHUGHART, PC**

*/s/ Andrew S. Jacob*  
By \_\_\_\_\_  
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**Certificate of Service**

I hereby certify that on this 1st day of November 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 \_\_\_\_\_

## CLT Domicile Update

**Details** Created on Monday, 29 October 2012 22:21  
Fellow CLT Pilots,

During the course of litigation surrounding the issue of seniority, we have generally avoided commenting about the positions and public statements of certain groups intending to advance the Nicolau award. However, in light of some recent misleading statements by these groups and the Company, we thought it appropriate to highlight some significant points in Judge Silver's "Order" and "Judgment" to quell any doubt as to whether USAPA prevailed in the District Court in Phoenix.

If you are interested in reading the [Order](#) and/or [Judgment](#) issued by Judge Silver in their entirety, you can do so by clicking the links or in the [Legal Library](#). For your convenience, we have reduced the documents to the following bullet points that should help dispel any rumors you may hear that USAPA did not prevail or that the Company did not receive clear direction as to its obligations and rights with regard to USAPA's seniority proposal.

Found in the Judgment and Order are the following points:

- 1 "USAPA's seniority proposal does not breach its duty of fair representation provided it is supported by a legitimate union purpose."
- 2 "USAPA is free to pursue any seniority position it wishes during the collective bargaining negotiations."
- 3 US Airways "must negotiate with USAPA and it need not insist on any particular seniority regime."
- 4 "It is undisputed that the Transition Agreement can be modified at any time by written agreement of USAPA and US Airways."
- 5 "There is no obvious impediment to USAPA and US Airways negotiating and agreeing upon any seniority regime they wish."
- 6 "Seniority rights are creations of the collective bargaining agreement...."
- 7 "It is unlikely the West Pilots could successfully allege claims against US Airways merely for not insisting that USAPA continue to advocate for the Nicolau Award."
- 8 USAPA's Motion for Summary Judgment was GRANTED.
- 9 The West Pilots' Motion for Summary Judgment was DENIED.

After reading the above bullet points from Judge Silver, it is difficult to comprehend how some are still claiming USAPA did not prevail, and thus must use the Nicolau award or that the Company still needs more direction. Please don't be fooled. USAPA prevailed in PHX; the Company is not only free to negotiate but Judge Silver found that they "must" negotiate on the matter of seniority, and "need not insist on any particular seniority list". The language is unambiguous.

Also being perpetuated by some is the myth that in her decision, Judge Silver expressed she disagreed with the 9<sup>th</sup> Circuit's ruling in the Addington appeal and if it weren't for the upper court "getting it wrong", her decision would have bound USAPA to the Nicolau. There is no such expression by Judge Silver. Her only references to the 9<sup>th</sup> is in her acknowledgment that it ruled the earlier claim brought against USAPA was not ripe; and a case precedent where the 9<sup>th</sup> Circuit gave its opinion that seniority rights are creations of the collective bargaining agreement. She gave no indication whether she agreed with the 9<sup>th</sup> or not.

What she did, was use strong language to remind USAPA that if it is intent on pursuing a seniority list other than the Nicolau, it must not breach its duty of fair representation, or a viable claim against it may be brought. These are valid reminders to USAPA, but not anything USAPA hasn't been aware of from the beginning.

Here are her reminders:

- 1 With that freedom comes risk, because the West Pilot Defendants may have viable legal claims in the future should the collective bargaining agreement contain a seniority provision harmful to a subsection of the union.
- 2 US Airways must evaluate any proposal by USAPA with some care to ensure that it is reasonable and supported by a legitimate union purpose.
- 3 By discarding the result of a valid arbitration and 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.

Again, these are valid reminders but they are not new to USAPA and not something Judge Silver came up with out of the blue; USAPA has always been aware of its obligations as memorialized in the Railway Labor Act (RLA) and case-precedent, and is certainly aware that legal action has always been a possibility by any union member. But remember, the West Class does not have a monopoly on this right nor does the RLA only apply to one segment of a union's membership. USAPA is bound under the duty of fair representation and must apply it to all pilots, or possibly face a legitimate claim. And, when there is a ratified collective agreement and a duty of fair representation claim is filed, the usual DFR standard will apply, and the plaintiff or plaintiffs will be required to show that the seniority provision in the Collective Bargaining Agreement (CBA), whatever it may be, is "so far outside a 'wide range of reasonableness' that it is wholly 'irrational' or 'arbitrary'." *Air Line Pilots Ass'n v. O'Neill*, 499 U.S. 65, 78 (1991).

Another myth being circulated is that USAPA does not have a legitimate union purpose for pursuing something other than the Nicolau award. Common sense would dictate that Judge Silver obviously believes there are legitimate union purposes for setting aside the Nicolau Award. If she didn't, she certainly wouldn't have decided that USAPA had the right to propose something else, and that the Company was obligated to negotiate about something else. She would have simply dismissed USAPA's claim and granted

the West Class' motion for summary judgment. But that's not what happened. She did just the opposite.

There is no question that USAPA has a legitimate union purpose –in fact many good reasons – for a seniority proposal different from the Nicolau award. USAPA's lawyers explained through the papers filed with the Court, why USAPA is justified in proposing something other than the Nicolau Award. Here are the main points:

- 1 USAPA has a duty to fairly represent not only former America West Pilots, but all US Airways pilots.
- 2 It is legitimate to integrate seniority based on date of hire.
- 3 It is legitimate to respect pre-merger career expectations.
- 4 It is legitimate to take into account changed circumstances including the relative economic strength and viability of America West flying VS US Airways flying.
- 5 USAPA is not required to follow the ALPA Merger Policy in effect at the time of the Nicolau Award, which eliminated length of service as a relevant consideration, but is entitled to pursue a "fair and equitable" integration.
- 6 It is legitimate to place a pilot with 25 years of seniority above a pilot with 9 years, or a pilot with 15-16 years seniority above a pilot still in ground school.
- 7 Each of the other crafts on the property integrated seniority based on date of hire, and no case-precedent holds that DOH integration violates the duty of fair representation.

This is certainly not meant to be a comprehensive list. There were more reasons listed in the papers filed with the Court, and considering that any future legal claim will be weighed against the circumstances at the time the claim is filed, there may be other reasons supporting something other than the Nicolau award.

This update should help clarify where we are, where we are going, and perhaps more importantly dispel some of the inaccuracies being perpetuated lately. USAPA prevailed, the West Class's motion was dismissed and the Company was told it must negotiate with USAPA about seniority.

As a result of Judge Silver ruling on USAPA's behalf, the union, through President Hummel and our attorneys have reached out to both the West Class attorneys and the PHX Domicile Chairman seeking their willingness to sit down and have good-faith discussions with the union on USAPA's seniority proposal. To date, the union has been rather harshly rebuffed by both parties and informed that it is "NIC or nothing". Nevertheless, we will proceed with the best interest of all pilots in mind and with every intention of living up to our responsibilities as per the RLA while negotiating all sections of our next CBA including Section 22, seniority.

Captain Bill McKee

Chairman

(980) 875-7644

First Officer Steve Crimi                      Vice Chairman                      (980) 875-7645

First Officer Dewitt Ingram                      Vice Chairman                      (704) 497-7246