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IN THE 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-ROS

US AIRLINE PILOTS ASSOCIATION'S MEMORANDUM OF LAW IN OPPOSITION TO US AIRWAYS, INC.'S MOTION FOR RELIEF FROM JUDGMENT

The motion filed by US Airways should be denied because the post-judgment correspondence raises nothing new and therefore does not justify relief from the decision and judgment under the "extraordinary" standard applicable under FRCP 60(b)(6).

From the beginning of this case, in the Complaint itself, US Airways alleged it was entitled to relief because it was caught between the proverbial "rock and a hard place." The rock was that former America West pilots had threatened to file an action for breach of the duty of fair representation if the collective bargaining agreement included anything other than the Nicolau Award (Doc. 1, at ¶33). The hard place was that "USAPA is inalterably opposed to the implementation of the Nicolau Award" (Doc. 1, at ¶32). Based on thorough briefing and extensive factual presentations and after due deliberation, the Court "conclude[d] Defendant US Airline Pilots Association ("USAPA") is free to pursue any seniority position it wishes during the collective bargaining," entered judgment "in favor of US Airline Pilots Association on Count II of the Complaint" stating "US Airline Pilots Association's seniority proposal does not breach its duty of fair representation provided it is supported by a legitimate union purpose," and dismissed Counts I and III. Docs. 193, at 1, and 194.

The subsequent correspondence neither adds nor changes a thing. Despite the Court's Decision and an open door to discuss alternatives to the Nicolau Award, the West Pilot Class remains adamant that it must be "the Nic or nothing." It is regrettable that the West Pilot Class is not willing to discuss anything other than the Nicolau Award. But this is not new and in fact was exactly the factual predicate laid out in the Complaint.

Rule 60(b)(6) is a catch-all provision reserved for those rare cases where the "interests of justice" compel the re-opening of a final judgment. *See In re Cavic*, 2009

WL 7809925, at *14 (9th Cir. Mar. 2, 2009). Relief under subsection (6) is "used sparingly as an equitable remedy to prevent manifest injustice" and "is to be utilized only where extraordinary circumstances prevented a party from taking timely action to prevent or correct an erroneous judgment." *United States v. Alpine Land & Reservoir Co.*, 984 F.2d 1047, 1049 (9th Cir.1993). "Rule 60(b) authorizes setting aside a judgment only for reasons that would have prevented entry of the judgment in the first place, had the reasons been known at the time judgment was entered." *United States v. Washington*, 98 F.3d 1159, 1164 (9th Cir. 1996) (Kozinski, J., concurring).

The correspondence simply shows that the disagreement laid out in the Complaint continues, at least to date. The continuation of the factual context alleged in the Complaint and carefully considered by the Court is not an "extraordinary circumstance" that justifies relief under Rule 60(b)(6).

Contrary to the suggestion of US Airways, the continued intransigence of the West Pilot Class in no way affects the applicability of the Ninth Circuit's *Addington* decision. The analysis in *Addington* did not in any way contemplate or require that at some point in the future former America West pilots and USAPA would agree on a seniority proposal. "Agreement" or the lack thereof was not part of the *Addington* analysis. *Addington* explained that the DFR claim was "speculative" because of the uncertainties inherent in negotiation and ratification and that the claim therefore would not be ripe "until the airline responds to the proposal, the parties complete negotiations, and the membership ratifies the CBA." 606 F.3d 1174, 1180 (9th Cir. 2010). US Airways' apparent disagreement with this analysis provides no grounds for relief from the judgment of this Court.

US Airways pilots have gone too long without fair wages and benefits. USAPA will proceed to fulfill its responsibility to fairly represent the interests of all employees in the bargaining unit. As the Supreme Court observed in *Ford Mtr. Co. v. Huffman*, 3445 U.S. 330, 338 (1953):

> Inevitably differences arise in the manner and degree to which the terms of any negotiated agreement affect individual employees and classes of employees. The mere existence of such differences does not make them invalid. The complete satisfaction of all who are represented is hardly to be expected. A wide range of reasonableness must be allowed a statutory bargaining representative in serving the unit it represents, subject always to complete good faith and honesty of purpose in the exercise of its discretion.

We do not believe that anything in the Court's Decision was intended to change this well established standard. A bargaining representative necessarily proceeds to negotiate an agreement despite differences between groups of employees. There is nothing extraordinary about this. Indeed, as the Court also found, "there is no obvious impediment to USAPA and US Airways negotiating and agreeing upon any seniority regime they wish." Doc. 193, at 7.

Finally, we note that US Airways exaggerates its fears about subsequent liability. US Airways is required by the Railway Labor Act to negotiate with USAPA over all mandatory subjects of bargaining including seniority. *Rakestraw v. United Airlines*, 981 F.2d 1524, 1535 (7th Cir. 1992) ("Like wages and fringe benefits, seniority is a legitimate subject of discussion and compromise in collective bargaining."). Employers are, of course, required to bargain with the representative of its employees even where there are disagreements among "individual employees" or "classes of employees." It is the union's job to reconcile these competing interests, not the employer's. And, as the Court further explained, "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." Doc. 193, at 8, *citing Davenport v. Int'l Broth. of Teamsters*, AFL-CIO, 166 F.3d 356, 361-62 (D.C. Cir. 1999). "An employer is liable together with the union for the union's breach of its DFR if it acts in *collusion* with the union." *United Indep. Flight Officers, Inc. v. United Airlines, Inc.*, 756 F.2d 1274, 1283 (7th Cir. 1985) (emphasis added). Moreover, as the Seventh Circuit went on to explain, the mere fact that an employer agrees to a union proposal does not prove collusion. Id. ("it is patently fallacious that negotiation necessarily entails collusion"). As we noted at oral argument, there is no evidence that US Airways is in any way colluding with USAPA.

In short, the continuing differences between the West Pilot Class and USAPA have been a part of this case from the beginning, were fully considered by the Court in reaching its decision, do not diminish the applicability of *Addington* and do not justify any relief under Rule 60(b)(6).

CONCLUSION

USAPA submits that the motion should be denied.

Respectfully submitted this 16th day of November, 2012.

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CERTIFICATE OF SERVICE

I hereby certify that on November 16, 2012, I electronically transmitted the attached document to the Clerk's Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to the following CM/ECF registrants:

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