IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

US AIRLINE PILOTS ASSOCIATION,	
Plaintiff,	
v.	Civil Action No. 14-0328 (BAH)
US AIRWAYS, INC., *et al.*,	
Defendants.	

ALLIED PILOTS ASSOCIATION'S ANSWER AND COUNTERCLAIMS

Defendant Allied Pilots Association's ("**APA**") Answers and Counterclaims against the US Airline Pilots Association ("**USAPA**") as follows:

1. Paragraph 1 of the Complaint makes assertions of law to which no response is required.

2. To the extent that Paragraph 2 makes assertions of law, no response is required. APA denies that it treated the TWA pilots unfairly.

3. Paragraph 3 of the Complaint makes assertions of law to which no response is required. APA denies that USAPA is entitled to relief, as it negotiated, approved and had its members ratify a seniority integration process and timeline in a Memorandum of Understanding Regarding Contingent Collective Bargaining Agreement between American Airlines, Inc. ("**American**"), US Airways, Inc. ("**US Airways**"), APA and USAPA that became effective on December 9, 2013, when the merger between American and US Airways occurred ("**MOU**").

4. Paragraph 4 of the Complaint makes assertions of law to which no response is required. Nevertheless, APA admits that the Court has federal-question subject-matter jurisdiction with respect to USAPA's claim.

5. Paragraph 5 of the Complaint makes assertions of law to which no response is required.

6. Paragraph 6 of the Complaint makes assertions of law to which no response is required. APA admits that it does business in and represents some pilots who live in the District of Columbia. APA further admits that venue is proper in this District pursuant to 28 U.S.C. § 1391(b)(3).

7. Paragraph 7 of the Complaint makes assertions of law to which no response is required; however, APA denies that "the events giving rise to this action primarily occurred within this district." The MOU was negotiated almost exclusively in the Dallas-Fort Worth area of Texas and negotiations over a Protocol occurred in a number of other jurisdictions as well as the District of Columbia.

8. APA admits that the National Mediation Board ("**NMB**") is located in the District of Columbia. However, because USAPA negotiated, approved and had its members ratify a seniority integration process and timing agreement as permitted by Section (a)(2) of the McCaskill-Bond Amendment to the Federal Aviation Act ("**McCaskill-Bond**"),[1] the location of the NMB, which would be important in the absence of such an agreement, is not relevant. APA, therefore, otherwise denies the allegations set forth in Paragraph 8.

[1] The McCaskill-Bond Amendment to the Federal Aviation Act, Pub. L. 110–161, Div. K, Title I, § 117, 121 Stat 2382 (Dec. 26, 2007), is codified at 49 U.S.C. § 42112, note.

9. APA admits that USAPA is a labor organization certified to represent, currently, the pilots of US Airways.

10. APA admits the allegations set forth in Paragraph 10 of the Complaint and USAPA's recognition that American and US Airways are operating as one single carrier out of American's corporate headquarters at 4333 Amon Carter Boulevard in Fort Worth, Texas.

11. APA admits the allegations of Paragraph 11 of the Complaint and adds that US Airways Group is also a wholly owned subsidiary of American Airlines Group, Inc. ("**AAG**"), the renamed parent of American.

12. APA admits the allegations set forth in Paragraph 12 of the Complaint.

13. APA admits the allegations set forth in Paragraph 13 of the Complaint with the correction that the parent of American, formerly AMR Corporation, was renamed AAG.

14. APA admits that it is an unincorporated labor organization and adds that it has been certified by the NMB to represent the flight deck crew members of American.

15. APA admits the allegations set forth in Paragraph 15 of the Complaint.

16. APA admits that McCaskill-Bond, 49 U.S.C. § 42112, note, governs the integration of seniority lists in the case of this merger, but APA denies the implication that the parties have not entered into an MOU that sets forth the process and timing of the seniority integration as expressly permitted by Section (a)(2) of McCaskill-Bond.

17. Paragraph 17 of the Complaint makes assertions of law to which no response is required.

18. Paragraph 18 of the Complaint makes assertions of law to which no response is required; however, APA denies the suggestion that the parties have been unable to agree "on a fair and equitable manner for combination of the seniority lists[.]" The MOU expressly sets forth a process and timeline that was negotiated, approved and ratified by USAPA.

19. Paragraph 19 of the Complaint makes assertions of law to which no response is required; however, APA denies that USAPA may proceed under Section 13(a) of the *Allegheny-Mohawk* Labor Protective Provisions ("***Allegheny-Mohawk***" or "***Allegheny-Mohawk* LPPs**") as it agreed to a different seniority integration process and timeline in the MOU and may not now repudiate that agreement.

20. Paragraph 20 of the Complaint makes assertions of law to which no response is required; however, the parties were able to agree on an arbitration selection method. The parties, American/US Airways, APA and USAPA were unable to agree that USAPA would be a permanent party to the seniority integration protocol in defiance of Judge Silver's decision in *Addington v. US Airline Pilots Ass'n,* No. 13-cv-00471, Doc. 298 (D.Ariz. Jan. 10, 2014), that "when USAPA is no longer the certified representative [of the pilots of US Airways following a single employer determination by the NMB and the certification of APA], it must immediately stop participating in the seniority integration." *Id.* at 20-21.

21. APA admits the allegations set forth in Paragraph 21 of the Complaint.

22. APA is without information sufficient to form a belief about when US Airways announced its intention to pursue a merger with American.

23. APA denies the allegations set forth in Paragraph 21 of the Complaint.

24. APA denies the allegations set forth in Paragraph 24 of the Complaint. The MOU was signed by the parties in January 2013.

25. APA admits that the MOU sets forth a procedure and timeline for the integration of seniority lists but denies that Paragraph 10 sets forth the only relevant provision of the MOU.

26. APA denies the allegations set forth in Paragraph 26 of the Complaint.

27. APA denies the allegations set forth in Paragraph 27 of the Complaint.

28. APA admits the allegations set forth in Paragraph 28 of the Complaint.

29. APA admits the allegations set forth in Paragraph 29 of the Complaint.

30. APA denies the allegations set forth in Paragraph 30 of the Complaint, but admits that AMR Corporation filed the motion referenced in Paragraph 30.

31. APA denies the allegations set forth in Paragraph 31 of the Complaint. The correct date is April 11, 2013.

32. APA denies the allegations set forth in Paragraph 32 of the Complaint, but admits that AMR Corporation filed the document referenced in Paragraph 32.

33. APA admits the allegations set forth in Paragraph 33 of the Complaint.

34. APA admits the allegations set forth in Paragraph 34 of the Complaint.

35. APA admits the allegations set forth in Paragraph 35 of the Complaint.

36. APA admits the allegations set forth in Paragraph 36 of the Complaint.

37. APA denies the allegations set forth in Paragraph 37 of the Complaint, except that APA admits that discussion over a Protocol Agreement, as required by MOU Paragraph 10(f), began in December 2013 and was held in part in the District of Columbia. APA denies that negotiations "were primarily conducted within the District of Columbia."

38. APA admits the allegations set forth in Paragraph 38 of the Complaint.

39. APA admits the allegations set forth in Paragraph 39 of the Complaint.

40. APA denies the allegations set forth in Paragraph 40 of the Complaint. The parties did agree "on an alternative means for seniority list integration." Indeed, USAPA participated in the negotiation, approval and ratification of that agreement.

41. APA denies the allegations set forth in Paragraph 41 of the Complaint, except that APA admits that Paul Jones did send an email on February 19, 2014. APA asserts that Mr. Jones' email speaks for itself. APA further asserts that, as of the date of Mr. Jones' email, the parties had reached agreement on "a method for arbitrator selection."

42. APA admits that USAPA President Captain Gary Hummel sent a letter requesting a list of seven arbitrators to NMB Chief of Staff Daniel Rainey, at his office in Washington, D.C., on February 20, 2014 and that the purported basis for Captain Hummel's request was Section 13(a) of *Allegheny-Mohawk* and McCaskill-Bond. However, APA denies that either *Allegheny-Mohawk* or McCaskill-Bond provide legal authority for Captain Hummel's request.

43. Paragraph 43 of the Complaint makes assertions of law to which no response is required; however, APA denies the allegations set forth in Paragraph 43 because the parties, including USAPA, agreed in the MOU to a process and timeline that is expressly permitted by Section (a)(2) of McCaskill-Bond.

44. APA admits that APA and the Company filed the grievances under Paragraph 20 of the MOU on February 25, 2014 and asserts that that those grievances speak for themselves.

45. APA denies the allegation set forth in Paragraph 45. APA admits that the Company sent a letter to the NMB on February 26, 2014 – not February 27 – and asserts that the Company's February 26 letter speaks for itself.

46. APA denies the allegation set forth in Paragraph 46. APA admits that it sent a letter to the NMB on February 26, 2014 – not February 27 – and admits that that letter objected to USAPA's request. APA asserts that its February 26 letter speaks for itself.

47. Paragraph 47 of the Complaint makes assertions of law to which no response is required. To the extent a response in required, APA asserts that the process and timeline set forth in the MOU provide an alternative process and timeline expressly sanctioned by Section (a)(2) of McCaskill-Bond. USAPA should not be permitted to repudiate an agreement that it negotiated, approved and had its members ratify.

48. The APA realleges and incorporates by reference the allegations of Paragraphs 1-47 of this Answer as if fully set forth herein.

49. Paragraph 49 of the Complaint makes assertions of law to which no response is required. Nevertheless, APA admits the allegation set forth in Paragraph 49 of the Complaint.

50. Paragraph 50 of the Complaint makes assertions of law to which no response is required. Nevertheless, APA admits the allegation set forth in Paragraph 50 of the Complaint.

51. Paragraph 51 of the Complaint makes assertions of law to which no response is required. Nevertheless, APA admits the allegation set forth in Paragraph 51 of the Complaint.

52. Paragraph 52 of the Complaint makes assertions of law to which no response is required; however, APA denies that it is required to follow the processes and timelines set forth under Sections 3 and 13 of *Allegheny-Mohawk* given the MOU and Section (a)(2) of McCaskill-Bond.

53. Paragraph 53 of the Complaint makes assertions of law to which no response is required. APA admits that Section 13(b) of *Allegheny-Mohawk* speaks for itself.

54. Paragraph 54 of the Complaint makes assertions of law to which no response is required; however, APA denies the suggestion by USAPA that the parties did not expressly agree "on an alternative method for seniority integration."

55. APA denies the allegations set Paragraph 55 of the Complaint. USAPA, itself, negotiated, approved and had its members ratify an "alternative method for integration of the seniority lists."

56. Paragraph 56 of the Complaint makes assertions of law to which no response is required; however, APA denies that "the seniority list integration dispute" is governed by Section 13(a) of the *Allegheny-Mohawk* LPPs.

57. Paragraph 57 of the Complaint makes assertions of law to which no response is required; however, APA denies that the parties are obligated to comply with Section 13(a) of the *Allegheny-Mohawk* LPPs to resolve "the seniority list integration dispute."

58. Paragraph 58 of the Complaint makes assertions of law to which no response is required; however, APA denies that USAPA is entitled to a declaratory judgment that it may avoid the MOU process and timelines for a seniority integration that it negotiated, approved and had its members ratify.

59. Paragraph 59 of the Complaint makes assertions of law to which no response is required; however, APA denies that USAPA is entitled to injunctive relief permitting it to avoid the MOU process and timelines for a seniority integration that it negotiated, approved and had its members ratify.

USAPA PRAYER FOR RELIEF

To the extent that any response is required to the Complaint's separately-denominated Prayer for Relief, APA denies that USAPA is entitled to a declaratory judgment, injunctive relief or to relief of any kind.

APA AFFIRMATIVE DEFENSES

1. USAPA's claim, as set forth in the Complaint, fails to state facts sufficient to constitute a cause of action against APA.

2. USAPA's claim, including its request for equitable relief, is barred in whole or in part because USAPA has unclean hands and is barred from equitable relief pursuant to Section 108 of the Norris-LaGuardia Act, 29 U.S.C. § 108.

3. USAPA's claim, including its request for equitable relief, is barred in whole or in part because USAPA is estopped from asserting this claim by its own conduct.

DEMAND FOR JUDGMENT

WHEREFORE, APA respectfully requests that the Court:

a) dismiss the Complaint with prejudice;

b) award APA its costs; and

c) grant such other and further relief as it deems just and proper.

COUNTERCLAIMS FOR DECLARATORY RELIEF

Counterclaim Plaintiff, Allied Pilots Association ("**APA**"), alleges as follows:

INTRODUCTION

1. APA brings these counterclaims to resolve its dispute with Counterclaim Defendant US Airline Pilots Association ("**USAPA**") regarding the procedures and timeline for integrating the seniority lists of legacy US Airways, Inc. ("**US Airways**") and legacy American Airlines, Inc. ("**American**") (collectively, the "**Company**") pilots following the two airlines' merger on December 9, 2013, and regarding USAPA's role in the seniority-integration process if and when USAPA is decertified by the National Mediation Board ("**NMB**") as the collective bargaining representative for the legacy US Airways pilots and is replaced in that capacity by APA.

2. In anticipation of the merger, American, US Airways, APA and USAPA entered into a Memorandum Of Understanding Regarding Contingent Collective Bargaining Agreement (the "**MOU**") that set forth the terms and conditions of employment that would be applicable to legacy US Airways and legacy American pilots if there were a merger, including detailed procedures for the seniority integration of the two pilot groups. In particular, the MOU provisions governing the seniority integration process specify that any arbitration needed to resolve the seniority-integration dispute will be conducted before a panel of three arbitrators designated by the parties and that any such arbitration hearing shall not commence until after the parties have achieved a Joint Collective Bargaining Agreement ("**JCBA**"). The MOU became effective on December 9, 2013, when the merger occurred.

3. By its Complaint in this action, USAPA seeks to invalidate the MOU provisions governing the seniority integration process and to compel the Company and APA to integrate pilot seniority according to the barebones procedure set forth in Section 13(a) of the *Allegheny-Mohawk* Labor Protective Provisions ("***Allegheny-Mohawk***" or "***Allegheny-Mohawk* LPPs**"), which USAPA contends control the US Airways/American pilot seniority integration in light of the McCaskill-Bond Amendment to the Federal Aviation Act, Pub. L. 110–161, Div. K, Title I, § 117, 121 Stat 2382 (Dec. 26, 2007), codified at 49 U.S.C. § 42112, note ("**McCaskill-Bond**").

4. APA now seeks to put a stop to USAPA's bad-faith attempt to repudiate the terms of the MOU that govern seniority integration for the legacy US Airways and legacy American pilot groups.

5. To that end, APA seeks a declaration that, pursuant to McCaskill-Bond, the MOU controls the US Airways/American pilot seniority integration process, because: (i) the MOU is a collective bargaining agreement and allows for the protections afforded by Sections 3 and 13 of the *Allegheny-Mohawk* LPPs, thereby triggering the exception set forth in Section (a)(2) of McCaskill-Bond; and (b) even if *Allegheny-Mohawk* is applicable, the MOU establishes an alternative method for dispute settlement that is permissible under *Allegheny-Mohawk* Section 13(b) and, therefore, takes precedence over those provisions of Section 13(a) that are inconsistent with the MOU – specifically the Section 13(a) provisions USAPA has attempted to invoke that provide for the appointment of a single arbitrator, rather than three as provided for in the MOU, and an "expedited" arbitration hearing with a decision within 90 days.

6. APA seeks a further declaration that, following USAPA's decertification as the collective bargaining representative for legacy US Airways pilots and its replacement by APA as the collective bargaining representative for all US Airways and American pilots, USAPA may only participate in the MOU seniority integration process if and to the extent deemed appropriate by APA.

THE PARTIES

7. Counterclaim Plaintiff APA is an unincorporated association operating as a labor organization. APA is a "representative" as defined by the Railway Labor Act ("**RLA**"), 45 U.S.C. § 151 (Sixth), and is the current certified collective bargaining representative of the flight deck crew members, or pilots, of American.

8. US Airways is a commercial airline with national and international operations. Its principal place of business is located at 4333 Amon Carter Boulevard, Fort Worth, Texas 76155. US Airways is a "common carrier by air" within the meaning of 45 U.S.C. § 181, and, as such, its labor relations are governed by the RLA. US Airways is a "covered air carrier" within the meaning of McCaskill-Bond, 49 U.S.C. § 42112, note.

9. US Airways is a wholly-owned subsidiary of US Airways Group, Inc. On December 9, 2013, US Airways Group, Inc. became a wholly-owned subsidiary of American Airlines Group, Inc. ("**AAG**"), which was formerly known as AMR Corporation.

10. American is a commercial airline with national and international operations. American's principal place of business is located at 4333 Amon Carter Boulevard, Fort Worth, Texas 76155. American is a "common carrier by air" within the meaning of

45 U.S.C. § 181, and, as such, its labor relations are governed by the RLA. American is a "covered air carrier" within the meaning of McCaskill-Bond, 49 U.S.C. § 42112, note.

11. American is a wholly-owned subsidiary of AAG.

12. Counterclaim Defendant USAPA is an unincorporated association operating as a labor organization. USAPA is a "representative" as defined by the RLA, 45 U.S.C. § 151 (Sixth), and is the current certified collective bargaining representative of the flight deck crew members, or pilots, of US Airways.

JURISDICTION AND VENUE

13. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331, as these compulsory counterclaims seek declarations pursuant to 28 U.S.C. §§ 2201 and 2202 respecting the parties' rights and obligations under a federal statute (McCaskill-Bond, 49 U.S.C. § 42112, note).

14. Venue is proper under 28 U.S.C. § 1391(b) by reason of USAPA's commencement of this action in this District.

FACTUAL BACKGROUND

A. 2013 Merger of US Airways and American, and the MOU

15. In February 2013, US Airways and American agreed to merge. In anticipation of this merger, US Airways, American, USAPA and APA entered into the MOU.

16. A copy of the MOU is attached as Exhibit A and is incorporated by reference.

17. The MOU is a collective bargaining agreement between and among US Airways, American, USAPA, and APA that provides for the terms and conditions of employment for legacy US Airways and legacy American pilots following the merger. The

MOU, which was ratified by USAPA's membership, incorporated the pre-existing collective bargaining agreement between American and APA that became effective on January 1, 2013 ("**2013 AA/APA CBA**"), provided $87 million per year in improvements for the pilots relative to the prior agreement, and extended all of those provisions to the US Airways pilots.

18. In prior litigation involving USAPA and US Airways in the District of Arizona, USAPA speciously argued that the MOU was not a collective bargaining agreement for fear of triggering application of an arbitration award integrating the former America West and US Airways pilots. Eight years after that merger, USAPA has blocked application of an integrated seniority list. In the Arizona litigation, the Court ruled against USAPA:

> The West Pilots, US Airways, and AMR maintain that the MOU qualifies as a collective bargaining agreement. USAPA, however, argues the MOU "is not a final and binding collective bargaining agreement." (Doc. 44 at 14). USAPA admits the MOU will "govern the terms and conditions of employment of the US Airways and American Airlines pilots after" the Bankruptcy Court handling the AMR case approves AMR's Plan of Reorganization. (Doc. 44 at 8). USAPA maintains there is something about the MOU–but USAPA does not identify precisely what–that means it should not be considered a "collective bargaining agreement. [¶] The text of the MOU supports the position adopted by the West Pilots, US Airways, and AMR: that it is a collective bargaining agreement."

(*Addington v. USAPA*, No. 2:13-cv-00471-ROS, Doc. No. 122 at 3:8-22.)

19. The MOU is actually a slightly modified version of the AA/APA 2013 CBA. USAPA ratified the MOU, and thus both pilot groups are working under a common collective bargaining agreement. The parties agreed, however, that further negotiations would ensue to reconcile the MOU as applied at American and at US Airways. The process would lead to a single reconciled agreement known as the JCBA.

B. The US Airways/American Seniority Integration Process

20. In negotiating the MOU, APA, USAPA and the Company agreed to a detailed set of timelines and procedures to govern the process of integrating the seniority lists for the legacy US Airways and legacy American pilot groups. Paragraph 10 of the MOU contains the primary provisions governing the process and timing for seniority integration. In addition, Paragraphs 26 and 27 of the MOU contain provisions relating to the parties' obligations with respect to certain key benchmarks in the seniority integration process.

21. Paragraph 10(a) of the MOU provides generally that the seniority lists of the legacy American and legacy US Airways pilots shall be combined through "[a] seniority integration process consistent with McCaskill-Bond."

22. McCaskill-Bond, 49 U.S.C § 42112, note § 117, provides in pertinent part:

> (a) Labor integration.--With respect to any covered transaction involving two or more covered air carriers that results in the combination of crafts or classes that are subject to the Railway Labor Act (45 U.S.C. 151 et seq.), sections 3 and 13 of the labor protective provisions imposed by the Civil Aeronautics Board in the Allegheny-Mohawk merger (as published at 59 C.A.B. 45) shall apply to the integration of covered employees of the covered air carriers; except that--
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> …
>
> (2) the requirements of any collective bargaining agreement that may be applicable to the terms of integration involving covered employees of a covered air carrier shall not be affected by the requirements of this section as to the employees covered by that agreement, so long as those provisions allow for the protections afforded by sections 3 and 13 of the Allegheny-Mohawk provisions.

23. A copy of McCaskill-Bond and a copy of Sections 3 and 13 of the *Allegheny-Mohawk* LPPs are attached as Exhibit B and are incorporated by reference.

24. US Airways and American are "covered air carriers," and their merger constituted a "covered transaction," all within the meaning of McCaskill-Bond, 49 U.S.C. § 42112, note § 117(b)(2), (4). The legacy US Airways and legacy American pilots are "covered employees" within the meaning of McCaskill-Bond, 49 U.S.C § 42112, note § 117(b)(3).

25. Section 3 of the *Allegheny-Mohawk* LPPs states in full:

> Insofar as the merger affects the seniority rights of the carriers' employees, provisions shall be made for the integration of seniority lists in a fair and equitable manner, including, where applicable, agreement through collective bargaining between the carriers and the representatives of the employees affected. In the event of failure to agree, the dispute may be submitted by either party for adjustment in accordance with section 13.

26. Section 13 of the *Allegheny-Mohawk* LPPs, in turn, states in full:

> (a) In the event that any dispute or controversy (except as to matters arising under section 9) arises with respect to the protections provided herein which cannot be settled by the parties within 20 days after the controversy arises, it may be referred by any party to an arbitrator selected from a panel of seven names furnished by the National Mediation Board for consideration and determination. The parties shall select the arbitrator from such panel by alternatively striking names until only one remains, and he shall serve as arbitrator. Expedited hearings and decisions will be expected, and a decision shall be rendered within 90 days after the controversy arises, unless an extension of time is mutually agreeable to all parties. The salary and expenses of the arbitrator shall be borne equally by the carrier and (i) the organization or organizations representing the employee or employees or (ii) if unrepresented, the employee or employees or group or groups of employees. The decision of the arbitrator shall be final and binding on the parties.
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> (b) The above condition shall not apply if the parties by mutual agreement determine that an alternative method for dispute settlement or an alternative procedure for selection of an arbitrator is appropriate in-their particular dispute. No party shall be excused from complying with the above condition by reason of having suggested an alternative method or procedure unless and until that alternative method or procedure shall have been agreed to by all the parties.

27. Paragraph 10 of the MOU, which sets forth seniority integration timelines and procedures, states in full:

> 10. a. A seniority integration process consistent with McCaskill-Bond shall begin as soon as possible after the Effective Date. If, on the date ninety (90) days following the Effective Date, direct negotiations have failed to result in a merged seniority list acceptable to the pilots at both airlines, a panel of three neutral arbitrators will be designated within fifteen (15) days to resolve the dispute, pursuant to the authority and requirements of McCaskill-Bond. That arbitration proceeding will commence no later than 60 days after the designation of the arbitrators, or as soon thereafter as practicable given the availability of the designated arbitrators, provided that it is understood that, in no event, shall the seniority integration arbitration proceeding commence prior to final approval of the JCBA pursuant to the deadlines and procedures in Paragraph 27 below. The panel of arbitrators will render its award within six (6) months of the commencement of the arbitration, and in any event not later than 24 months after the Effective Date.
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> b. The panel of arbitrators may not render an award unless it complies with all of the following criteria: (i) the list does not require any active pilot to displace any other active pilot from the tatter's position; (ii) furloughed pilots may not bump/displace active pilots; (iii) except as set forth in Paragraphs 12 and 13 below, the list does not require that pilots be compensated for flying not performed (e.g., differential pay for a position not actually flown); (iv) the list allows pilots who, at the time of implementation of an integrated seniority list, are in the process of completing or who have completed initial qualification training for a new category (e.g., A320 Captain or 757 First Officer), or who have successfully bid such a position but have not been trained because of conditions beyond their control (such as a company freeze), to be assigned to the positions for which they have been trained or successfully bid, regardless of their relative standing on the integrated seniority list; and (v) it does not contain conditions and restrictions that materially increase costs associated with training or company paid move as specified in the JCBA.
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> c. The integrated seniority list resulting from the McCaskill-Bond process shall be final and binding on APA and USAPA (and/or the certified bargaining representative of the combined pilot group), the company(ies) and its(their) successors (if any), and all of the pilots of American/New American Airlines and US Airways.
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> d. During the McCaskill-Bond process, including any arbitration proceeding, US Airways, American or New American Airlines, or their successors (if any), shall remain neutral regarding the order in which pilots are placed on

the integrated seniority list, but such neutrality shall not prevent said carriers from insuring that the award complies with the criteria in Paragraph 10(b)(i)-(v).

e. The obligations contained in this Paragraph shall be specifically enforceable on an expedited basis before a System Board of Adjustment in accordance with Paragraph 20, provided that the obligations imposed by McCaskill-Bond may be enforced in a court of competent jurisdiction.

f. A Seniority Integration Protocol Agreement ("Protocol Agreement") consistent with McCaskill-Bond and this Paragraph 10 will be agreed upon within 30 days of the Effective Date. The Protocol Agreement will set forth the process and protocol for conducting negotiations and arbitration, if applicable, and will include a methodology for allocating the reimbursement provided for in Paragraph 7. The company(ies) will be parties to the arbitration, if any, in accordance with McCaskill-Bond. The company(ies) shall provide information requested by the merger representatives for use in the arbitration, if any. In accordance with requirements of McCaskill-Bond, provided that the information is relevant to the issues involved in the arbitration, and the requests are reasonable and do not impose undue burden or expense, and so long as the merger representatives agree to appropriate confidentiality terms.

g. This Memorandum is not a waiver of any argument that participants may make in the seniority integration process. Nor do the provisions of this Memorandum constitute an admission as to the appropriate allocation of flying following the expiration of the protections in Paragraph 8 of this Memorandum, or the manner in which the respective pre-merger carriers would have operated in the absence of a merger, or the job entitlements or equities that arguably underlie the construction of an integrated seniority list, or for any other purpose. This Memorandum may be offered into evidence or shown to a mediator as background information and to describe the actual operations of the separate carriers prior to expiration of the protections in Paragraph 8 of this Memorandum.

h. US Airways agrees that neither this Memorandum nor the JCBA shall provide a basis for changing the seniority lists currently in effect at US Airways other than through the process set forth in this Paragraph 10.

i. Nothing in this Paragraph 10 shall modify the decision of the arbitration panel in Letter of Agreement 12-05 of the 2012 CBA.

28. On December 9, 2013, the US Airways/American merger closed. The "Effective Date" referred to in the MOU is the closing date of the merger: December 9, 2013.

29. The first procedural step in the seniority integration process, as set forth in MOU Paragraph 10(f), is for the parties to negotiate a Seniority Integration Protocol Agreement: "A Seniority Integration Protocol Agreement ("**Protocol Agreement**") consistent with McCaskill-Bond and this Paragraph 10 will be agreed upon within 30 days of the Effective Date."

30. The initial deadline for completion of Protocol Agreement negotiations was January 8, 2014 (*i.e.*, 30 days after December 9, 2013), but the deadline was twice extended – once at the request of USAPA – and, ultimately, the deadline was February 18, 2014.

31. Although there was agreement on virtually all issues – including a procedure for the selection of arbitrators – the parties were unable to finalize a Protocol Agreement by the February 18, 2014 deadline.

32. The next procedural milestone in the seniority integration process, as set forth in MOU Paragraph 10(a), was for USAPA and APA to engage in direct negotiations for an integrated seniority list. There was a 90-day period for such negotiations (*i.e.*, 90 days from the merger close), which expired on March 9, 2014 without an agreement.

33. Under MOU Paragraph 10(a), the next step in the seniority integration process is for the parties to select a panel of three arbitrators and to proceed to final and binding arbitration to generate an integrated seniority list: "If, on the date ninety (90) days following the Effective Date, direct negotiations have failed to result in a merged seniority list acceptable to the pilots at both airlines, a panel of three neutral arbitrators will be

designated within fifteen (15) days to resolve the dispute, pursuant to the authority and requirements of McCaskill-Bond."

34. On February 19, 2014, on the assumption that USAPA and APA would not reach agreement on an integrated seniority list, the Company made a proposal to APA and USAPA regarding the manner in which the arbitrators would be selected.

35. USAPA has never responded to the Company's February 19, 2014 proposal.

36. APA responded to the Company's proposal on March 5, 2014, indicating that it was willing to accept the Company's proposal or, alternatively, that it was willing to accept the arbitrator-selection proposal to which all parties – including USAPA – had agreed in the Protocol Agreement negotiations.

37. On March 9, 2014, the Company responded to APA's proposal, indicating that either option was acceptable to the Company.

38. USAPA has never responded to APA's proposal.

39. Although it has never responded to the Company's and APA's arbitrator-selection proposals, USAPA did file a request with the NMB on February 20, 2014, purportedly pursuant to *Allegheny-Mohawk* Section 13(a), seeking a panel of seven potential arbitrators from which USAPA claimed the parties would select one to resolve their seniority-integration dispute. USAPA did this even though:

a. The time frame for selection of arbitrators under MOU Paragraph 10(a) would not begin until March 9 and would not end until March 24, 2014;

b. The MOU expressly states that three arbitrators (not one) will be utilized;

c. The MOU clearly contemplates that the parties will attempt in good faith to agree on the three arbitrators; and

d. In the negotiations for a Protocol Agreement, all parties, including USAPA, had reached accord on an arbitrator-selection procedure that was consistent with the provisions of the MOU.

40. Both the Company and APA have opposed USAPA's request for an arbitrator panel from the NMB, noting the inconsistency between USAPA's request and its obligations under the MOU. USAPA's request is currently pending before the NMB.

41. The next step in the MOU seniority integration process after arbitrator selection is for the parties to conduct the arbitration proceeding itself. MOU Paragraph 10(a) mandates that the arbitration hearing may not commence "prior to final approval of the JCBA pursuant to the deadlines and procedures in Paragraph 27 [of the MOU]."

42. Paragraph 27 of the MOU states in full:

> If and when the NMB makes a single-carrier finding, the organization certified to represent the pilots of the single carrier, the single carrier acknowledged by the NMB and the certified organization shall promptly engage or re-engage in negotiations to achieve a JCBA to be applicable to the carrier that will be the product of the Merger. In the event that such negotiations are not completed within 30 days of the NMB's certification, New American Airlines will offer final and binding interest arbitration under Section 7 of the RLA, and the organization will accept such proffer, to resolve once and for all the terms of the JCBA. The arbitration decision shall be issued no later than 60 days after the close of the 30-day negotiation period. A panel of three arbitrators led by Richard Bloch shall serve as the arbitrators for this process. If Arbitrator Bloch declines to serve in this capacity or is unable to resolve the parties' dispute, the parties shall select another arbitrator. The arbitrator's jurisdiction and award will be limited to fashioning provisions which are consistent with the terms of the MTA, including provisions which implement the terms of the MTA or facilitate the integration of pilots under the terms of the MTA. The arbitrator's award specifically shall adhere to the economic terms of the MTA and shall not change the MTA's Scope terms (Paragraph 25 of this Memorandum) or the modifications generated through the process set forth in Paragraph 24 of this Memorandum.

43. Thus, pursuant to MOU Paragraphs 10(a) and 27, the seniority-integration arbitration hearing will not commence until after the NMB certifies one labor organization to be the collective bargaining representative for all of the pilots of the Company. Given the vastly greater number of legacy American pilots relative to legacy US Airways pilots, that labor organization will, in all likelihood, be APA.

44. Paragraph 26 of the MOU requires APA to file for single-carrier status with the NMB "as soon as practicable after the Effective Date." This filing is the first step in the NMB's process for certifying a single collective bargaining representative for all pilots of the Company.

45. Paragraph 26 of the MOU states in full:

> APA shall file a single carrier petition with the NMB as soon as practicable after the Effective Date, when APA determines that the facts support the legal requirements for the filing of a petition but in no event later than four months after the Effective Date. If and when the NMB makes a single-carrier finding, the single carrier acknowledged by the NMB and the certified representative shall be governed by this Memorandum.

46. On January 15, 2014, APA filed a single-carrier petition with the NMB.

47. On January 30, 2014, the Company submitted a Position Statement in support of APA's application, demonstrating that American and US Airways now operate as a single transportation system within the meaning of the NMB's rules and decisions. Directly contrary to the timeline it had negotiated, approved and ratified in the MOU, USAPA submitted a Position Statement with the NMB on February 19, 2014 opposing APA's petition and arguing that the NMB should not find that a single transportation system exists until the seniority lists are integrated. On March 17, 2014, APA and the

Company submitted responses to USAPA's opposition. USAPA has until March 27, 2014 to submit its response to the Company's and APA's most recent submissions.

48. On February 27, 2014, USAPA filed the present action seeking to compel the Company and APA to conduct the pilot seniority integration, specifically including any arbitration hearing, pursuant to the procedures of Section 13(a) of the *Allegheny-Mohawk* LPPs, which contemplate that any arbitration hearing be "expedited" with a decision within 90 days. This time frame for the arbitration hearing is substantially different from, and inconsistent with, the time frame set forth in the MOU – for which APA, the Company and USAPA bargained in the MOU negotiations and to which USAPA has already agreed.

C. The Arizona Lawsuit

49. In recent years, USAPA has engaged in extensive litigation on seniority integration issues, including litigation that bears directly on the proper construction of the MOU's seniority integration provisions and the rights of various pre-merger pilot groups under McCaskill-Bond.

50. On March 6, 2013, a group of US Airways pilots filed a class-action lawsuit in the United States District Court for the District of Arizona against USAPA and US Airways, *Addington v. USAPA*, No. 2:13-cv-00471-PHX-ROS ("**Arizona Lawsuit**"). The Arizona Lawsuit was the latest round in a long-running seniority dispute between two groups of pilots following the merger of US Airways and America West Airlines, Inc. ("**America West**") in 2005 that created the current US Airways. The pre-merger America West Pilots are commonly known as the "**West Pilots**" and the pre-merger US Airways pilots are commonly known as the "**East Pilots**." The named plaintiffs in the Arizona

Lawsuit are all West Pilots and the Court ultimately certified a class of West Pilots in that case.

1. Seniority Dispute Between West Pilots and East Pilots

51. At the time of the US Airways/America West merger in 2005, the Air Line Pilots Association ("**ALPA**") represented both the West Pilots and the East Pilots.

52. In connection with the US Airways/America West merger, the East Pilots and the West Pilots (through their respective ALPA governing bodies) and the merging airlines agreed, in a collectively-bargained US Airways/America West Transition Agreement negotiated pursuant to the RLA ("**East/West Transition Agreement**"), that the pilot workforces of the two airlines would be combined. A dispute arose, however, as to the relative placement of the two groups of pilots on the integrated seniority list that was to be used by the combined, post-merger US Airways. This dispute proceeded to what was supposed to be final and binding arbitration before a neutral arbitrator, George Nicolau, who issued his award on May 1, 2007 ("**Nicolau Award**"). The East Pilots were generally displeased with the Nicolau Award because it did not integrate pilot seniority based strictly on each pilot's "date of hire" with his or her pre-merger airline, as the East Pilots had sought, but instead purported to fashion a "fair and equitable" seniority integration attributing importance to the "career expectations" of the pilots at each of the pre-merger airlines.

53. In response to the Nicolau Award, the East Pilots formed a new union, USAPA, whose constitution expressly mandated an integrated US Airways/America West seniority list based on "date of hire" principles and prohibited implementation of the Nicolau Award. The East Pilots outnumbered the West Pilots and, following a

representation election between USAPA and ALPA, the NMB certified USAPA on April 18, 2008 as the new collective bargaining representative for the combined, post-merger group of East Pilots and West Pilots.

54. The dispute between USAPA and the West Pilots over seniority list integration has resulted in long running litigation between and among USAPA, the West Pilots and US Airways. *See, e.g., Addington v. US Airline Pilots Ass'n*, 606 F.3d 1174 (9th Cir. 2010), and *US Airways, Inc. v. Addington*, 2012 WL 5996936 (D. Ariz., Oct. 11, 2012).

55. Because of the unresolved seniority dispute between the West Pilots and USAPA, US Airways continues, eight years after the merger, to operate with two separate pilot seniority lists: one for the West Pilots, and one for the East Pilots.

56. The MOU did not specifically address the integration of East and West Pilots as part of the overall US Airways/American pilot seniority integration, but did provide, in Paragraph 10(h), "that neither this Memorandum nor the JCBA shall provide a basis for changing the seniority lists in effect at US Airways other than through the process set forth in … Paragraph 10."

2. Procedural History of the Arizona Lawsuit

57. Plaintiffs in the Arizona Lawsuit alleged in general that the MOU violated the East/West Transition Agreement, because the MOU did not specifically require use of the Nicolau Award to determine the relative ordering of West Pilots and East Pilots in the seniority integration of US Airways (East and West) pilots with American pilots following the US Airways/American merger.

58. Plaintiffs in the Arizona Lawsuit initially asserted a cause of action against USAPA for breach of the duty of fair representation ("**DFR**"). The plaintiffs sought

declaratory and injunctive relief requiring USAPA to use the Nicolau Award to determine the relative ordering of West Pilots and East Pilots in the MOU seniority-integration process.

59. During a hearing on May 14, 2013, the Court in the Arizona Lawsuit requested briefing from the parties regarding the West Pilots' right under McCaskill-Bond to participate separately from USAPA in the MOU seniority-integration process.

60. In its opening brief, US Airways argued that, in light of the longstanding seniority dispute between USAPA and the West Pilots, the West Pilots had distinct seniority interests that entitled them to participate separately in the US Airways/American seniority-integration process. In advancing this argument, US Airways relied largely on decisions of the Civil Aeronautics Board ("**CAB**") interpreting Sections 3 and 13 of the *Allegheny-Mohawk* LPPs. (Arizona Lawsuit, Doc. No. 98 at 2-4.) The West Pilots agreed that CAB decisions supported their right to participate separately. (Arizona Lawsuit, Doc. No. 97 at 4:16-6:3.)

61. By contrast, USAPA argued, citing other CAB decisions, that only NMB-certified collective bargaining representatives may participate in the McCaskill-Bond seniority-integration process (assuming there was such a representative), thereby precluding separate representation in that process for the West Pilots. (Arizona Lawsuit, Doc. No. 95 at 1:16-11:6; Doc. No. 108 at 1:5-8:6.)

62. In its response brief, US Airways noted the incongruity in USAPA's position, given that "it is a certainty that, by the time the McCaskill-Bond arbitration begins, APA will be certified to represent all post-merger pilots of the combined airlines and USAPA will

no longer be the RLA collective-bargaining representative for any US Airways pilots." (Arizona Lawsuit, Doc. No. 110 at 5-6 n.5.)

63. On July 30, 2013, after being dismissed from the litigation in connection with a claim by the West Pilots, US Airways moved to intervene in the Arizona Lawsuit in order to, among other things, seek "confirmation of its legal position (disputed by USAPA) that its obligation under McCaskill-Bond to provide for a 'fair and equitable' seniority integration entails affording an opportunity to the West Pilots to have a 'separate seat at the table' under the circumstances of this case." (Arizona Lawsuit, Doc. No. 128 at 5:11-14.) US Airways' motion was granted, and US Airways subsequently filed its pleading-in-intervention, in which it asserted its significant interest in obtaining a declaration affirming the West Pilots' right, pursuant to McCaskill-Bond, to participate separately in the MOU seniority-integration process (the "**McCaskill-Bond claim**"). (Arizona Lawsuit, Doc. No. 194 at 3:20-4:11; Doc. No. 197 at ¶¶ 8-16.)

64. On August 2, 2013, plaintiffs in the Arizona Lawsuit filed an amended complaint, in which they added a claim against USAPA for declaratory relief, seeking "an order declaring that [the West Pilots] have party status and the right (but not the obligation) to participate fully (with counsel of their own choice) in the MOU Seniority Integration process." (Arizona Lawsuit, Doc. No. 134 ¶ 134.)

65. On October 11, 2013, US Airways filed a motion for summary judgment on its McCaskill-Bond claim. (Arizona Lawsuit, Doc. No. 212.) US Airways again relied heavily on CAB authority, mostly for the proposition that the "fair and equitable" requirement in Section 3 of the *Allegheny-Mohawk* LPPs supported separate participation for the West Pilots, given the longstanding seniority dispute between the West Pilots and

USAPA. (*Id*. at 7:9-10:4.) In addition, US Airways argued that, contrary to USAPA's previously-asserted arguments, McCaskill-Bond does not limit participation in post-merger seniority-integration proceedings to the employees' certified collective bargaining representative under the RLA. (*Id*. at 10:5-13:9.) US Airways again noted that:

> After the merger between US Airways and American is complete, a new collective bargaining agent will be certified by the NMB for all pilots of the merged carrier. The APA, not USAPA, will, in all likelihood, be certified through this process given the far greater number of pilots currently represented by APA at American. Under the MOU, the McCaskill-Bond seniority-integration arbitration among the pilot groups will not even occur until after this NMB process is completed.

(*Id.* at 7 n.6; *see also* Doc. No. 277 at 1 n.1.)

66. Also on October 11, 2013, USAPA filed its own motion for summary judgment in the Arizona Lawsuit. (Doc. No. 211.) In its supporting memorandum of points and authorities and in its opposition to US Airways' motion for summary judgment, USAPA again argued that only certified collective bargaining representatives may participate in the McCaskill-Bond seniority-integration process and that, therefore, only USAPA could represent US Airways pilots, including the West Pilots, in the MOU seniority integration process. (*Id*. at 11:2-15:3; Doc. No. 270 at 2:1-5:7.) USAPA stated that:

> Section 3 [of the Allegheny-Mohawk LPPs] expressly provides for agreement through collective bargaining between the carriers and the representatives of the employees affected. The only parties to the collective bargaining process are the certified union and the carrier. There are no outside groups or employees permitted in that process … [T]he language of both the statute and Sections 3 and 13 are clear that the bargaining representative is the only participant on behalf of employees within the class or craft it represents.

(*Id*. at 4:13-17 and 5:4-7.)

67. A bench trial took place before the Court in the Arizona Lawsuit on October 22-23, 2013.

68. On January 10, 2014, the Court (Judge Silver) issued her decision, finding in favor of USAPA on all claims. (Arizona Lawsuit, Doc. No. 298, 2014 WL 321349 (D. Ariz. Jan. 10, 2014).)

69. With respect to the West Pilots' right under McCaskill-Bond to participate separately in the MOU seniority-integration process, Judge Silver held, in pertinent part:

> With the limited amount of guidance from CAB, and the parties offering no other legal authority or materials that might help illuminate Congressional intent, the Court is left to arrive at the meaning of McCaskill-Bond on its own. Section 3 requires carriers provide a "fair and equitable" integration process. And Section 13 requires arbitration between "the organization or organizations representing the employee or employees." The Court is persuaded this statutory text should be interpreted in harmony with those CAB decisions allowing participation only by the employees' certified representatives. When a certified representative exists, that representative owes a duty of fair representation to all employees. A "fair and equitable" integration process will involve that representative acting on behalf of the represented employees. And when a certified bargaining representative exists, introducing an independent group, such as the West Pilots, would "interfere with the established representation format" and also "tamper with and inevitably complicate the procedures used to negotiate seniority list integration." *Nat'l Airlines, Arbitration*, 84 C.A.B. 408, 476 (1979). In addition, allowing the involvement of any employee or group of employees with sufficiently distinct interests would be an invitation to chaos; the seniority integration process cannot accommodate the participation of whoever might be affected by the final result. Therefore, the process contemplated by McCaskill-Bond allows only the certified bargaining representatives to participate in seniority integration proceedings.
>
> …
>
> USAPA has succeeded here but it is a Pyrrhic victory. **As contemplated by the MOU, in the very near future an election will take place and a new representative will be chosen by all of the post-merger pilots. It is almost certain USAPA will lose that election. Once that happens, USAPA will no longer be entitled to participate in the seniority integration proceedings. The Court has no doubt that–as is USAPA's consistent practice–USAPA will change its position when it needs to do so to fit its**

> **hard and unyielding view on seniority. That is, having prevailed in convincing the Court that only certified representatives should participate in seniority discussions, once USAPA is no longer a certified representative, it will change its position and argue entities other than certified representatives should be allowed to participate. The Court's patience with USAPA has run out.** USAPA avoided liability on the DFR claim by the slimmest of margins and the Court has serious doubts that USAPA will fairly and adequately represent all of its members while it remains a certified representative. But all the Court can do at this stage is implore USAPA to, in the words of CAB, "make every effort to see that [the West Pilots'] are given extensive consideration, and that their interests are fairly and fully represented" during seniority integration. *National Airlines, Acquisition*, 84 C.A.B. 408, 477 (1979). **And when USAPA is no longer the certified representative, it must immediately stop participating in the seniority integration.**

(*Id*. at 19:27-21:12, 2014 WL 321349, at *12 (emphasis added).)

70. In Footnote 15, Judge Silver observed:

> The parties have not explained how the process contemplated by the MOU could ever take effect. The MOU contemplates the need for arbitration but also requires the postmerger carrier remain neutral. Under the Court's reading of McCaskill-Bond, there will be no need for arbitration because, based on explicit language in the MOU, prior to the arbitration, there will have been an election and there will be only one certified representative for all pilots. Simply put, with the carrier having promised neutrality, there will not be two parties to go to arbitration. Whether the post-merger carrier's promise to remain neutral regarding seniority violates the obligations imposed on it by McCaskill-Bond is an open question and one not presented in this case.

(*Id*. at 21 n.15, 2014 WL 321349, at *12 n.15.)

71. A copy of the Court's January 10, 2014 Order is attached as Exhibit C.

72. Consistent with the Court's order, the Court entered judgment in favor of USAPA on all claims. (Arizona Lawsuit, Doc. No. 299.)

73. On February 7, 2014, US Airways filed a motion to correct the judgment and to modify the Court's January 10, 2014 Order. (Arizona Lawsuit, Doc. No. 300.) In its motion, US Airways requested that the Court correct the judgment to conform to the

technical requirements of Federal Rule of Civil Procedure 23(c)(3) by describing the class to be bound by the judgment. (*Id*. at 2:10-4:20.) In addition, US Airways requested that the Court modify its January 10, 2014 Order to delete Footnote 15 so that the Order could not be construed to prohibit APA – after it has been certified as the single collective bargaining representative for all of the US Airways/American pilots – from creating and delegating authority to separate merger committees to represent the disparate seniority interests of the legacy US Airways and legacy American pilots. (*Id*. at 4:21-9:6.)

74. In its motion, US Airways explained that, consistent with industry practice following the enactment of McCaskill-Bond, APA had recently proposed, in negotiations with the Company and USAPA, creating separate merger committees to represent the disparate interests of the legacy US Airways and legacy American pilots. The APA's initial proposal in these negotiations would have provided that:

> Effective on and after the date that the NMB determines the representation of the combined pilot craft and class at New American, the Organization, if any, designated by the NMB as the duly designated representative of the combined craft and class (the "Organization") shall designate such Merger Committees as are required to represent, for seniority integration purposes, the pilots on the pre-merger seniority lists in the combined craft and class. **Consistent with the MOU, this Protocol Agreement, the duty of fair representation, and the Organization's other legal obligations, the Organization shall delegate to such Merger Committees authority to act for and on behalf of the pilots on their respective pre-merger seniority lists for purposes of concluding an integrated pilot seniority list.**

(*Id*. at 8:6-11 (quoting APA SIC [Seniority Integration Committee] Proposal, dated January 17, 2014, ¶ 2(b) at 3-4 (emphasis added).)

75. APA's proposal specified further that if an integrated seniority list was not reached through negotiations, the Merger Committees would proceed to arbitration. (*Id*. at 8:6-11 (*citing* APA SIC Proposal, dated January 17, 2014 ¶¶ 7-16 at 7-13).)

76. Both USAPA and the plaintiffs supported the relief requested by US Airways in its motion. (Arizona Lawsuit, Doc. No. 301 at 1:27-2:3; Doc. No. 302 at 1:19-25.) However, USAPA also asked the Court to delete a number of other statements from the Court's January 10, 2014 Order, including the statement that: "And when USAPA is no longer the certified representative, it must immediately stop participating in the seniority integration." (Arizona Lawsuit, Doc. No. 301 at 4:21-5:9.)

77. In its reply brief in support of its motion, US Airways referred the Court to a number of actions by USAPA indicating that it did not intend to comply with the Court's January 10, 2014 Order. (Arizona Lawsuit, Doc. No. 303 at 3:19-4:21). USAPA has and continues to attempt to evade the Court's Order, as follows:

a. In the days and weeks following the issuance of the Court's Order, USAPA made a number of public pronouncements that it viewed the statements by the Court regarding its right to participate in the seniority-integration process following decertification as "dicta" and that USAPA would continue to represent the legacy US Airways pilots throughout the entire seniority-integration process, both before and after its decertification.

b. In negotiations with APA and the Company pursuant to Paragraph 10 of the MOU for the Protocol Agreement setting procedures for the negotiation and/or arbitration of an integrated seniority list, the initial USAPA proposal, dated January 28, 2014, expressly provided that USAPA's designated Merger Committee would "continue in existence"

even after decertification and, along with the APA Merger Committee, would be a full participant throughout the seniority-integration process.

c. Later in the Protocol Agreement negotiations, USAPA proposed that "[f]urther elements of the seniority integration protocol may be established by written agreement of the parties." This proposal would have given USAPA veto power over any changes to the seniority-integration process that APA might deem appropriate after APA is certified as the single collective bargaining representative, and was thus plainly inconsistent with the Court's January 10, 2014 Order. In these negotiations, which ultimately broke down by the applicable deadline, USAPA's counsel stated that "USAPA will not waive its position on these issues [*i.e.,* "a West merger Committee and any changes to the Protocol Agreement"], but we would agree to leave any dispute until when/if APA is certified."

d. As soon as the deadline for reaching a Protocol Agreement had passed, USAPA attempted to repudiate the entire MOU seniority-integration framework. On February 20, 2014, USAPA filed a request with the NMB seeking a panel of seven potential arbitrators from which USAPA claimed the parties would select one to resolve their seniority-integration dispute. USAPA did this even though: (i) the time frame for selection of arbitrators under the MOU would not begin until March 9 and would not end until March 24, 2014; (ii) the MOU expressly states that three arbitrators (not one) will be utilized; (iii) the MOU clearly contemplates that the parties will attempt in good faith to agree on those three

arbitrators; and in the negotiations for the Protocol Agreement, all parties, including USAPA, had reached accord on an arbitrator-selection procedure that was consistent with the provisions of the MOU.

e. On February 27, 2014, USAPA filed the present action seeking to invalidate all of the MOU's seniority integration provisions on the grounds that the MOU contains no procedure for the selection of arbitrators and there is no signed Protocol Agreement, and instead to invoke the dispute-resolution procedures set forth in Section 13(a) of the *Allegheny-Mohawk* LPPs.

FIRST CLAIM FOR RELIEF

(Declaratory Judgment (28 U.S.C. § 2201))
Under McCaskill-Bond, the MOU is a Collective Bargaining Agreement with Seniority Integration Procedures that Allow for the Protections of *Allegheny-Mohawk* Sections 3 and 13

78. APA realleges and incorporates by reference each and every allegation contained in Paragraphs 1 through 77 of these Counterclaims as though fully set forth herein.

79. McCaskill-Bond provides that the general requirement to integrate seniority in accordance with Sections 3 and 13 of the *Allegheny-Mohawk* LPPs shall not affect "the requirements of any collective bargaining agreement that may be applicable to the terms of integration involving covered employees of a covered air carrier … so long as those provisions allow for the protections afforded by sections 3 and 13 of the Allegheny-Mohawk provisions." 49 U.S.C § 42112, note § 117(a)(2).

80. The MOU is a collective bargaining agreement applicable to the terms of seniority integration involving the legacy US Airways and legacy American pilots, who are

"covered employees of a covered air carrier" within the meaning of McCaskill-Bond, and the MOU allows for the protections afforded by Sections 3 and 13 of the *Allegheny-Mohawk* LPPs.

81. The Court in the Arizona Lawsuit previously held that the MOU is a collective bargaining agreement. (Arizona Lawsuit, Doc. No. 122 at 3:8-22.)

82. Paragraph 10 of the MOU (quoted in full at Paragraph 27, *supra*) prescribes the use of a seniority integration process "consistent with McCaskill-Bond," and contains the following specific requirements, among others:

e. The seniority-integration process "shall begin as soon as possible" after December 9, 2013;

f. An expedited (*i.e.*, 90-day) period of negotiations for an integrated seniority list;

g. If negotiations are unsuccessful, "a panel of three neutral arbitrators will be designated within fifteen (15) days to resolve the dispute";

h. The arbitration panel's award must comply with five specified criteria in order to minimize the adverse operational and financial impacts to the Company from implementation of the integrated seniority list;

i. The integrated seniority list will be "final and binding" on all concerned;

j. The carriers "shall remain neutral regarding the order in which pilots are placed on the integrated seniority list;"

k. The MOU's seniority-integration provisions are specifically enforceable before an arbitration board or a court, as applicable;

l. The carriers will "provide information requested by the merger representatives for use in the arbitration;" and

m. The carriers will provide $4 million to the "merger representatives involved in the seniority integration process."

83. The seniority integration process established by the MOU is far more detailed, and contains many more safeguards and protections for both the employees and the carriers, than are contained in *Allegheny-Mohawk* Sections 3 and 13 (quoted in full at Paragraphs 25-26, *supra*). As a result, the MOU "allow[s] for the protections afforded by sections 3 and 13 of the Allegheny-Mohawk provisions" within the meaning of Section (a)(2) of McCaskill-Bond, 49 U.S.C § 42112, note § 117(a)(2).

84. Because the MOU satisfies the requirements of 49 U.S.C § 42112, note § 117(a)(2), the general requirement under McCaskill-Bond to integrate employee seniority lists according to Sections 3 and 13 of the *Allegheny-Mohawk* LPPs is inapplicable to the US Airways/American pilot seniority integration. According to McCaskill-Bond itself, the MOU, specifically including the seniority-integration procedures and timeline set forth in MOU Paragraph 10, "shall not be affected." 49 U.S.C § 42112, note § 117(a)(2).

85. By its Complaint in this action, USAPA seeks to invalidate the MOU's seniority integration process in its entirety and to compel the Company and APA to conduct a pilot seniority integration in accordance with Section 13(a) of *Allegheny-Mohawk*.

86. USAPA has, therefore, definitively expressed its intention not to be bound by the seniority integration terms of the MOU.

87. 28 U.S.C. § 2201 provides that, "[i]n a case of actual controversy within its jurisdiction … any court of the United States, upon the filing of an appropriate pleading,

may declare the rights and other legal relations of any interested party seeking such a declaration, whether or not further relief is or could be sought. Any such declaration shall have the force and effect of a final judgment or decree and shall be reviewable as such."

88. Unless the Court issues declaratory relief resolving the relevant legal issues, APA will be substantially injured by USAPA's repudiation of its contractual obligations under the MOU. APA has no prompt, adequate and effective remedy at law and this action is the only means available to it for the protection of its rights.

89. APA seeks a declaration that, pursuant to 49 U.S.C § 42112, note § 117(a)(2), the MOU shall govern the seniority-integration process for legacy US Airways and legacy American pilots, and that the procedures and timelines in Section 13(a) of the *Allegheny-Mohawk* LPPs shall not apply to the US Airways/American pilots seniority integration.

SECOND CLAIM FOR RELIEF

(Declaratory Judgment (28 U.S.C. § 2201))
The MOU Provides for an Alternative Method for Dispute Settlement Under Section 13(b) of the *Allegheny-Mohawk* LPPs

90. APA realleges and incorporates by reference each and every allegation contained in Paragraphs 1 through 89 of these Counterclaims as though fully set forth herein.

91. APA asserts this claim for relief as an alternative to its First Claim for Relief, in the event the Court determines that 49 U.S.C § 42112, note § 117(a)(2) is inapplicable and that Sections 3 and 13 of *Allegheny-Mohawk* (through their incorporation by McCaskill-Bond) are directly applicable to the US Airways/American pilot seniority integration.

92. Section 13(b) of the *Allegheny-Mohawk* LPPs, as adopted by McCaskill-Bond, provides that the requirements of Section 13(a) "shall not apply if the parties by mutual

agreement determine that an alternative method for dispute settlement or an alternative procedure for selection of an arbitrator is appropriate in their particular dispute." (*See* Paragraph 26, *supra*.)

93. The MOU provides for an expedited (*i.e.*, 90-day) period of negotiations for an integrated seniority list and, in the event of a failure to agree on an integrated list through negotiation within the applicable time period, for the integrated seniority list to be determined through final and binding arbitration before a panel of three arbitrators designated by the parties.

94. The MOU provides that the seniority-integration arbitration process shall be conducted according to a specific timeline, that the arbitration hearing itself will not commence until after a JCBA has been achieved, that the arbitration award shall comply with specific substantive requirements, and that the award shall be final and binding on all concerned.

95. The MOU provides that the Company shall remain neutral throughout the entire seniority-integration process regarding the relative ordering of pilots on the integrated seniority list.

96. The MOU provides for an "alternative method for dispute settlement" within the meaning of *Allegheny-Mohawk* Section 13(b), thereby rendering Section 13(a) inapplicable to the US Airways/American pilot seniority integration.

97. By its Complaint in this action, USAPA has definitively expressed its intention not to be bound by the seniority integration terms of the MOU as an "alternative method for dispute settlement" under Section 13(b) of the *Allegheny-Mohawk* LPPs.

98. 28 U.S.C. § 2201 provides that, "[i]n a case of actual controversy within its jurisdiction … any court of the United States, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such a declaration, whether or not further relief is or could be sought. Any such declaration shall have the force and effect of a final judgment or decree and shall be reviewable as such."

99. Unless the Court issues declaratory relief resolving the relevant legal issues, APA will be substantially injured by USAPA's repudiation of its contractual obligations under the MOU. APA has no prompt, adequate and effective remedy at law and this action is the only means available to it for the protection of its rights.

100. APA seeks a declaration that, because the MOU provides for an "alternative method for dispute settlement" under Section 13(b) of *Allegheny-Mohawk*, the dispute resolution procedures set forth in Section 13(a) do not apply to the seniority integration of legacy US Airways and legacy American pilots, and that the specific arbitration procedures and timeline set forth in the MOU shall be used to determine the integrated seniority list.

THIRD CLAIM FOR RELIEF

(Declaratory Judgment (28 U.S.C. § 2201))
Once Decertified, USAPA's Right to Participate in Seniority Integration Terminates and its Continued Participation is Determined by APA as Certified Representative of All Company Pilots

101. APA re-alleges and incorporates by reference each and every allegation contained in Paragraphs 1 through 100 of these Counterclaims as though fully set forth herein.

102. McCaskill-Bond, 49 U.S.C. § 42112, note, contemplates that the only parties to a labor integration proceeding related to a transaction covered by the statute will be

"collective bargaining agent[s]" that represent "the combining crafts or classes" at any of the covered air carriers.

103. Sections 3 and 13 of the *Allegheny-Mohawk* LPPs contemplate that only "the carriers and the representatives of the employees affected" may be parties to a labor integration proceeding. Unless the employees are "unrepresented," the employees' representative is the "organization or organizations representing the employees," as certified by the NMB.

104. USAPA's right, pursuant to McCaskill-Bond and Sections 3 and 13 of the *Allegheny-Mohawk* LPPs, to participate in the US Airways/American seniority-integration process as the representative of US Airways (East and West) pilots was previously adjudicated in the Arizona Lawsuit.

105. Throughout the course of the Arizona Lawsuit, USAPA affirmatively took the position that, pursuant to McCaskill-Bond and Sections 3 and 13 of the *Allegheny-Mohawk* LPPs, only the NMB-certified collective bargaining representative of affected employees could represent those employees in seniority-integration proceedings (assuming there was such a representative). USAPA prevailed on this point in the Arizona Lawsuit, and successfully defeated the McCaskill-Bond claim in that Lawsuit as a result.

106. Pursuant to McCaskill-Bond, Sections 3 and 13 of the *Allegheny-Mohawk* LPPs, and the January 10, 2014 Order in the Arizona Lawsuit, if and when the NMB makes a single carrier finding and certifies APA as the collective bargaining representative for all pilots of the Company, APA will be entitled to represent all pilots of the Company in the seniority integration process.

107. Pursuant to McCaskill-Bond, Sections 3 and 13 of the *Allegheny-Mohawk* LPPs, and the January 10, 2014 Order in the Arizona Lawsuit, if and when the NMB decertifies USAPA as the collective bargaining representative for US Airways pilots, USAPA will not be entitled to party status in the seniority integration arbitration.

108. Pursuant to industry practice, once it is certified as the collective bargaining representative for all pilots of the Company, APA may continue the existing American and US Airways seniority integration committees or may establish new merger committees to act for and on behalf of the pilots on their respective pre-merger seniority lists for purposes of concluding an integrated pilot seniority list.

109. Since the issuance of the January 10, 2014 Order, USAPA has definitively expressed its intent, contrary to that Order, to exclusively represent US Airways pilots in the US Airways/American seniority integration process, even after it is decertified as the collective bargaining representative for legacy US Airways pilots.

110. Unless the Court issues declaratory relief resolving the relevant legal issues, APA will be substantially injured because USAPA's post-decertification role in the seniority integration process will be disputed and will threaten the ability of the parties to proceed to final and binding arbitration under MOU Paragraph 10(a). APA has no prompt, adequate and effective remedy at law and this action is the only means available to it for the protection of its rights.

111. APA seeks a declaration that, once USAPA is decertified as the collective bargaining representative for legacy US Airways pilots and APA is certified as the collective bargaining representative for all legacy US Airways and legacy American pilots, USAPA

may only participate in the MOU seniority integration process if and to the extent APA deems appropriate as the certified representative for all pilots of the Company.

PRAYER FOR RELIEF

The Company prays for judgment against USAPA as follows:

112. **For a declaration that**: (a) pursuant to McCaskill-Bond, 49 U.S.C § 42112, note § 117(a)(2), the terms of the MOU, including the procedures and timelines set forth in MOU Paragraphs 10, 26 and 27, shall govern the seniority-integration process for legacy US Airways and American pilots, and that (b) the specific procedures and timeline set forth in Section 13(a) of the *Allegheny-Mohawk* Labor Protective Provisions for resolving disputes over seniority integration, therefore, do not apply to the seniority integration process of legacy US Airways and legacy American pilots.

113. **In the alternative, for a declaration that**: (a) the MOU, including the procedures and timelines set forth in MOU Paragraphs 10, 26 and 27, provides for an "alternative method for dispute settlement" under Section 13(b) of the *Allegheny-Mohawk* Labor Protective Provisions, and (b) the dispute resolution procedures set forth in Section 13(a), therefore, do not apply to the seniority integration of legacy US Airways and legacy American pilots, and further that (c) because APA and USAPA failed to agree on a merged seniority list within the applicable time period under the MOU, the specific arbitration procedures and timeline set forth in the MOU shall be used to determine the merged seniority list of legacy US Airways and legacy American pilots.

114. **For a declaration that**: immediately upon losing its certification as the collective bargaining representative for US Airways pilots, USAPA may only participate in the MOU seniority integration process to the extent APA, as the certified representative for

all pilots of the Company, delegates authority to USAPA to act for and on behalf of any legacy US Airways pilots.

115. For such other, further, and/or different relief as the Court may deem just and proper.

Dated: March 21, 2014

Respectfully submitted,

/s/ Edgar N. James

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ALLIED PILOTS ASSOCIATION

CERTIFICATE OF SERVICE

I hereby certify that on March 21, 2014 a copy of the foregoing was electronically filed via the Court's ECF System. Notice of this filing will be sent to all parties of record by operation of the Court's electronic filing system.

/s/ Edgar N. James
Edgar N. James