IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

US AIRLINE PILOTS ASSOCIATION
200 E. Woodlawn Road, Suite 250
Charlotte, North Carolina, 28217,

Plaintiff,

v.

US AIRWAYS, INC.
4333 Amon Carter Boulevard
Fort Worth, Texas 76155

AMERICAN AIRLINES, INC.
4333 Amon Carter Boulevard
Fort Worth, Texas 76155

and

ALLIED PILOTS ASSOCIATION
14600 Trinity Boulevard, Suite 500
Fort Worth, Texas 76155-2512,

Defendants.

Case No. 1:14-cv-00328 (BAH)

ANSWER AND COUNTERCLAIMS OF DEFENDANTS US AIRWAYS, INC. AND AMERICAN AIRLINES, INC.

Defendants US Airways, Inc. ("US Airways") and American Airlines, Inc. ("American") (collectively, the "Company"), for themselves alone and for no other defendant, hereby answer the unverified Complaint of Plaintiff US Airline Pilots Association ("USAPA") as follows:

NATURE OF ACTION

PARAGRAPH NO. 1:

USAPA brings this action against defendants US AIRWAYS, INC. ("US Airways"), AMERICAN AIRLINES, INC. ("American") (collectively "the Company"), and ALLIED

PILOTS ASSOCIATION ("APA"), for declaratory and injunctive relief under 49 U.S.C. § 42112(a), the McCaskill-Bond Amendment to the Federal Aviation Act ("McCaskill-Bond Amendment") and 28 U.S.C. § 2201, the Declaratory Judgment Act.

RESPONSE TO PARAGRAPH NO. 1:

The allegations contained in Paragraph 1 state legal conclusions, to which no responsive pleading is required, but to the extent a responsive pleading is necessary, the Company denies each and every averment in Paragraph 1 except as follows: the Company admits that USAPA purports to bring this action against defendants US Airways, American, and the Allied Pilots Association ("APA"); and that USAPA purports to seek declaratory and injunctive relief under the McCaskill-Bond Amendment and the Declaratory Judgment Act.

PARAGRAPH NO. 2:

This action arises in a seniority list integration dispute between the pilots of American and US Airways to combine their existing separate seniority lists into one seniority list covering all pilots, resulting from the merger transaction between American and US Airways that closed on December 9, 2013. The integration of seniority lists among airline employee groups affected by an airline merger is governed by the McCaskill-Bond Amendment, 49 U.S.C. § 42112(a), which was adopted by Congress in 2007 in response to the unfair treatment of former employees of Trans World Airlines ("TWA") by defendants American and the APA in the 2001 merger of American and TWA. Defendants American and APA refused fair procedures for seniority list integration to the former pilots of TWA and instead entered an agreement, without participation by TWA pilots, which placed most former TWA pilots at the bottom of the American Airlines pilot seniority list and then resulted in those former TWA pilots being furloughed after merger of the two airlines. In response to this unfair treatment of TWA pilots by defendants American and

APA, Congress adopted the McCaskill-Bond Amendment and imposed on airline mergers a requirement that the employee groups involved in the merger would have their seniority lists combined in a fair and equitable manner through a fair process, including recourse to arbitration to resolve the dispute if necessary.

RESPONSE TO PARAGRAPH NO. 2:

The allegations contained in Paragraph 2 principally state legal conclusions, to which no responsive pleading is required, but to the extent a responsive pleading is necessary, the Company denies each and every averment in Paragraph 2 except as follows: the Company admits the allegations in the first sentence of Paragraph 2; and the Company admits and avers that the McCaskill-Bond Amendment speaks for itself.

PARAGRAPH NO. 3:

As more fully described below, USAPA seeks declaratory and injunctive relief in the parties' dispute concerning the integration of seniority lists between the pilots of American and the pilots of US Airways under the McCaskill-Bond Amendment, 49 U.S.C. § 42112(a), including, but not limited to, an order declaring that the McCaskill-Bond Amendment requires that the integration of the seniority lists of US Airways and American pilots must be completed pursuant to Section 13(a) of the Allegheny-Mohawk Labor Protective Provisions ("Allegheny-Mohawk LPPs") and compelling the defendants to comply with the requirements of Section 13(a); an order awarding USAPA its reasonable costs and attorneys' fees associated with this proceeding; and such other and further relief as the Court deems equitable and just.

RESPONSE TO PARAGRAPH NO. 3:

The allegations contained in Paragraph 3 state legal conclusions, to which no responsive pleading is required, but to the extent a responsive pleading is necessary, the Company denies

each and every averment in Paragraph 3 except as follows: the Company admits that USAPA purports to seek declaratory and injunctive relief on the grounds stated in Paragraph 3.

JURISDICTION AND VENUE

PARAGRAPH NO. 4:

This Court has subject matter jurisdiction under the McCaskill-Bond Amendment, 49 U.S.C. § 42112(a), pursuant to 28 U.S.C. § 1331. This Court also has jurisdiction herein pursuant to 28 U.S.C. § 1337 because this is an action arising under a statute that regulates commerce and/or protects trade and commerce against restraints.

RESPONSE TO PARAGRAPH NO. 4:

The allegations contained in Paragraph 4 state legal conclusions, to which no responsive pleading is required, but to the extent a responsive pleading is necessary, the Company denies each and every averment in Paragraph 4 except as follows: the Company admits that the Court has federal-question subject-matter jurisdiction with respect to USAPA's claim, but, insofar as the adjudication of that claim would require the Court to interpret the Memorandum of Understanding Regarding Contingent Collective Bargaining Agreement ("MOU") between and among US Airways, American, APA and USAPA, the Company specifically denies that the Court has jurisdiction to do so.

PARAGRAPH NO. 5:

Plaintiff's claims are also brought under the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202, and seek a declaration as to the parties' rights and obligations under the McCaskill-Bond Amendment.

RESPONSE TO PARAGRAPH NO. 5:

The allegations contained in Paragraph 5 state legal conclusions, to which no responsive pleading is required, but to the extent a responsive pleading is necessary, the Company denies each and every averment in Paragraph 5 except as follows: the Company admits that USAPA purports to assert a claim under the Declaratory Judgment Act.

PARAGRAPH NO. 6:

Venue is proper in the District of Columbia pursuant to 28 U.S.C. § 1391(b), because USAPA does business in this district, and defendants US Airways, US Airways Group, American, American Airlines Group, AMR and APA reside in, are found in, or are doing business in this district. Upon information and belief, it is also the district in which members of defendant APA reside.

RESPONSE TO PARAGRAPH NO. 6:

The allegations contained in Paragraph 6 state legal conclusions, to which no responsive pleading is required, but to the extent a responsive pleading is necessary, the Company denies, or denies for lack of sufficient information or knowledge, each and every averment except as follows: the Company admits that both US Airways and American reside in the District of Columbia within the meaning of 28 U.S.C. § 1391(c)(2), but specifically denies that US Airways Group, American Airlines Group, and AMR are defendants in this action; and the Company admits that venue is proper in this District pursuant to 28 U.S.C. § 1391(b)(3).

PARAGRAPH NO. 7:

Venue also is proper in this district, because the events giving rise to this action primarily occurred within this district. Specifically, negotiations among the parties in an effort to reach

agreement on alternative procedures for integration of the two pilot groups' seniority lists have occurred primarily in the District of Columbia.

RESPONSE TO PARAGRAPH NO. 7:

The allegations contained in Paragraph 7 principally state legal conclusions, to which no responsive pleading is required, but to the extent a responsive pleading is necessary, the Company denies each and every allegation in Paragraph 7 and specifically avers that the parties' negotiations for "alternative procedures for integration" (i.e., the MOU) occurred primarily in Dallas, Texas.

PARAGRAPH NO. 8:

Additionally, venue is proper in this district because the McCaskill-Bond Amendment designates the National Mediation Board, which is located here, as the federal agency to issue the list of arbitrators for resolving the seniority list integration dispute and it is a disagreement over the issuance and use of this list which gives rise to the immediate disagreement alleged in this complaint. All of the relevant correspondence concerning this list has been with the NMB which is located here and the list will be issued by the NMB

RESPONSE TO PARAGRAPH NO. 8:

The allegations contained in Paragraph 8 principally state legal conclusions, to which no responsive pleading is required, but to the extent a responsive pleading is necessary, the Company denies each and every averment in Paragraph 8 except as follows: the Company admits that the National Mediation Board is located in the District of Columbia.

PARTIES

PARAGRAPH NO. 9:

Plaintiff USAPA is a private, 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 certified collective bargaining representative of the pilots of US Airways. USAPA has its principal place of business located at 200 E. Woodlawn Road, Suite 250, Charlotte, North Carolina, 28217.

RESPONSE TO PARAGRAPH NO. 9:

The allegations contained in Paragraph 9 state legal conclusions, to which no responsive pleading is required, but to the extent a responsive pleading is necessary: the Company denies for lack of sufficient information or knowledge the allegations in the first sentence of Paragraph 9; and the Company admits the allegations in the second and third sentences of Paragraph 9.

PARAGRAPH NO. 10:

Upon information and belief, defendant US Airways is a commercial airline with national and international operations, and is an "air carrier" within the meaning of 49 U.S.C. § 42112, note § 117(b)(1). US Airways has its principal place of business located at 4333 Amon Carter Boulevard, Fort Worth, Texas 76155.

RESPONSE TO PARAGRAPH NO. 10:

The Company admits the allegations contained in Paragraph 10 of the Complaint.

PARAGRAPH NO. 11:

Upon information and belief, US Airways is a wholly owned subsidiary of US Airways Group.

RESPONSE TO PARAGRAPH NO. 11:

The Company admits that US Airways is a wholly-owned subsidiary of US Airways Group, Inc.

PARAGRAPH NO. 12:

Upon information and belief, defendant American is a commercial airline with national and international operations, and is an "air carrier" within the meaning of 49 U.S.C. § 42112, note § 117(b)(1). American has its principal place of business located at 4333 Amon Carter Boulevard, Fort Worth, Texas 76155.

RESPONSE TO PARAGRAPH NO. 12:

The Company admits the allegations in Paragraph 12 of the Complaint.

PARAGRAPH NO. 13:

Upon information and belief, American is a wholly owned-subsidiary of AMR Corporation.

RESPONSE TO PARAGRAPH NO. 13:

The Company denies the averment in Paragraph 13, but avers as follows: American is a wholly-owned subsidiary of American Airlines Group Inc.; and American Airlines Group Inc. was formerly named AMR Corporation.

PARAGRAPH NO. 14:

Upon information and belief, defendant APA is a private, unincorporated association operating as a labor organization.

RESPONSE TO PARAGRAPH NO. 14:

The Company admits the allegation in Paragraph 14 of the Complaint.

PARAGRAPH NO. 15:

Upon information and belief, APA is a "representative" as defined by the RLA, 45 U.S.C. § 151 (Sixth), and is the certified collective bargaining representative of the pilots of American. APA has its principal place of business located at 14600 Trinity Boulevard, Suite 500, Fort Worth, Texas 76155-2512. By its officers and employees, APA conducts business and acts on behalf of its members in the District of Columbia, at least one of whom resides within the District of Columbia.

RESPONSE TO PARAGRAPH NO. 15:

The allegations contained in Paragraph 15 principally state legal conclusions, to which no responsive pleading is required, but to the extent a responsive pleading is necessary: the Company denies for lack of sufficient information or knowledge the allegations in the last sentence of Paragraph 15; and the Company admits the allegations in the first and second sentences of Paragraph 15.

FACTS

PARAGRAPH NO. 16:

The McCaskill-Bond Amendment governs the integration of seniority lists among airline employee groups involved in an airline merger.

RESPONSE TO PARAGRAPH NO. 16:

The Company admits the allegation in Paragraph 16 of the Complaint.

PARAGRAPH NO. 17:

The McCaskill-Bond Amendment 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—

> (1) if the same collective bargaining agent represents the combining crafts or classes at each of the covered air carriers, that collective bargaining agent's internal policies regarding integration, if any, will not be affected by and will supersede the requirements of this section; and
>
> (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.

RESPONSE TO PARAGRAPH NO. 17:

The allegation contained in Paragraph 17 states a legal conclusion, to which no responsive pleading is required, but to the extent a responsive pleading is necessary, the Company denies each and every averment in Paragraph 17 except as follows: the Company admits that Paragraph 17 contains an accurate quotation of 49 U.S.C. § 42112(a).

PARAGRAPH NO. 18:

Section 3 of the Allegheny-Mohawk LPPs, which is incorporated as part of the McCaskill-Bond Amendment, provides that employees involved in a merger of airlines will have their separate seniority lists combined into a single seniority list covering all employees in a fair and equitable manner. Section 3 further provides that if the parties cannot agree on a fair and equitable manner for combination of the seniority lists, any party may submit the dispute for resolution in accordance with the dispute resolution procedures of Section 13 of the Allegheny-Mohawk LPPs.

RESPONSE TO PARAGRAPH NO. 18:

The allegations contained in Paragraph 18 state legal conclusions, to which no responsive pleading is required, but to the extent a responsive pleading is necessary, the Company denies

each and every averment in Paragraph 18 except as follows: the Company admits and avers that Section 3 of the Allegheny-Mohawk LPPs speaks for itself.

PARAGRAPH NO. 19:

Section 13 of the Allegheny-Mohawk LPPs establishes a dispute resolution procedure, including for Section 3 seniority integration disputes, which provides under its subsection 13(a) that if the parties have not settled the dispute within 20 days of it arising, any party may request from the National Mediation Board ("NMB") a list of seven potential arbitrators from which the parties will then alternately strike names until a single arbitrator remains who will hear and resolve the dispute. Section 13(a) further provides that expedited arbitration will occur and a decision will be rendered by the arbitrator within 90 days of the dispute arising, unless the parties mutually agree to extend that time period.

RESPONSE TO PARAGRAPH NO. 19:

The allegations contained in Paragraph 19 state legal conclusions, to which no responsive pleading is required, but to the extent a responsive pleading is necessary, the Company denies each and every averment in Paragraph 19 except as follows: the Company admits and avers that Section 13 of the Allegheny-Mohawk LPPs ("Section 13") speaks for itself.

PARAGRAPH NO. 20:

Section 13 also provides under its subsection 13(b) that parties may agree on an alternative method for dispute settlement or arbitrator selection for their particular dispute. But Section 13(b) states that no party is excused from compliance with Section 13(a)'s requirements unless and until all parties agree on an alternative dispute resolution procedure.

RESPONSE TO PARAGRAPH NO. 20:

The allegations contained in Paragraph 20 state legal conclusions, to which no responsive pleading is required, but to the extent a responsive pleading is necessary, the Company denies each and every averment in Paragraph 20 except as follows: the Company admits and avers that Section 13(b) of the Allegheny-Mohawk LPPs speaks for itself.

PARAGRAPH NO. 21:

On November 29, 2011, AMR Corporation and its subsidiaries, including American, commenced a voluntary Chapter 11 case in the United States Bankruptcy Court for the Southern District of New York. *In re AMR*, No. 7587, Case No. 11-15463.

RESPONSE TO PARAGRAPH NO. 21:

The Company admits the allegation in Paragraph 21 of the Complaint.

PARAGRAPH NO. 22:

In April 2012, US Airways announced its intention to pursue a merger with American.

RESPONSE TO PARAGRAPH NO. 22:

The Company admits the allegation in Paragraph 22 of the Complaint.

PARAGRAPH NO. 23:

In or around April 2012, USAPA, US Airways, American, and APA began negotiations on a four-party Memorandum of Understanding regarding a Contingent Collective Bargaining Agreement ("MOU").

RESPONSE TO PARAGRAPH NO. 23:

The Company denies the allegation in Paragraph 23 of the Complaint.

PARAGRAPH NO. 24:

The MOU was executed by the parties in or around February 2013.

RESPONSE TO PARAGRAPH NO. 24:

The Company denies the allegation in Paragraph 24 of the Complaint, but admits and avers that the MOU was executed in January 2013.

PARAGRAPH NO. 25:

The MOU contains certain provisions in its paragraph 10 pertaining to a procedure for integration of the seniority lists of the pilots of US Airways and American. The parties agreed that this process would commence on or about the "Effective Date" of the approval of a Plan of Reorganization by the Bankruptcy Court in the AMR bankruptcy proceeding.

RESPONSE TO PARAGRAPH NO. 25:

The Company denies each and every averment contained in Paragraph 25, except as follows: the Company admits and avers that the MOU speaks for itself.

PARAGRAPH NO. 26:

Paragraph 10 of the parties' MOU did not establish a method for the selection of arbitrators to hear a dispute. Such a process could only be established through the parties' further agreement in the seniority integration "Protocol Agreement" referenced in the MOU.

RESPONSE TO PARAGRAPH NO. 26:

The Company denies each and every averment contained in Paragraph 26 of the Complaint.

PARAGRAPH NO. 27:

The MOU did not trigger either exception under the McCaskill-Bond Amendment for its application to the seniority integration dispute between the American and US Airways pilots.

RESPONSE TO PARAGRAPH NO. 27:

The allegations contained in Paragraph 27 state legal conclusions, to which no responsive pleading is required, but to the extent a responsive pleading is necessary, the Company denies each and every averment in Paragraph 27.

PARAGRAPH NO. 28:

On or about February 13, 2013, US Airways and American (jointly "the Carriers") entered into an Agreement and Plan of Merger ("Merger Agreement").

RESPONSE TO PARAGRAPH NO. 28:

The Company admits the allegation in Paragraph 28 of the Complaint.

PARAGRAPH NO. 29:

The transaction entered by US Airways and American provided for the combination of the Carriers into a single air carrier, including the transfer of ownership of more than 50 percent of an air carrier.

RESPONSE TO PARAGRAPH NO. 29:

The allegations contained in Paragraph 29 state legal conclusions, to which no responsive pleading is required, but to the extent a responsive pleading is necessary, the Company admits that the US Airways/American transaction was a "covered transaction" within the meaning of the McCaskill-Bond Amendment.

PARAGRAPH NO. 30:

On or about February 22, 2013, the Carriers filed a joint motion in the AMR bankruptcy proceeding seeking approval of the Merger Agreement. *In Re AMR*, No. 7587, Case No. 11-15463, Doc. 6800.

RESPONSE TO PARAGRAPH NO. 30:

The Company denies the allegation in Paragraph 30 of the Complaint, but admits that AMR Corporation filed the motion referenced in Paragraph 30.

PARAGRAPH NO. 31:

On March 27, 2013, the Bankruptcy Court granted the motion seeking approval of an agreement to merge. *In Re AMR*, No. 7587, Case No. 11-15463, Doc. 7587.

RESPONSE TO PARAGRAPH NO. 31:

The Company denies the allegation in Paragraph 31 of the Complaint, but admits that the Bankruptcy Court granted the motion referenced in Paragraph 31 on April 11, 2013.

PARAGRAPH NO. 32:

On April 15, 2013, the Carriers filed a joint Plan of Reorganization in the AMR bankruptcy proceeding seeking approval of AMR's emergence from bankruptcy. *In Re AMR*, No. 7587, Case No. 11-15463, Doc. 7631.

RESPONSE TO PARAGRAPH NO. 32:

The Company denies the allegation in Paragraph 32 of the Complaint, but admits that AMR Corporation filed the document referenced in Paragraph 32.

PARAGRAPH NO. 33:

On August 13, 2013, the Department of Justice filed an anti-trust action, alleging that the merger violated Section 7 of the Clayton Act. *United States v. US Airways Group*, 13-cv-01236 (D.D.C Aug. 13, 2013).

RESPONSE TO PARAGRAPH NO. 33:

The Company admits the allegation in Paragraph 33 of the Complaint.

PARAGRAPH NO. 34:

On November 12, 2013, a settlement of the DOJ action was publicly announced.

RESPONSE TO PARAGRAPH NO. 34:

The Company admits the allegation in Paragraph 34 of the Complaint.

PARAGRAPH NO. 35:

On November 27, 2013, the SDNY Bankruptcy Court signed an order approving the settlement and allowing the merger to go forward. *In Re AMR*, No. 7587, Case No. 11-15463, Doc. 11320.

RESPONSE TO PARAGRAPH NO. 35:

The Company admits the allegation in Paragraph 35 of the Complaint.

PARAGRAPH NO. 36:

On December 9, 2013, the merger and reorganization plan became effective. *In Re AMR*, No. 7587, Case No. 11-15463, Doc. 11402.

RESPONSE TO PARAGRAPH NO. 36:

The Company admits the allegations in Paragraph 36 of the Complaint.

PARAGRAPH NO. 37:

In December 2013, American, APA, US Airways and USAPA began negotiations in an effort to reach agreement on procedures for integration of the seniority lists of the American Airlines pilots and the US Airways pilots, including the selection of arbitrators to resolve the dispute over seniority list integration referred to as a "Protocol Agreement." These negotiations were primarily conducted within the District of Columbia.

RESPONSE TO PARAGRAPH NO. 37:

The Company denies each and every averment contained in Paragraph 37, except as follows: the Company admits that the parties began negotiations for a Seniority Integration Protocol Agreement ,as required by MOU Paragraph 10(f), in December 2013.

PARAGRAPH NO. 38:

The parties mutually agreed to extend the deadline for negotiation of a Protocol Agreement until February 18, 2014.

RESPONSE TO PARAGRAPH NO. 38:

The Company admits the allegation in Paragraph 38 of the Complaint.

PARAGRAPH NO. 39:

Despite the exchange of various proposals between the parties, an agreement could not be reached on a Protocol Agreement by the February 18 deadline.

RESPONSE TO PARAGRAPH NO. 39:

The Company denies each and every averment contained in Paragraph 39, except as follows: the Company admits that proposals for a Protocol Agreement were exchanged between the parties; and the Company admits that a final Protocol Agreement, resolving all open issues, was not entered into by February 18, 2014.

PARAGRAPH NO. 40:

The parties did not agree on an alternative means for seniority list integration under Section 13(b) of the Allegheny-Mohawk LPPs.

RESPONSE TO PARAGRAPH NO. 40:

The allegation contained in Paragraph 40 states a legal conclusion, to which no responsive pleading is required, but to the extent a responsive pleading is necessary, the Company denies each and every averment contained in Paragraph 40.

PARAGRAPH NO. 41:

On February 19, 2014, Paul Jones (Senior Vice President, General Counsel, and Chief Compliance Officer for the Carriers) acknowledged via e-mail that the time period for reaching a Protocol Agreement had expired and that parties had failed to agree on a method of arbitrator selection. Mr. Jones proposed in his e-mail a method for selection of arbitrators to resolve the parties' dispute.

RESPONSE TO PARAGRAPH NO. 41:

The Company denies each and every averment contained in Paragraph 41, except as follows: the Company admits that Paul Jones, Senior Vice President, General Counsel, and Chief Compliance Officer of the Company, sent an email on February 19, 2014; and the Company admits and avers that Mr. Jones' email speaks for itself.

PARAGRAPH NO. 42:

On February 20, 2014, USAPA President Captain Gary Hummel sent a letter to NMB Chief of Staff Daniel Rainey, at his office in Washington, D.C., requesting a list of seven arbitrators pursuant to Section 13(a) of the Allegheny-Mohawk LPPs and the McCaskill-Bond Amendment.

RESPONSE TO PARAGRAPH NO. 42:

The Company denies each and every averment contained in Paragraph 42, except as follows: the Company admits that USAPA President Captain Gary Hummel sent a letter to

NMB Chief of Staff Daniel Rainey, at his office in Washington, D.C., on February 20, 2014; and the Company admits that the purported basis for Captain Hummel's request for a list of seven arbitrators was Section 13(a) of the Allegheny-Mohawk LPPs and the McCaskill-Bond Amendment, but specifically avers that neither Section 13(a) nor the McCaskill-Bond Amendment provide legal authority for Captain Hummel's request.

PARAGRAPH NO. 43:

Under the requirement of Section 13(a) imposed by the McCaskill-Bond Amendment, upon receipt of the list from the NMB, the parties are required to alternately strike names from the list until one named arbitrator remains. That remaining person will be appointed as the arbitrator who will preside over an arbitration regarding integration of the seniority lists of the pilots employed by the airlines, and decide upon a fair and equitable integration of said seniority lists.

RESPONSE TO PARAGRAPH NO. 43:

The allegations contained in Paragraph 43 state legal conclusions, to which no responsive pleading is required, but to the extent a responsive pleading is necessary, the Company denies each and every averment contained in Paragraph 43.

PARAGRAPH NO. 44:

On February 25, 2014, APA and the Carriers filed grievances under Paragraph 20 of the MOU, claiming that USAPA violated MOU paragraph 10 by invoking the McCaskill-Bond Section 13(a) process by requesting a list of seven potential arbitrators from the NMB on February 20, 2014. APA and the Carriers requested as part of the remedy in their grievance that USAPA be ordered by the arbitrator to revoke its February 20, 2014 request to the NMB under Section 13(a) of the Allegheny-Mohawk LPPs.

RESPONSE TO PARAGRAPH NO. 44:

The Company denies each and every averment contained in Paragraph 44, except as follows: the Company admits that both the Company and APA filed grievances under Paragraph 20 of the MOU on February 25, 2014; and the Company admits and avers that the grievances speak for themselves.

PARAGRAPH NO. 45:

On February 27, 2014, the Carriers sent a letter to the NMB, at its offices in Washington, D.C., asserting that USAPA's February 20, 2014 request under Section 13(a) was improper and that the NMB should not issue the panel of arbitrators as required by Section 13(a).

RESPONSE TO PARAGRAPH NO. 45:

The Company denies each and every averment contained in Paragraph 45, except as follows: the Company admits that it sent a letter to the NMB on February 26, 2014, at its offices in Washington, D.C.; and the Company admits and avers that its February 26 letter speaks for itself.

PARAGRAPH NO. 46:

The APA also wrote the NMB, at its offices in Washington, D.C., on February 27, 2014 objecting to USAPA's request under Section 13(a) and asserting that Section 13(a) did not apply to the parties' dispute.

RESPONSE TO PARAGRAPH NO. 46:

The Company denies each and every averment contained in Paragraph 46, except as follows: the Company admits that the APA sent a letter to the NMB at its offices in Washington, D.C., on February 26, 2014; and the Company admits and avers that the APA's February 26 letter speaks for itself.

PARAGRAPH NO. 47:

The defendants have conclusively asserted a position that they are not obligated to comply with Section 13(a) in resolving the seniority list integration dispute.

RESPONSE TO PARAGRAPH NO. 47:

The Company denies, or denies for lack of sufficient information or knowledge, each and every averment contained in Paragraph 47 except as follows: the Company admits that its legal position is that it is not required to apply Allegheny-Mohawk Section 13(a) to the US Airways/American pilot seniority integration, because, pursuant to the McCaskill-Bond Amendment, it is the MOU's seniority-integration provisions that are applicable and controlling in this case.

CAUSE OF ACTION

PARAGRAPH NO. 48:

USAPA repeats and realleges the allegations in paragraphs 1-47, inclusive, as if set forth fully herein.

RESPONSE TO PARAGRAPH NO. 48:

The Company repeats and incorporates herein by reference each and all of the denials, admissions, and averments set forth above in its answers to Paragraphs 1-47 of the Complaint, as though fully set forth herein.

PARAGRAPH NO. 49:

The merger of American and US Airways is a "covered transaction" under the McCaskill-Bond Amendment.

RESPONSE TO PARAGRAPH NO. 49:

The allegation contained in Paragraph 49 states a legal conclusion, to which no responsive pleading is required, but to the extent a responsive pleading is necessary, the Company admits the allegation in Paragraph 49 of the Complaint.

PARAGRAPH NO. 50:

The pilots of American and US Airways are "covered employees" under the McCaskill-Bond Amendment.

RESPONSE TO PARAGRAPH NO. 50:

The allegations contained in Paragraph 50 state legal conclusions, to which no responsive pleading is required, but to the extent a responsive pleading is necessary, the Company admits the allegations in Paragraph 50 of the Complaint.

PARAGRAPH NO. 51:

The McCaskill-Bond Amendment governs the seniority list integration dispute between the pilots of American and US Airways.

RESPONSE TO PARAGRAPH NO. 51:

The allegation contained in Paragraph 51 states a legal conclusion, to which no responsive pleading is required, but to the extent a responsive pleading is necessary, the Company admits the allegation in Paragraph 51 of the Complaint.

PARAGRAPH NO. 52:

The McCaskill-Bond Amendment requires that the integration of seniority lists among the pilots of American Airlines and US Airways be governed by Sections 3 and 13 of the Allegheny-Mohawk LPPs.

RESPONSE TO PARAGRAPH NO. 52:

The allegation contained in Paragraph 52 states a legal conclusion, to which no responsive pleading is required, but to the extent a responsive pleading is necessary, the Company denies the allegation in Paragraph 52 of the Complaint.

PARAGRAPH NO. 53:

Under Section 13(b) of the Allegheny-Mohawk LPPs, parties may agree on an alternative method for resolution of a seniority list integration dispute, including selection of arbitrators.

RESPONSE TO PARAGRAPH NO. 53:

The allegation contained in Paragraph 53 states a legal conclusion, to which no responsive pleading is required, but to the extent a responsive pleading is necessary, the Company admits and avers that Section 13(b) speaks for itself.

PARAGRAPH NO. 54:

In the absence of agreement on an alternative method for seniority integration under Section 13(b), a seniority list integration dispute is governed by Section 13(a) of the Allegheny-Mohawk LPPs.

RESPONSE TO PARAGRAPH NO. 54:

The allegation contained in Paragraph 54 states a legal conclusion, to which no responsive pleading is required, but to the extent a responsive pleading is necessary, the Company denies the allegation in Paragraph 54.

PARAGRAPH NO. 55:

The Carriers, APA and USAPA were not able to agree on an alternative method for integration of the seniority lists of the American pilots and US Airways pilots under Section 13(b).

RESPONSE TO PARAGRAPH NO. 55:

The allegation contained in Paragraph 55 states a legal conclusion, to which no responsive pleading is required, but to the extent a responsive pleading is necessary, the Company denies each and every averment contained in Paragraph 55.

PARAGRAPH NO. 56:

The seniority list integration dispute between the parties is therefore governed by Section 13(a) of the Allegheny-Mohawk LPPs.

RESPONSE TO PARAGRAPH NO. 56:

The allegation contained in Paragraph 56 states a legal conclusion, to which no responsive pleading is required, but to the extent a responsive pleading is necessary, the Company denies each and every averment contained in Paragraph 56.

PARAGRAPH NO. 57:

American, APA and US Airways are therefore obligated to comply with Section 13(a) of the Allegheny-Mohawk LPPs along with USAPA for resolution of the seniority list integration dispute between the American pilots and US Airways pilots.

RESPONSE TO PARAGRAPH NO. 57:

The allegation contained in Paragraph 57 states a legal conclusion, to which no responsive pleading is required, but to the extent a responsive pleading is necessary, the Company denies each and every averment contained in Paragraph 57.

PARAGRAPH NO. 58:

Accordingly, USAPA is entitled to a declaratory judgment declaring that integration of the seniority lists of US Airways and American pilots is governed by and must be completed pursuant to Section 13(a) of the Allegheny-Mohawk LPPs and the McCaskill-Bond Amendment.

RESPONSE TO PARAGRAPH NO. 58:

The allegations contained in Paragraph 58 state legal conclusions, to which no responsive pleading is required, but to the extent a responsive pleading is necessary, the Company denies each and every averment contained in Paragraph 58.

PARAGRAPH NO. 59:

USAPA is further entitled to injunctive relief against American, US Airways, and APA directing them to comply with the requirements of Section 13(a) of the Allegheny-Mohawk LPPs, and to participate with USAPA in resolving the seniority list integration dispute between the American and US Airways pilots under the requirements of Section 13(a) of the Allegheny Mohawk LPPs.

RESPONSE TO PARAGRAPH NO. 59:

The allegations contained in Paragraph 59 state legal conclusions, to which no responsive pleading is required, but to the extent a responsive pleading is necessary, the Company denies each and every averment contained in Paragraph 59.

PRAYER FOR RELIEF

To the extent that any response is required to the Complaint's separately-denominated Prayer for Relief, the Company denies each and every averment contained in the Prayer for Relief and further denies that USAPA is entitled to injunctive relief or to declaratory relief, or to any relief at all.

AS AND FOR THEIR AFFIRMATIVE DEFENSES TO ALL CLAIMS PURPORTED TO BE SET FORTH AGAINST THEM BY USAPA IN THE COMPLAINT, US AIRWAYS AND AMERICAN EACH ALLEGE AS FOLLOWS:

FIRST AFFIRMATIVE DEFENSE

Failure To State A Cause Of Action

USAPA's claim, as set forth in the Complaint, fails to state facts sufficient to constitute a cause of action against either US Airways or American.

SECOND AFFIRMATIVE DEFENSE

Lack Of Subject Matter Jurisdiction

The Court lacks subject-matter jurisdiction to adjudicate the merits of USAPA's claim to the extent resolution of USAPA's claim would require the Court to interpret or apply the MOU.

THIRD AFFIRMATIVE DEFENSE

Estoppel

USAPA's claim, including its request for equitable relief, is barred in whole or in part because USAPA is estopped by its own conduct to claim any right to relief.

FOURTH AFFIRMATIVE DEFENSE

Unclean Hands

USAPA's claim, including its request for equitable relief, is barred in whole or in part by USAPA's unclean hands and/or inequitable or wrongful conduct.

DEMAND FOR JUDGMENT

WHEREFORE, the Company respectfully requests that the Court:

a) dismiss the Complaint with prejudice;

b) award the Company its costs; and

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

COUNTERCLAIMS FOR DECLARATORY RELIEF

Counterclaim Plaintiffs US Airways, Inc. ("US Airways") and American Airlines, Inc. ("American"), collectively, "the Company," allege as follows:

INTRODUCTION

1. The Company brings these counterclaims to resolve its dispute with Counterclaim Defendant US Airline Pilots Association ("USAPA") over USAPA's attempt to repudiate the Memorandum of Understanding Regarding Contingent Collective Bargaining Agreement ("MOU"), which was agreed to by the Company, USAPA and Defendant Allied Pilots Association ("APA") in connection with the US Airways/American merger. The Company seeks to put a stop, once and for all, to USAPA's bad-faith behavior in trying to escape the provisions of the MOU regarding seniority integration for the pre-merger US Airways and pre-merger American pilot groups (the "MOU Seniority-Integration Process") – in particular, the provisions which specify that any arbitration that is 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").

2. The Company seeks a declaration that, pursuant to 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"), the MOU Seniority-Integration Process is controlling with respect to the US Airways/American pilot seniority integration, because (i) the MOU is a collective bargaining agreement, and the MOU Seniority-Integration Process allows for the protections afforded by Sections 3 and 13 of the *Allegheny-Mohawk* Labor Protective Provisions ("*Allegheny-Mohawk*," or "*Allegheny-Mohawk* LPPs"), thereby triggering an exception in McCaskill-Bond to direct application of *Allegheny-Mohawk*,

see 49 U.S.C § 42112, note § 117(a)(2); or, in the alternative, (ii) even if *Allegheny-Mohawk* is applicable, the MOU Seniority-Integration Process is an alternative method for dispute settlement that is permissible under *Allegheny-Mohawk* Section 13(b) and takes precedence over those provisions of Section 13(a) which are inconsistent with the MOU Seniority-Integration Process and which USAPA is attempting to invoke by its Complaint herein – namely, the provisions in *Allegheny-Mohawk* Section 13(a) which purport to require the use of a single arbitrator (rather than three) and that the arbitration hearing be "expedited" with a decision within 90 days.

3. The Company further seeks a determination that, by utterly failing and refusing to participate with the Company and APA in attempting to select a panel of three arbitrators in total disregard of the MOU Seniority-Integration Process (in particular, MOU Paragraph 10(a)), by unilaterally seeking a list of arbitrators from the National Mediation Board ("NMB") in furtherance of its scheme to expedite the arbitration hearing before a single arbitrator, and by filing a factually and legally meritless Complaint seeking to repudiate the MOU Seniority-Integration Process in its entirety, USAPA has violated its duty under Section 2, First, of the Railway Labor Act ("RLA"), 45 U.S.C. § 152 (First), to "exert every reasonable effort to make and maintain" its collective bargaining agreement with the Company and APA (i.e., the MOU).

4. While there may be disputes between the Company and APA, on the one hand, and USAPA, on the other hand, regarding the proper interpretation and application of the MOU, specifically including the MOU Seniority-Integration Process, the Company is not asking the Court to resolve any such disputes through its Counterclaims – indeed, it is an arbitral board of adjustment, and not a federal district court, that has the exclusive authority to do so. Rather, the

Company requests an interpretation from the Court of two federal statutes: McCaskill-Bond; and the RLA.

THE PARTIES

5. Counterclaim Plaintiff 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 § 117(b)(2).

6. 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., which was formerly known as AMR Corporation.

7. Counterclaim Plaintiff 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 § 117(b)(2).

8. American is a wholly-owned subsidiary of American Airlines Group Inc.

9. Defendant APA is a private, unincorporated association operating as a labor organization. APA is a "representative" as defined by the RLA, 45 U.S.C. § 151 (Sixth), and is the current certified collective bargaining representative of American's pilots.

10. Counterclaim Defendant USAPA is a private, 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 US Airways pilots.

JURISDICTION AND VENUE

11. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331 (federal question). The first two, alternative counterclaims seek declarations pursuant to 28 U.S.C. § 2201 and § 2202 respecting the parties' rights and obligations under a federal statute (McCaskill-Bond), and the third counterclaim is a direct action under Section 2, First, of the RLA, 45 U.S.C. § 152 (First).

12. 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

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

14. A true and correct copy of the MOU is attached hereto as Exhibit A and is hereby incorporated by reference.

15. 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 pilots and American pilots following the merger. USAPA has acknowledged in recent federal-court filings that the MOU is a collective bargaining agreement. *See* USAPA's Motion To Vacate The Permanent Injunction in *US Airways, Inc. v. US Airline Pilots Ass'n*, Case No. 3:11-cv-00371-RJC-DCK, Doc. No. 93 (Mar. 18, 2014) at 2 ¶ 5 (referring to the "entry

into a collective bargaining agreement (in February 2013)") (parenthetical in original). The MOU, which was ratified by USAPA's membership, incorporated the preexisting collective bargaining agreement between American and APA, provided $87 million/year in improvements for the pilots relative to the prior agreement, and extended all of those provisions to the US Airways pilots.

16. In prior litigation involving USAPA and US Airways in the District of Arizona, the court specifically rejected USAPA's arguments and ruled that the MOU was a collective bargaining agreement:

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

17. The MOU contains many provisions that were extremely beneficial to the pre-merger US Airways pilots, including, for example, an immediate substantial wage increase once the US Airways/American merger closed. A significant component of the quid pro quo for these economic concessions by the Company was USAPA's agreement to an orderly and effective procedure, memorialized in the MOU Seniority-Integration Process, for the seniority integration of the US Airways and American pilots – specifically including an arbitration hearing that would take place ***only after*** there was a JCBA.

18. An orderly and effective seniority-integration procedure, as reflected in the MOU Seniority-Integration Process, was critically important to the Company. This is because of

US Airways' experience with pilot seniority-integration disputes arising from its merger with America West Airlines, Inc. ("America West") in 2005. At the time of the MOU negotiations, it had been almost eight years since the US Airways/America West merger; the passage of time had generated much litigation between the "East Pilots" and "West Pilots," *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) – but no integrated seniority list had been implemented. There also was no JCBA, in large measure because of the dispute surrounding seniority integration. The Company insisted in the MOU negotiations that the two unions, USAPA in particular, agree to an MOU Seniority-Integration Process that was designed to avoid a repeat of the scenario that unfolded after the US Airways/America West merger.

19. The importance of the MOU Seniority-Integration Process to the Company has been recognized by other federal courts in litigation involving US Airways and USAPA. In *Addington, et al. v. USAPA*, No. 2:13-cv-00471-ROS, the District of Arizona granted US Airways' motion to intervene in a lawsuit between the former America West pilots and USAPA related to seniority integration in order to protect US Airways' strong interest in ensuring that the US Airways/American pilots seniority integration occurred in accordance with the procedures and time frame in the MOU Seniority-Integration Process. (*See* Doc. No. 194 at 4:4-6 ("the failure to resolve the seniority dispute in a timely manner may impair or impede US Airways' interest by frustrating the expected realization of the operational and financial benefits from the combined pilot workforce.").)

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

21. Paragraph 10 of the MOU, i.e., the MOU Seniority-Integration Process, 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.
>
> 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 latter'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.
>
> 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.
>
> 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.

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 [Act May 20, 1926, c. 347, 44 Stat. 577] (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—

. . . .

> (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. 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) and (b)(4). The pre-merger US Airways and pre-merger American pilots are "covered employees" within the meaning of McCaskill-Bond, 49 U.S.C § 42112, note § 117(b)(3).

24. 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.

25. 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.
>
> (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.

B. The US Airways/American Seniority-Integration Process

26. On December 9, 2013, the US Airways/American merger closed. The "Effective Date" referred to in the MOU Seniority-Integration Process (MOU Paragraph 10) is the closing date of the merger: December 9, 2013.

27. The first procedural step in the MOU 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."

28. 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.

29. 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 due to a disagreement over USAPA's role in the seniority-integration process if and when USAPA were decertified by the National Mediation Board ("NMB").

30. The next procedural milestone in the MOU Seniority-Integration Process, 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.

31. Under MOU Paragraph 10(a), the next step in the process is for the parties to select a panel of three arbitrators to resolve the seniority-integration dispute: "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."

32. 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.

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

34. The 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.

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

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

37. 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 the MOU Seniority-Integration Process (MOU Paragraph 10(a)) would not begin until March 9 and would not end until March 24, 2014;

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

c. The MOU Seniority-Integration Process 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.

38. Both the Company and APA have opposed USAPA's request for an arbitrator panel from the NMB. USAPA's request is currently pending before the NMB.

39. Additionally, the Company filed a grievance pursuant to Paragraph 20 of the MOU, contending that USAPA's failure to respond to the Company's arbitrator-selection proposal, combined with its premature and unilateral filing with the NMB, constituted a breach of the MOU. The APA also filed a similar grievance. USAPA has refused to submit these grievances to arbitration pending the outcome of its Complaint in this matter, and on March 5, 2014 sent a letter to the two potential arbitrators for MOU grievances stating that the arbitration hearing requested by the Company and APA "must not proceed."

40. 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 [i.e., Joint Collective Bargaining Agreement] pursuant to the deadlines and procedures in Paragraph 27 [of the MOU]."

41. Paragraph 27 of the MOU states in pertinent part:

> 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.

42. 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 pre-merger American pilots relative to pre-merger US Airways pilots, that labor organization will, in all likelihood, be APA. On January 15, 2014, the APA filed a single-carrier application with the NMB, which is the first step in the APA potentially becoming the single representative for all of the Company's pilots.

43. 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 in the MOU Seniority-Integration Process – for which the Company bargained in the MOU negotiations and to which USAPA has already agreed.

FIRST CLAIM FOR RELIEF

DECLARATORY JUDGMENT (28 U.S.C. § 2201)

FOR A DECLARATION THAT, PURSUANT TO 49 U.S.C § 42112(a)(2), THE MOU IS A COLLECTIVE BARGAINING AGREEMENT AND THE MOU SENIORITY-INTEGRATION PROCESS ALLOWS FOR THE PROTECTIONS AFFORDED SECTIONS 3 AND 13 OF THE ALLEGHENY-MOHAWK LPPS

44. The Company realleges and incorporates by reference each and every allegation contained in Paragraphs 1 through 43 of these Counterclaims as though fully set forth herein.

45. 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).

46. The MOU is a collective bargaining agreement applicable to the terms of seniority integration involving the US Airways and American pilots, who are "covered employees of a covered air carrier" within the meaning of McCaskill-Bond, and the MOU Seniority-Integration Process allows for the protections afforded by sections 3 and 13 of the *Allegheny-Mohawk* LPPs.

47. The MOU Seniority-Integration Process (quoted in full at Paragraph 21, *supra*) prescribes the use of a process "consistent with McCaskill-Bond," and contains the following specific requirements, among others:

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

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

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

d. 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;

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

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

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

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

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

48. The MOU Seniority-Integration Process 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 24-25, *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 49 U.S.C § 42112, note § 117(a)(2).

49. 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, including the seniority-integration procedures and timeline set forth in the MOU Seniority-Integration Process, "shall not be affected." 49 U.S.C § 42112, note § 117(a)(2).

50. By its Complaint in this action and by unilaterally seeking a list of arbitrators from the NMB in furtherance of its scheme to expedite the arbitration hearing before a single arbitrator, USAPA has definitively expressed its intention not to be bound by the terms of the MOU Seniority-Integration Process – including both its provision for the selection of arbitrators and its provision for the timing of the seniority-integration arbitration hearing.

51. 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 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."

52. Unless the Court issues declaratory relief resolving the relevant legal issues, the Company will be substantially injured by USAPA's repudiation of its contractual obligations under the MOU Seniority-Integration Process. The Company 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.

53. The Company seeks a declaration that, pursuant to 49 U.S.C § 42112, note § 117(a)(2), the MOU Seniority-Integration Process, specifically including both its provision for the selection of arbitrators and its provision for the timing of the seniority-integration arbitration hearing, shall govern the seniority-integration process for legacy US Airways and American pilots.

SECOND CLAIM FOR RELIEF

DECLARATORY JUDGMENT (28 U.S.C. § 2201)

FOR A DECLARATION THAT THE MOU SENIORITY-INTEGRATION PROCESS IS AN ALTERNATIVE METHOD FOR DISPUTE SETTLEMENT UNDER SECTION 13(b) OF THE ALLEGHENY-MOHAWK LPPS

54. The Company realleges and incorporates by reference each and every allegation contained in Paragraphs 1 through 53 of these Counterclaims as though fully set forth herein.

55. The Company alleges 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.

56. 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 25, *supra*.)

57. The MOU Seniority-Integration Process 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.

58. The MOU Seniority-Integration Process 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.

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

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

61. By its Complaint in this action and by unilaterally seeking a list of arbitrators from the NMB in furtherance of its scheme to expedite the arbitration hearing before a single arbitrator, USAPA has definitively expressed its intention not to be bound by the terms of the MOU Seniority-Integration Process as an "alternative method for dispute settlement" under Section 13(b) of the *Allegheny-Mohawk* LPPs.

62. 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 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."

63. Unless the Court issues declaratory relief resolving the relevant legal issues, US Airways will be substantially injured by USAPA's repudiation of its contractual obligations under the MOU Seniority-Integration Process. US Airways 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.

64. The Company seeks a declaration that because the MOU Seniority-Integration Process provides for an "alternative method for dispute settlement or an alternative procedure for selection of an arbitrator" 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 American pilots, and that the specific arbitration procedures and timeline set forth in the MOU Seniority-Integration Process – including its provision for the selection of arbitrators and its provision for the timing of the seniority-integration arbitration hearing – shall be used to determine the integrated seniority list.

THIRD CLAIM FOR RELIEF

RAILWAY LABOR ACT (SECTION 2, FIRST) (45 U.S.C. § 152 (FIRST))

65. The Company realleges and incorporates by reference each and every allegation contained in Paragraphs 1 through 64 of these Counterclaims as though fully set forth herein.

66. Section 2, First, of the Railway Labor Act ("RLA"), 45 U.S.C. § 152 (First), mandates that "[i]t shall be the duty of all carriers, their officers, agents, and employees to exert every reasonable effort to make and maintain agreements concerning rates of pay, rules, and working conditions, and to settle all disputes, whether arising out of the application of such agreements or otherwise, in order to avoid any interruption to commerce or to the operation of any carrier growing out of any dispute between the carrier and the employees thereof."

67. The obligations imposed by Section 2, First, are applicable to certified labor organizations such as USAPA.

68. By unilaterally requesting an arbitrator panel from the NMB, while failing and refusing to respond to the Company's and APA's proposals for an arbitrator-selection procedure, USAPA has failed to "exert every reasonable effort to make and maintain agreements," in

particular, the provision for arbitrator selection in Paragraph 10(a) of the MOU Seniority-Integration Process.

69. By filing the instant factually and legally meritless Complaint, in which it seeks to repudiate the MOU Seniority-Integration Process in its entirety, USAPA has violated its duty under Section 2, First, of the RLA to "exert every reasonable effort to make and ***maintain*** agreements" (emphasis added), in particular, MOU Paragraph 10.

70. US Airways has already been harmed by USAPA's disregard and repudiation of the MOU Seniority-Integration Process arbitrator-selection procedure, and will be further and substantially injured if USAPA is permitted to repudiate its other contractual obligations under the MOU Seniority-Integration Process.

PRAYER FOR RELIEF

The Company prays for judgment against USAPA as follows:

1. **For a declaration that**: pursuant to 49 U.S.C § 42112, note § 117(a)(2), the terms of the MOU Seniority-Integration Process shall govern the seniority-integration process for legacy US Airways and American pilots.

2. **In the alternative, for a declaration that**: because the MOU Seniority-Integration Process 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 American pilots, and that the specific arbitration procedures and timeline set forth in the MOU Seniority-Integration Process shall be used to determine the integrated seniority list.

3. **For a declaration that**: by failing and refusing to respond to the Company's and APA's proposals for an arbitrator-selection procedure, and instead unilaterally seeking to impose

a different arbitrator-selection procedure through its request to the NMB, USAPA has violated and is continuing to violate its duty under 45 U.S.C. § 152 (First), to "exert every reasonable effort to make and maintain agreements."

4. **For a declaration that**: by filing the instant lawsuit, in which it seeks to repudiate the MOU Seniority-Integration Process in its entirety, USAPA has violated its duty under Section 2, First, of the RLA to "exert every reasonable effort to make and maintain agreements."

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

Dated: March 21, 2014

O'Melveny & Myers LLP

By: /s/Robert A. Siegel

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

US AIRLINE PILOTS ASSOCIATION
200 E. Woodlawn Road, Suite 250
Charlotte, North Carolina, 28217,

Plaintiff,

v.

US AIRWAYS, INC.
4333 Amon Carter Boulevard
Fort Worth, Texas 76155

AMERICAN AIRLINES, INC.
4333 Amon Carter Boulevard
Fort Worth, Texas 76155

and

ALLIED PILOTS ASSOCIATION
14600 Trinity Boulevard, Suite 500
Fort Worth, Texas 76155-2512,

Defendants.

Case No. 1:14-cv-00328 (BAH)

CERTIFICATE OF SERVICE

I hereby certify that on this 21st day of March, 2014, I electronically filed the foregoing Answer and Counterclaims of Defendants US Airways, Inc. and American Airlines, Inc. with the Clerk of Court using the CM/ECF system, which will send a notice of electronic filing to the counsel of record in this matter who are registered on the CM/ECF system, and that I caused a copy of the foregoing to be served by email on the following non-ECF participants who have not yet made their initial appearance as counsel for defendant Allied Pilots Association but who authorized me to serve them by email in lieu of regular mail:

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Dated: March 21, 2014

/s/ Robert A. Siegel

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