

EXHIBIT E

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18 **IN THE UNITED STATES DISTRICT COURT**
19 **DISTRICT OF ARIZONA**

20 Don Addington, *et. al.*,
21 *Plaintiffs,*
22 v.
23 US Airline Pilots Association, *et. al.*,
24 *Defendants.*

Case No.: CV-13-00471-PHX-ROS

**US Airline Pilots Association's
Controverting Statement of Facts
and Additional Statement of
Undisputed Facts**

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1 majority of US Airways pilots on several objective measures, gave West Pilots
2 significant windfalls in seniority and increased career compensation at the expense of
3 East Pilots, and failed to give any weight to length of service. Bradford Dep., 48:6-10
4 (Ex. “3” to Szymanski Decl.).

5
6 7. USAPA was formed in 2007, in part to advocate for seniority integration
7 based upon date of hire in any future merger between US Airways and another carrier.

8 Disputed. USAPA objects on the grounds of relevancy. The formation of
9 USAPA in 2007 is neither relevant nor material to the issue presented on summary
10 judgment. To the extent the Court considers ¶7, while USAPA was founded *in part* to
11 insure that length of service was considered in any seniority integration proceeding, there
12 were many other reasons US Airways Pilots wanted to replace ALPA. For example,
13 ALPA agreed to eliminate the defined benefit retirement plan, job protections and made
14 other concessions in wages, retirement and other benefits without obtaining “snapback”
15 guarantees in the event of improved economic performance. ALPA’s governing
16 documents allowed the MEC’s to agree to changes affecting pilot working conditions
17 without requiring pilot ratification. And the ALPA national organization was not
18 controlled by or answerable to the US Airways pilots. The ALPA seniority proposal was
19 just the final straw and the catalyst for representational change. Bradford Dep., 48:6-10;
20 83:21-84:3 (Ex. “3” to Szymanski Decl.).

21 8. The Memorandum of Understanding regarding Contingent Collective
22 Bargaining Agreement (“MOU”) is silent as to what seniority list or lists will be used to
23 determine the relative ordering of US Airways pilots in the McCaskill-Bond seniority-
24 integration process with the American Airlines (“American”) pilots.

25 Disputed in part. The MOU provides that the parties thereto agree to “[a] seniority
26 integration process consistent with McCaskill–Bond”. The process is a contractual one,
27 devised by the four parties to the MOU as expressly authorized by the statute, which
28 provides, in relevant part: “the requirements of any collective bargaining agreement that
may be applicable to the terms of integration involving covered employees of a covered

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2 air carrier shall not be affected by the requirements of this section as to the employees
3 covered by that agreement, so long as those provisions allow for the protections afforded
4 by sections 3 and 13 of the Allegheny-Mohawk provisions.” 49 U.S.C. §42112, Note
5 117(a)(2). Section 3 of the labor protective provisions imposed by the Civil Aeronautics
6 Board in the Allegheny-Mohawk merger further provides for agreement through
7 collective bargaining between the carriers and the representatives of the employees
8 affected. 59 C.A.B. 45.

9 9. The MOU is silent as to who will represent the US Airways pilots in the
10 McCaskill-Bond seniority integration process.

11 Disputed. The MOU explicitly provides that the parties to the Agreement are
12 USAPA, US Airways, American, and APA. MOU Attachment C explicitly refers to
13 APA and USAPA and no other parties as the participants in the seniority integration
14 process. MOU, Attachment C (US Airways Ex. “I”).

15 10. The MOU mandates that the integrated seniority list meet certain criteria
16 that are related to limiting operational and financial hardships on the post-merger airline
17 as a result of seniority integration.

18 Disputed. Paragraph 10.b of the MOU speaks for itself. MOU, ¶10.b (US
19 Airways Ex. “I”).

20 11. The MOU expressly requires that both US Airways and American remain
21 neutral throughout the McCaskill-Bond process with respect to “the order in which pilots
22 are placed on the integrated seniority list.”

23 Admitted that ¶11 accurately quotes a portion of MOU ¶10.b.

24 12. The USAPA Board of Pilot Representatives (“BPR”) will determine
25 USAPA’s negotiating position regarding seniority integration with the American pilots
26 and this negotiating position will be advanced by USAPA’s Merger Committee during
27 the McCaskill-Bond seniority-integration process.

28 Admitted that the USAPA BPR will determine USAPA’s position regarding
seniority integration throughout the seniority integration process set forth in ¶10 of the

1 MOU, and that the Merger Committee will advance the position(s) as determined by the
2 BPR. Disputed that the process is anything other than a collectively bargained process
3 set forth in the MOU that is consistent with McCaskill-Bond. It is a contractual seniority
4 integration process. See USAPA’s Response to ¶8, *supra*. See MOU, ¶10 (US Airways
5 Ex. “I”); Hummel Dep., 12:19-13:7 (Ex.”4” to Szymanski Decl.); Pauley Dep., 19:2-
6 19:14, 53:24-54:8 (Ex. “5” to Szymanski Decl.).
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8 13. The USAPA BPR is made up of a majority of East Pilots, and this majority
9 will support a seniority list based upon date of hire (with some conditions and
10 restrictions), and will oppose presentation of the Nicolau Award during the seniority-
11 integration process.

12 Admitted that a majority of the USAPA BPR is made up of East Pilots and that
13 this proportional majority will likely oppose presentation of the unmodified Nicolau
14 Award during the seniority-integration process set forth in ¶10 of the MOU. Otherwise
15 disputed because it is pure speculation as to what proposal will be recommended to the
16 BPR by the Merger Committee or what proposal the BPR will support. The USAPA
17 Merger Committee has and will continue to analyze multiple seniority integration
18 methodologies. The USAPA Merger Committee believes its position vis á vis APA is
19 stronger if it is not committed to one inflexible proposal. Pauley trial testimony, pp. 406-
20 408 (Ex. “9” to Szymanski Decl.); Davison trial testimony, pp.414-415 (Ex. “10” to
21 Szymanski Decl.); Bradford Dep., 54:3-54:18 (Ex. “3” to Szymanski Decl.), and Hummel
22 Dep., 19:3-20:15; 106:10-107:9 (Ex. “4” to Szymanski Decl.).

23 14. Following this Court’s decision in *Addington II*, both Captain Hummel and
24 Mr. Bradford stated that USAPA was under no legal obligation to consider implementing
25 the Nicolau Award.

26 Disputed, except admitted that both Captain Hummel and Mr. Bradford oppose
27 implementation of the unmodified Nicolau Award, and that following the decision issued
28 in *US Airways v Addington*, 2:10-cv-01570-ROS, in October, 2012, stated that USAPA
was free to depart from the Nicolau Award in negotiations with US Airways within the