UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:	:	Chapter 11
AMR CORPORATION, *et al.*,	:	Case No. 11-15463-SHL
Debtors.	:	(Jointly Administered)
US AIRLINE PILOTS ASSOCIATION,	:	Adversary Proceeding
Plaintiff,	:	Case No. 13-01282-SHL
v.	:	
LEONIDAS, LLC; DON ADDINGTON; JOHN BOSTIC; MARK BURMAN; AFSHIN IRANPOUR; ROGER VELEZ; STEVE WARGOCKI; MICHAEL J. SOHA, RODNEY ALBERT BRACKIN; AND GEORGE MALIGA,	:	
Defendants.	:	

MEMORANDUM OF THE DEBTORS AND THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS IN SUPPORT OF ORDER DISMISSING ADVERSARY PROCEEDING

AMR Corporation and certain of its subsidiaries, as debtors and debtors in possession in the above-captioned chapter 11 cases (collectively, the "**Debtors**"), and the Official Committee of Unsecured Creditors (the "**Committee**") respectfully submit this Memorandum in Support of an Order Dismissing this Adversary Proceeding ("**Adversary Proceeding**") without prejudice. The grounds for the Motion are set forth below.

INTRODUCTION AND STATEMENT OF FACTS

Adversary Proceeding. This Adversary Proceeding was brought by the US Airline Pilots Association ("**USAPA**") against a number of the individual US Airways pilots they

represent for purposes of collective bargaining[1] and an organization called Leonidas, LLC, which is alleged to have been "created in August of 2007 by several former America West [Airlines, Inc.] pilots to safeguard the legal rights of America West Pilots post-merger with US Airways." Amended Complaint ¶5. In its Amended Complaint, USAPA seeks to have this Court enjoin proceedings in a second case, currently pending in the United States District Court for the District of Arizona, captioned *Addington et al v. US Airline Pilots Association et al*, 2:13-cv-00471-PGR ("**Arizona Action**"). In that Arizona Action, the individual Defendants here have sued USAPA for a breach of the union's duty of fair representation ("**DFR**") arising from the way in which USAPA has dealt with the integration of the former America West Pilots into the US Airways pilot seniority list after the merger between the two airlines. That seniority integration dispute has been a long and difficult one, resulting in numerous lawsuits. The Amended Complaint in this Adversary Proceeding alleges that a primary purpose of the Arizona Action is or was to interfere with this Court's jurisdiction and responsibility for administration of the Debtors' chapter 11 cases by seeking to enjoin the consummation of the Debtors' pending merger with US Airways.

Status conference. This Adversary Proceeding came before the Court for a status conference on April 3, 2013. Present at the conference, either in person or by telephone, were counsel for the parties to the Adversary Proceeding as well as counsel for Debtors and counsel for the Committee.

During the status conference, counsel for the Defendants in this Adversary Proceeding (who also represent the Plaintiffs in the Arizona Action) vigorously and repeatedly denied that Defendants here (the "**West Pilots**") have any intent or purpose of interfering with the US

[1] These individual pilots are: Don Addington, John Bostic, Mark Burman, Afshin Iranpour, Roger Velez, Steve Wargocki, Michael J. Soha, Rodney Albert Brackin, and George Maliga

Airways/American merger through the Arizona Action or otherwise. Tr. 12:12-14; 29:7-11.[2] The Court questioned the West Pilots' counsel closely on this point and, based on counsel's representations, expressed satisfaction that no such purpose of interference or delay existed. *Id.* Based on these representations, counsel for USAPA agreed to dismiss this Adversary Proceeding without prejudice. Tr. 26:22-27:1. The Court then directed counsel for the Debtors to prepare a stipulation of dismissal and an accompanying Order to effectuate this dismissal. Tr. 28:10-13; 37:7-12.

According to West Pilots, Arizona Action must be resolved before merger. During the process of preparing the stipulation, however, two things became clear. First, counsel for the West Pilots intended to communicate a far less comprehensive commitment than was understood by the other entities involved when he stated at the status conference that the West Pilots had "absolutely no intent *to do anything that might interfere* with the merger between American and US Airways from going final." Tr. 29: 9-11 (emphasis added). Counsel subsequently explained that this was a promise only to refrain from seeking an injunction in Arizona that would prevent the merger from closing. He informed counsel for the Debtors that he and his clients would not agree — and said he did not intend to communicate to the Court — that they would refrain from taking actions that could delay or otherwise interfere with the processes that form part of the merger or that would undermine the merging entities' ability to fulfill the numerous contractual obligations they have undertaken that are designed to facilitate the merger process.

Of particular concern in this regard is the Memorandum of Understanding ("**MOU**") that American and US Airways have entered into with their pilot unions (the Allied Pilots

[2] The transcript of the status conference is attached hereto as Ex. A.

Association or "**APA**" and USAPA, respectively). That MOU,[3] an important element of the merger at the core of the Debtors' recently filed Plan of Reorganization, includes a contractual commitment by American, US Airways, USAPA and APA to complete the American and US Airways seniority integration process "as soon as possible" after the Plan of Reorganization becomes effective and the merger closed. As the Court recognized at the status conference, resolving the long-festering US Airways seniority integration dispute *first* — before the merger-related American/US Airways seniority integration process begins — is imperative to the merger process. Tr. 21:10-12.

Counsel for the West Pilots, however, are not prepared to commit that they will refrain from actions specifically aimed at frustrating that seniority integration process. Indeed, they have made it clear that, if the parties to the merger are ready to go forward with the MOU-required American/US Airways seniority integration process at any time *before* the merits of the Arizona litigation have been fully and finally resolved (including, presumably, any appeals), they will seek to stop the merging parties from proceeding with the merger-related process until those merits are finally decided.

According to USAPA, Arizona Action is not ripe. USAPA's post-status conference actions have further complicated the matter, including actions taken in the Arizona Action. Despite this Court's statement at the hearing that for the American/US Airways merger process to proceed smoothly, the US Airways seniority "issue [has to] be resolved [on the merits] as quickly as it can" — that it is "a precondition to the integration that's contemplated by this merger" — USAPA filed a motion in the Arizona Action just two days after the status conference arguing that the US Airways seniority dispute at issue in the Arizona Action is not

[3] A copy of the MOU is attached as Ex. B. The MOU was listed in both American's and USAirway's Merger Agreement Disclosure Schedules and incorporated into the Debtors' Joint Chapter 11 Plan as one of the Merger Collective Bargaining Agreements.

ripe, and it sought to delay any consideration of the class certification and preliminary injunction motions pending in the Arizona court until USAPA's ripeness argument can be finally decided. USAPA represented to the Arizona court that the Plan of Reorganization cannot be approved by this Court for "at least six months." Ex. C at 4.[4]

No meaningful stipulation is possible. Debtors' post-status conference communications with the parties to the Adversary Proceeding have made it clear that those parties remain entrenched in their respective positions, making it obvious that no stipulation is possible that would achieve the two primary goals identified by the Court at the status conference: (a) to dismiss this Adversary Proceeding in a way that permits the Court thereafter to protect its jurisdiction; and (b) to allow the merging entities to move forward with an efficient merger process consistent with the MOU without being impeded by the Arizona Action. The West Pilots maintain that the merger-related seniority integration process must wait for the ultimate resolution of their DFR claims in Arizona — and, as stated, they claim the right to seek injunctive relief against the merger seniority integration process to accomplish that result. USAPA maintains that the US Airways seniority dispute at issue in the Arizona Action remains unripe a full eight years after the merger with America West, and claim that it will remain unripe, presumably until a new representative is chosen to represent the merged pilot workforce, the merger-related seniority integration process is completed, and a new single collective bargaining agreement is negotiated. Because no consensual resolution achieving the Court's aims is possible, American seeks an Order from the Court accomplishing that result.

The expedited schedule in the Arizona Action. On April 16, 2013, the Arizona Action was transferred to Chief Judge Roslyn O. Silver of the United States District Court for the

[4] USAPA's Motion To Set Briefing Schedule. A copy of that Motion is attached hereto as Ex. C.

District of Arizona. Judge Silver had previously presided over the DFR litigation between the West Pilots and USAPA. On April 17, 2013, Chief Judge ordered an expedited briefing schedule on the West Pilots' motion for a preliminary injunction and set a hearing on that Motion for May 14, 2013. Chief Judge Silver also observed that, "[h]aving handled the previous litigation, the Court is well aware of the importance of the issues in this case and the unfortunate level of antagonism between the parties." Order at 1.[5]

ARGUMENT

I. THE COURT SHOULD DISMISS THIS ADVERSARY PROCEEDING WITHOUT PREJUDICE, WHILE PROTECTING ITS JURISDICTION TO ADMINISTER THE DEBTORS' ESTATES AND PROTECTING THE MERGER SENIORITY INTEGRATION PROCESS FROM INTERFERENCE FROM THE ARIZONA ACTION

This Adversary Proceeding has no place on the Court's docket. The dispute at issue involves two factions of pilots at US Airways; the Debtors are not parties to that dispute and neither are any of their employees. The US Airways pilot seniority dispute is already pending before the United States District Court for the District of Arizona, and that court is fully capable of considering whether USAPA violated its duty of fair representation.

Although Debtors take no position regarding the merits of that dispute or how it is ultimately resolved, as stated at the status conference, Debtors and the Committee have one compelling interest (shared by the Court and all other interested constituencies in these chapter 11 cases); that the proceedings in the Arizona Action not interfere with the administration of these cases or with the progress of American and US Airways towards the recently approved merger that lies at the heart of the Debtors' Plan of Reorganization. At the time of the status conference, Debtors believed that the seemingly unequivocal statements of counsel for the West

[5] A copy of Chief Judge Silver's Order is attached hereto as Ex. D.

Pilots' counsel disclaiming any interest in interfering with the merger would provide adequate comfort that they intended, and desired, no such interference.

It is now clear, however, that counsel for the West Pilots intended to provide much less comfort than was understood at the time. The West Pilots have made it clear, in fact, that they intend to seek injunctive relief to prevent the merger-related seniority integration process from proceeding — to prevent the parties to the MOU from complying with their contractual commitments — if the West Pilots have not fully and finally prevailed on the claims they have asserted in the Arizona Action when that MOU seniority integration process begins.

It is extraordinarily unlikely that the US Airways seniority dispute will be finally resolved by that time; one need only observe (a) that it has already been festering for eight years; and (b) that USAPA has already told the judge in the Arizona Action that the dispute is not yet ripe,[6] and will remain so until the merger-related seniority integration process has been completed and a new collective bargaining agreement is in place. Given these irreconcilable views, there is no alternative but to seek relief from this Court. The Court should dismiss this Adversary Proceeding, but do so with an admonition to the parties that they refrain from seeking any relief in the Arizona Action that might interfere with the MOU's seniority integration process or otherwise prevent the parties to the MOU from complying with their MOU-related contractual commitments.[7]

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[6] *See* Ex. C. at 4.

[7] Although this Court "may utilize section 105(a) of the Code to 'enjoin proceedings in other courts when it is satisfied that such a proceeding would defeat or impair its jurisdiction with respect to a case before it,'" it does not appear to Debtors to be prudent at this juncture to ask the Court to enter such an Order. *Sec. Investor Prot. Corp. v. Bernard L. Madoff Inv. Sec. LLC*, 443 B.R. 295, 318 (Bankr. S.D.N.Y. 2011), *citing with approval Johns–Manville Corp. v. Colorado Ins. Guar. Assoc.* (*In re Johns–Manville Corp.*), 91 B.R. 225, 228 (Bankr. S.D.N.Y. 1988) (*quoting LTV Steel Co., Inc. v. Board of Ed. of the Cleveland City Sch. Dist.* (*In re Chateaugay Corp.*), 93 B.R. 26, 29 (S.D.N.Y. 1988)); *Malm v. Goldin*, No. 92–CIV–8012 (LJF), 1993 WL

II. IN PROVIDING ITS RATIONALE FOR DISMISSAL, THE COURT'S ORDER SHOULD STATE ITS VIEWS ON THE RIPENESS OF THE US AIRWAYS DISPUTE

As indicated above, USAPA has already told the Arizona court that the West Pilots' DFR claims are not ripe, and will not become ripe until *after* the completion of a seniority integration processes that the West Pilots will seek to enjoin from beginning unless they have finally prevailed in their Arizona Action. Although the ultimate question of ripeness is ultimately one for the court in the Arizona Action, in dismissing this Adversary Proceeding, the Debtors and the UCC suggest that it would be appropriate to note that the the US Airways seniority integration dispute at the core of the Arizona Action "should be resolved as quickly as it can," and that the pending merger-related seniority integration process renders the merits of the US Airways DFR claim ripe for decision.[8]

330489, at *2 (S.D.N.Y. Aug. 27, 1993); *Keene Corp. v. Coleman* (*In re Keene Corp.*), 164 B.R. 844, 849 (Bankr. S.D.N.Y. 1994); *AP Indus., Inc. v. SN Phelps & Co.* (*In re AP Indus., Inc.*), 117 B.R. 789, 802 (Bankr. S.D.N.Y. 1990). Although such an injunction would be well within the Court's power under §105(a), Debtors are of the view that an admonition to the parties and an explanation to court in the Arizona Action should be sufficient at this time.

[8] Although the court in the Arizona Action, and not this Court, will ultimately have to decide whether the DFR claims are ripe, Debtors and the Committee are strongly of the view that USAPA is mistaken. A case is ripe within the meaning of Article III if "a threatened injury is sufficiently 'imminent' to establish standing . . . . At that point, only the prudential justiciability concerns of ripeness can act to bar consideration of the claim." *See Nat'l Treasury Emps. Union v. United States*, 101 F.3d 1423, 1428 (D.C. Cir. 1996). There is no non-frivolous argument that Article III ripeness is lacking; the West pilots have a pending motion for preliminary injunctive relief that, if granted, would force the four parties to the MOU to wait, potentially for years, to resolve critical aspects of an $11 billion merger and force USAPA to breach its agreement with American, APA, and US Airways. Similarly, prudential ripeness exists. That doctrine turns on two factors: "1) 'the fitness of the issues for judicial decision'; and 2) 'the hardship to the parties of withholding court consideration.'" *Ehrenfeld v. Mahfouz*, 489 F.3d 542, 546 (2d Cir. 2007) (*quoting Abbott Labs. v. Gardner*, 387 U.S. 136, 149 (1967) (*abrogated on other grounds by* statute as recognized in *Califano v. Sanders*, 430 U.S. 99 (1977)). The "fitness of the issues for judicial decision" prong… "requires a weighing of the sensitivity of the issues presented and whether there exists a need for further factual development. Meanwhile, the 'hardship to the parties' prong . . . requir[es a court] to gauge the risk and severity of injury to a party that will result if the exercise of jurisdiction is declined." *Murphy v. New Milford Zoning Comm'n*, 402

Undoubtedly, USAPA will claim that any statements made by this Court with respect to the ripeness question would amount to an advisory opinion on a subject not before the Court. Such an argument would be misguided. The Court is charged statutorily with administering the Debtors' estates, and to do its work, the Court has an obligation to protect its own jurisdiction. The proper course here would be to allow the court in the Arizona Action to consider the US Airways seniority dispute without the interference of this Adversary Proceeding, while making known to the Arizona court certain critical facts about the status of this matter because failure to do so could lead that court inadvertently to take actions or entertain relief that could interfere with this Court's exercise of its statutory jurisdiction over the estates, these chapter 11 cases, and Debtors' pending Plan of Reorganization. This Court is intimately familiar with these proceedings; no party to the Arizona Action has that sort of familiarity. It is prudent, then, for the Court to advise the Arizona court of the central role that seniority integration will play in the merger process and the imperative in resolving the US Airways pilot seniority integration dispute as soon as possible.

CONCLUSION

F.3d 342, 347 (2d Cir. 2005) (citations omitted). With respect to hardship, a court must "ask whether the challenged action creates a direct and immediate dilemma for the parties." *N.Y. Civil Liberties Union v. Grandeau*, 528 F.3d 122, 134 (2d Cir. 2008) (citations omitted). "Even if resolution of a dispute could be facilitated if a court waited for a specific application of the issues in contention, the question may, nonetheless, perhaps be justiciable under the second ripeness factor if the challenged action creates a direct and immediate hardship for the parties." *Nutritional Health Alliance v. Shalala*, 144 F.3d 220, 226 (2d Cir. 1998). That is plainly the case here: as the Court observed, resolving the US Airways seniority dispute "is a precondition to the integration that's contemplated by this merger . . . . You have to figure out what the rights are within [US Airways] first." Tr. 21:10-11; 13-14.

For the foregoing reasons this Adversary Proceeding should be dismissed without prejudice to the Debtor's ability to return to the Court for relief should an infringement to this Court's jurisdiction be threatened.

Dated: April 22, 2013

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