

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NORTH CAROLINA  
CHARLOTTE DIVISION  
CIVIL ACTION NO. 3:11-CV-00371-RJC-DCK

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US AIRWAYS, INC.,

Plaintiff,

**DEFENDANTS' MOTION  
TO DISMISS COMPLAINT**

v.

US AIRLINE PILOTS ASSOCIATION and  
MICHAEL J. CLEARY,

Defendants.  
-----X

PLEASE TAKE NOTICE that upon the Brief in Support of Defendants' Motion to Dismiss the Complaint, the declaration of Joy K. Mele, Esq., and the exhibits annexed thereto, and all prior proceedings had herein, defendants US Airline Pilots Association ("USAPA") and Michael J. Cleary ("Cleary") (collectively, "Defendants"), hereby move this Court, before the Honorable Robert J. Conrad, Jr., in the United States District Court, 235 Charles R. Jonas Federal Building, 401 West Trade Street, Charlotte, North Carolina, for an Order: (1) dismissing the complaint pursuant to Rule 12(b)(3), or alternatively, Rule 12(b)(6) of the Federal Rules of Civil Procedure pursuant to the First-Filed Rule; (2) dismissing the complaint pursuant to Rules 12(b)(3) and 13(a) for improper venue; (3) dismissing the complaint pursuant to Rule 12(b)(1) for lack of subject matter jurisdiction; (4) dismissing the complaint pursuant to Rule 12(b)(6) for failure to state a claim upon which relief may be granted; or (5) alternatively, transferring the action to the Eastern District of New York; or (6) alternatively, staying the action pending resolution of USAPA v. US Airways, Inc., commenced in the Eastern District of New York

under docket number 11-CIV-2579 (ARR) (SMG); and (7) for such other relief as the Court deems just and proper.

Dated: August 11, 2011  
Charlotte, North Carolina

Respectfully submitted,

TIN FULTON WALKER & OWEN

/s John Gresham

John Gresham

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## CERTIFICATE OF SERVICE

I certify that I have this day served the foregoing **Defendants' Motion to Dismiss the Complaint** on all of the parties to this cause by:

- \_\_\_\_\_ Hand delivering a copy hereof to the attorney for each said party addressed as follows:
- \_\_\_\_\_ Depositing a copy hereof with a nationally recognized overnight courier service, for overnight delivery, addressed to the attorney for each said party as follows:
- \_\_\_\_\_ Transmitting via facsimile transmission a copy hereof to the attorney for each said party as follows:
- X   Electronic transmission (e-mail) to the attorney for each said party as follows:
- \_\_\_\_\_ Depositing a copy hereof in a first-class, postage-prepaid, properly-addressed wrapper in a post office or official depository under the exclusive care and custody of the United States Postal Service, addressed to the attorney for each said party as follows:

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This, the 11<sup>th</sup> day of August, 2011.

/s/ John W. Gresham  
Attorney for Defendants