

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
CIVIL ACTION NO. 11-CV-371 (RJC)(DCK)

US AIRWAYS, INC.,

Plaintiff,

DECLARATION OF
THOMAS KUBIK

v.

US AIRLINE PILOTS ASSOCIATION, and
MICHAEL J. CLEARY

Defendants.

THOMAS KUBIK, declares as follows under penalty of perjury pursuant to 28 U.S.C. § 1746:

1. This declaration is in opposition to a motion by plaintiff US AIRWAYS, INC. (hereinafter "US Airways") seeking a preliminary injunction against defendants US AIRLINE PILOTS ASSOCIATION (hereinafter "USAPA") and MICHAEL J. CLEARY (hereinafter "Cleary")(collectively "defendants") in this Court.

2. I am presently, and have been for approximately 33 years, a pilot employed by plaintiff US AIRWAYS, INC. (hereinafter "US Airways").¹ During this period, I have been, and continue to be, a member of the labor organization certified as the exclusive representative of US Airways pilots. From in or around February 1978 until April 2008, I was a member of the Air Line Pilots Association, International (hereinafter "ALPA"). In or around April 2008, defendant US AIRLINE PILOTS ASSOCIATION (hereinafter "USAPA") replaced ALPA as the certified bargaining representative for US Airways pilots. From April 2008 to the present, I have been,

¹ In total I have been employed in the airline industry for approximately 35 years, as I spent two years as a First Officer for Federal Express beginning in or around 1976.

and continue to be, a member of USAPA, and the Chairman of its Safety Committee.

3. From approximately February 1978 to June 1985, I was employed by US Airways as a First Officer. After being promoted to Captain, I spent about three years as a regular line pilot, until in or around April 1988, when I became a Check Airman in the Training Department.² I worked as a Check Airman for approximately 16 years between 1988 to 2006. During all above periods of time, my home domicile was Pittsburgh International Airport in Pittsburgh, Pennsylvania.

4. In December 2006 my domicile became Charlotte Douglas International Airport in Charlotte, North Carolina, and I returned to a position as a regular line pilot, and continue to be employed in this capacity by US Airways.

5. As previously stated, I spent approximately sixteen years working in US Airways' Training Department as a Check Airman. This is considered a management position. A Check Airman is a pilot who trains other pilots employed by US Airways regarding, among other things, all applicable rules, standard operating procedures ("SOPs") and safety requirements established by US Airways and the Federal Aviation Administration ("FAA"). In order to keep US Airways pilots in compliance with applicable rules and standards, a Check Airman evaluates and trains line pilots using a flight simulator and by observing actual flight operations.

6. At the time I was put into the position of Check Airman (approximately 1988), it was recognized amongst US Airways pilots that the requirements necessary to be eligible for a Check Airman position were extremely stringent. For instance, a pilot was required to have an unblemished employment record and be an expert in all aspects of being a pilot, including, but not limited to, having significant knowledge of US Airways SOPs and other applicable policies, as well as all rules of the FAA.

² The position of Check Airman is described in ¶¶ 5-6.

7. During the above period of time, I was also a Senior Instructor in US Airways' Training Department. In this capacity, I not only performed the duties of a Check Airman, but also supervised about 20-25 other Check Airmen in the performance of their duties.

8. While working as a Senior Instructor, I was recognized by the FAA as a "designee," or, an individual who may qualify a pilot to operate certain aircrafts.

9. I am presently, and have been since in or around May 2008, the Chairman of USAPA's Safety Committee. I was appointed by the USAPA Board of Pilot Representatives (hereinafter "BPR") to this position due to my experience as a regular line pilot and a Check Airman, my extensive knowledge of safety rules and guidelines, and my recognized and well-respected commitment to safety. Also, given that proper training of pilots is now widely considered an indispensable facet of airline safety, my experience as a Check Airman and Senior Instructor has uniquely qualified me to serve as USAPA's Safety Committee Chairman.

10. In my capacity as Chair of the USAPA Safety Committee, my duties include but are not limited to: responding to the safety concerns of US Airways pilots through various means and media; improving working conditions by ensuring line pilots are well informed with respect to safety issues, and by attempting to communicate with US Airways regarding USAPA's position on SOPs and other guidelines that US Airways has unilaterally implemented or that are outdated or inconsistent with a culture of safety; attempting to increase USAPA's input to the the Company's flight operations management regarding the creation, alteration, and implementation of rules, SOPs and other guidelines; controlling USAPA's participation in certain programs, including, but not limited to, the Aviation Safety Action Program (hereinafter "ASAP") and the Flight Operation Quality Assurance (hereinafter "FOQA")) sponsored by the FAA and/or US Airways; and representing USAPA at airline industry safety conferences and FAA rule making

committees.

US Airways and the Flawed Safety Culture

11. In or around September 2005, US Airlines completed a merger with America West Airlines (hereinafter "America West"), an airline based in Phoenix, Arizona. As part of this merger, the corporate management for America West assumed control of the newly-created corporation, which maintained the US Airways name.

12. Prior to the America West merger, the relationship between US Airways management and the pilots' union (then ALPA) with respect to safety was collegial, harmonious, and productive. Management constantly communicated with the union and individual pilots to ensure that all of their SOPs and guidelines were safe.

13. For example, in or around the mid to late 1990s, the pre-merger US Airways management, the pilots, the union, and the FAA all joined forces to solve an altitude deviation issue by developing and implementing a sound SOP from the input of the above parties that worked extremely well and solved the altitude deviation problem.

14. Put simply, prior to the America West merger in September 2005, an effective and pragmatic safety culture existed at US Airways. That safety culture stood in stark contrast to the culture that existed at America West prior to the merger. America West management, which is now US Airways management, has a long history of safety violations dating back to the 1990s when the airline had so many safety violations that the FAA threatened to ground the fleet and threatened to bar America West from acquiring additional aircraft. In the early 2000s, America West was consistently amongst the worst performing airlines in terms of the number of customer complaints filed each year. That same philosophy exists today at US Airways and is the root of the current safety culture problem.

15. Shortly after the merger was completed and the America West management team took over, it became clear to the pilots that safety was no longer a primary concern at US Airways, and had instead taken a subordinate position to costs and to a relentless pressure for on-time performance at the expense of safety. The degradation of US Airways' safety culture became clear to its pilots over time after the merger.

16. Beginning in or around May 2008, when I was appointed the new Chairman of USAPA's Safety Committee, USAPA renewed its efforts to restore a proper safety culture at US Airways. The first order of business was to attempt to gain a seat for USAPA at the Flight Operations Safety Board ("FOSB") so that the individual line pilots who are intimately familiar with, and who are experts on, the aircraft in US Airways' fleet as well as in the rules, regulations and operating procedures that affect them and the safety of the airline's operations could be part of discussions regarding changes to SOPs and other guidelines, could present anecdotal evidence to the FOSB with respect to certain safety issues, and could propose changes and revisions to SOPs and other guidelines as a result of actual experience in the cockpit.

17. US Airways denied USAPA's request to include a USAPA representative on the FOSB. This is just a small example of how the current safety culture at US Airways is in need of a complete overhaul. Under the existing safety culture, the primary responsibility for enforcing and creating safety rules and other SOPs falls on management pilots. Almost none of the management pilots have been line pilots for decades. Most stopped living the life of a line pilot in the late 1980s or early 1990s. As such, they have no practical experience living and working in the flawed safety culture they have helped propagate since the 2005 merger. This disconnect, *inter alia*, lends support to the flawed safety culture currently in existence at US Airways.

18. It is, and has been since April 2008, the position of USAPA that safety is a term

and condition of employment that USAPA (i.e. the Safety Committee) has the right to seek improvement in and assert its opinion on. The actions of the USAPA, its Safety Committee and myself discussed herein are simply examples of the exercise of those rights in support of the membership, US Airways, and the general public.

The Impartial Safety Culture Survey

19. In late spring 2010, I attended a conference in San Diego sponsored by the FAA. At the conference, I heard a report by Dr. Terry L. von Thaden, a professor at the University of Illinois, regarding the measurement of the safety culture of various airlines. Given the grave concerns by USAPA of the safety of US Airways, and particularly the pressures exerted by management having put economic concerns to the forefront, I was convinced that the Company could benefit from such a survey.

20. Dr. von Thaden has a reputation as one of, if not the leading expert on safety culture and human factors in the aviation industry. (A copy of Dr. von Thaden's Curriculum Vitae is annexed hereto as Exhibit "A") Moreover, her safety culture survey, which was developed in conjunction with the United States Air Force and the FAA, has been conducted at over 220 airlines around the world, including America West prior to the 2005 merger. Dr. von Thaden was commissioned to conduct her survey by airlines in the United States ten different times in 2010 alone.

21. Dr. von Thaden and the Illumia Corporation are widely known to be entirely impartial and without ties to any specific airline or union. The safety culture survey is similarly impartial. It consists of 200 total questions, 95-98% of which are identical for each survey conducted and the remaining 2-5% of which are tailored to the specific operations of the airline being tested. Dr. von Thaden and her staff create the specifically tailored questions by holding

focus groups of that airline's pilots, who are then asked about the operations of the airline in question.

22. In late summer 2010, Capt. John Sabel and myself met with Captains Lyle Hogg and Bob Skinner, US Airways' Vice President of Flight Operations and Managing Director of Training respectively, and asked them to have the Company commission a safety survey. I was hopeful that the company would cooperate in such a survey particularly since the company had commissioned Dr. von Thaden to do a similar survey prior to the 2005 merger when it was America West. Despite her impressive credentials, and the fact that the Company had retained her in the past for a similar project, the company declined to commission Dr. von Thaden for a survey.

23. I was advised that shortly after the above meeting, Capt. Paul Morrell, the Company's vice-president of Safety and Regulatory Compliance, called Dr. von Thaden via telephone and further explained why the Company had refused to participate in the survey. Based on the account of the conversation I received, it was obvious that Capt. Morrell was simply trying to privately dissuade Dr. von Thaden from performing the survey rather than explain the Company's curious decision to refuse to participate.

24. I then met with Dr. von Thaden and asked if the survey could be done without the company's involvement. While she was reluctant to perform the project in the absence of the company's participation, Dr. von Thaden agreed to conduct the survey through the Illumia Corporation. The proposed project was brought before the USAPA Board of Pilot Representatives and it was unanimously approved. USAPA also agreed to bear the full cost of the survey.

25. The survey commenced in the fall of 2010 and was completed by December of that

year. (A copy of Parts I and II of the survey results is annexed hereto as Exhibits "B" and "C") It was conducted pursuant to the same procedures normally employed by Dr. von Thaden in her previous surveys with other airlines, which are described in detail above, including the use of only five specifically tailored questions based on the results of pilot focus groups out of the survey's 200 total questions. Every US Airways pilot was given, or had access to, a copy of the survey. Focus group meetings were held in Charlotte, NC, Pittsburgh, PA, and Phoenix, AZ. USAPA, including the Safety Committee and myself, had zero involvement in the survey throughout the process, other than the posting of an announcement on the USAPA website notifying pilots of the survey, and announcing and arranging for the previously mentioned focus group meetings.

26. According to Dr. von Thaden, the results of the survey indicated that "the safety culture at US Airways is generally negative and in need of intervention." She identified twelve areas of particular concern;

- a) The pressure for profitability has led to cutting corners and poor scheduling practices.
- b) Pilots feel pressed to push in areas where it would be better to slow down.
- c) Personal safety and comfort of the pilots is not seen as a leadership concern.
- d) Problems with pushing for on-time departure which may hinder safety.
- e) Problems with accurate ACARS reporting.
- f) Certain Chief Pilots not acting in the best safety interests of the Line Pilots.
- g) Round crews approaching the aircraft while under power.
- h) Safety personnel perceived as out-of-touch with the risks of flight operations.
- i) Unsatisfactory response to reported safety issues.
- j) Inconsistent treatment along with perceptions of favoritism.
- k) Perceived cultural misalignment of pilots from the West and pilots from the East.
- l) Little input on safety decisions or processes at US Airways.

She concluded the executive summary by stating: "These survey results represent the culture of safety at US Airways flight operations and should not be distorted by any party as biased or meeting political ends. Sharing this information and using it for positive change is necessary to reinforce trust, integrity, due diligence, and value in safety, and jointly increase

consistency in the perception of the safety culture among company personnel.”

27. In that spirit, USAPA President Captain Michael Cleary sought a meeting with Company officials to share the results of the survey and to solicit their cooperation in jointly addressing the safety concerns of Dr. von Thaden. In January 2011, Dr. von Thaden presented her findings at a meeting attended by Capt. Cleary, Capt. Sabel, Capt. Hogg, Capt. Randal Mowrey, Capt. Paul Morrell, the Company’s Vice President of Corporate Communications, and myself. From the very beginning, it was apparent that the company was not interested in discussing the survey and its findings, and was more intent on seeking to discredit the findings. USAPA requested the Company sign on to the 23-page abridged version of the survey results in order to demonstrate their commitment to addressing the safety culture issues identified by Dr. von Thaden and working together with USAPA to return US Airways to an industry leader in all aspects of safety. The Company tabled USAPA’s request at the meeting, and, shortly thereafter, wrote USAPA refusing to sign the 23-page report, and seeking to rebut Dr. von Thaden’s findings rather than locate common ground to address the issues that arose.

28. Since that time, the Company has engaged in a campaign to discredit the safety initiatives of the Union. This has included a campaign of harassment and intimidation of the pilots that has attempted to discredit the pilots as they seek to maintain the safe operation of the aircraft and to silence me and the USAPA Safety Committee.

29. Specifically, the Company’s negative position towards safety became increasingly obvious when I received a letter from Capt. Morrell dated February 11, 2011, wherein he angrily discredited the results of the survey, and impliedly stated his position that pilots should just shut up and fly. (A copy of the February 11, 2011 Letter from Capt. Morrell is annexed hereto as Exhibit “D”) Moreover, Capt. Morrell wrongfully accused USAPA of using the survey strictly

to allow pilots to vent frustrations regarding contract and seniority issues, and claiming that USAPA and the pilots should be applauding the Company for its efforts with respect to safety.

30. The Company has previously involved itself in small survey-like evaluations of pilots. These events are typically referred to as "line audits" or "special operational audits", and were often sponsored by US Airways.

31. Moreover, the Company has previously recognized the expertise and renown of Dr. von Thaden in the field of airline safety and safety culture issues, as they quoted her in the Spring 2010 edition of the US Airways safety publication, entitled "What is Safety Culture", regarding human factor and safety culture issues.

32. As a result of the Company's response to the survey results, the inaction taken as part of that response, and the clear position of Capt. Morrell, the Company's head safety official, the USAPA Safety Committee determined that it was necessary for the Committee to take affirmative steps to educate pilots and Company officials, and to restore a proper safety culture at US Airways. Any reference to the phrases "slow it down" or "Safety First" in communications from the Safety Committee were derived from the Company's use of those or similar phrasing in both training modules and on tickers outside US Airways' terminals. (Copies of screen shots from Company training modules advising pilots "to slow down" and "slow down" are annexed hereto as Exhibits "E" and "F")

33. It is important to note that none of the actions described below would have been undertaken or would have been necessary had the Company partnered with USAPA on the Safety Culture survey, or agreed to address the safety culture issues upon completion of the survey.

Safety Videos and Written Guidance

34. In connection with my responsibilities as USAPA Safety Committee Chairman, and in that capacity, in or about April and May 2011, I published information to USAPA pilots to inform them of various measures to improve their working conditions and advance the safe operation of aircraft.

35. Said communications responded, in part, to the results of the comprehensive Safety Culture Survey, identifying numerous areas of aircraft and airline operation that were of concern.

36. The USAPA Safety Committee communicated its opinions concerning certain SOPs to pilots and proposed measures to ameliorate the risks posed by such SOPs to the safe operation of aircrafts. Moreover, the Safety Committee also identified a number of issues that needed to be addressed in response to the alarmingly results of Dr. von Thaden's Safety Culture Survey.

37. Beginning on or around April 2011, the Safety Committee published a series of six video messages from me instructing pilots on how to respond to certain issues or situations and stay in the "green" with respect to safety. One video was released each week on the USAPA website. In conjunction with the aforementioned video messages, the Safety Committee also issued written guidance covering the issues addressed in the videos.

38. Part 1 of the Safety Committee guidance addresses how the flawed safety culture at US Airways and the pressures for on-time performance detrimentally affect safety, and explains how pilots can alleviate potential safety risks by following certain pre- and post-flight procedures that, unlike the Company's guidance, do not sacrifice safety in the interests of saving money and cutting corners. My sole intention in Part 1 of the guidance was to advise pilots of

the clear safety risks associated with following the baseline procedures of the Company, and instead offering alternative procedures that alleviate these safety concerns and are within the pilot's discretion to perform pursuant to U.S. FAA FAR 91.3, which provides that the pilot in command of an aircraft "is directly responsible for, and is the final authority as to, the operation of that aircraft" and "[i]n an in-flight emergency requiring immediate action ... may deviate from any rule of this part to the extent required to meet that emergency." Nothing in Part 1 of the guidance provides that pilots should unreasonably delay a flight or improperly elongate their pre-flight checks, and I did not intend for any language within Part 1 of USAPA's guidance to have such results.

39. Part 2 of the Safety Committee's guidance deals with pilot fatigue issues. The message to pilots in Part 2 was simple, pilot fatigue "is a very dangerous and insidious condition." It is well documented that fatigue is a legitimate impairment that affects many human functions, including, but not limited to, cognitive abilities and motor skills. Accordingly, the Safety Committee was compelled by the Company's inaction to advise pilots on how to handle fatigue-related issues and take steps to ensure that the Company does not cause or exacerbate fatigue problems through improperly scheduling pilot trips and obtaining unreasonable pilot accommodations. Nothing in Part 2 of the guidance states that pilots should seek to improperly alter the Company's operation, and I did not intend for any language within Part 2 of USAPA's guidance to have such a result.

40. Part 3 of the Safety Committee's guidance addresses the use of Minimum Equipment Lists (hereinafter "MELs") by US Airways pilots. Specifically, it reminds pilots of their authority under the FARs and the FOM to use their individual experience and judgment when determining whether to accept an MEL and thereby defer maintenance and/or repairs on

the aircraft. Again, the Company's policy of employing the baseline, minimum safety standards and attempting to interfere with the authority and judgment of the pilot of an aircraft forced USAPA to remind pilots of the original purpose of a MEL, as well as their right to make the final call regarding whether an aircraft is safe enough to fly. Nothing in Part 3 of the guidance provides that pilots should improperly refuse MELs or otherwise ground a viable aircraft, and I did not intend for any language within Part 3 of USAPA's guidance to have any such results.

41. Part 4 of the Safety Committee's guidance addresses two engine taxi. It explains why this method of taxi is more safe and within a pilot's authority to do.³ In essence, this guidance simply advises pilots to follow US Airways' FOM 1.1.2, wherein it is expressly noted that "[s]afety [is] our top operational priority ...". The guidance explains that the decision to two engine taxi is within the pilots authority and is consistent with the policies and guidelines of the Company and FAA. Nothing in Part 4 of the guidance states that pilots should violate Company policies or SOPs, or should use two engine taxi to alter the operations of US Airways. Moreover, I did not intend for any language within Part 4 of USAPA's guidance to have any similar results.

42. The remaining two parts of the Safety Committee's guidance similarly do not advise pilots to improperly alter the operations of the airline or take any action or make any decision where it is not within a pilot's authority to do so. Nor did I intend for any language in Parts 4 and 5 of USAPA's guidance to have such results.

43. As a direct result of the USAPA Safety Committee's expression of opinion and communications to USAPA membership concerning means of improving working conditions, by letter dated July 1, 2011, US Airways threatened to discipline me, despite the fact that I acted

³ Importantly, Part 4 specifically states that: [t]he recommendations of your Safety Committee, as always, are within the authority granted to you in both the FOM and the FARs."

solely in my capacity as USAPA Safety Committee Chairman, including seeking, or threatening, my termination from employment.

44. The threats made to me became known to the rank-and-file USAPA membership and have been, and continue to be, used by US Airways as an object lesson to other pilots who engage in protected speech and other lawful activities for the mutual aid and benefit of pilots to improve their working conditions, by, *inter alia*, making aircraft operations safer.

45. USAPA's demonstrated commitment to safety, like the current management's history of subordinating it in favor of efficiency and monetary savings, has been consistent since the former's certification as exclusive representative of US Airways pilots.

46. Prior to the commencement of the safety campaign in question herein, USAPA and its pilots were constantly attempting to engage the Company with respect to safety issues and incidents. For instance, in or around summer 2009, the Company announced that A330 pilots would be able to conduct VOR approaches to Manchester England due to the shutdown of the normal ILS approach for approximately 30-60 days. The Company then advised the A330 pilots that said training would simply consist of a written bulletin and short computer module rather than actual simulator training where pilots could practice the Manchester approach and landing process. USAPA insisted that simulator training was necessary in order to protect the safety of pilots and passengers. Again, the Company cut corners to save money and sacrificed safety as a result.

47. Moreover, the long standing dispute between the Company and USAPA regarding safety is evidenced by the lack of satellite communications on B-767 aircraft dispatched to Rio, Brazil. The Company utilized HF communication on this route, which is widely recognized as highly unreliable in this part of the world. Every other American airline uses satellite

communications on aircraft flying in or around this area. Upon information and belief, the Company's sustained failure to provide proper communications equipment was for economic reasons only. After numerous ASAP reports and pilot complaints, the Company finally relented and installed satellite communication equipment on these aircraft. By the time the equipment was being installed, over one year had passed since the filing of the first complaints.

48. The above incident also demonstrated to USAPA and individual line pilots that the Company no longer considered safety a priority, and that the Company's existing reporting system, ASAP, and other safety programs were meaningless and futile. Given the above, when the Company refused to address Dr. von Thaden's Safety Culture survey, there became no question to the Safety Committee that the safety culture at US Airways was significantly flawed and would not be improved upon by the Company voluntarily.

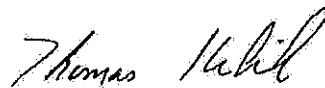
49. The decision of the Safety Committee to take affirmative action with respect to the flawed safety culture was a last resort in response to the above and the Company's increased efforts to degrade the safety culture and fail to meaningfully engage USAPA with respect to safety issues since April 2008.

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50. Once the Company's intention to sacrifice safety for economics and marketing became unambiguous, USAPA was forced to take affirmative steps to ensure the preservation of its airline, and the safety of the pilots and the general public. As mentioned at various points herein, the conduct of USAPA, its Safety Committee and myself during the time periods in question was not intended to encourage any illegal job action by pilots or advise pilots to attempt to improperly hinder the operations of US Airways.

I declare under penalty of perjury that the foregoing is true and correct. Executed on August 17, 2011.

Dated: August 17, 2011
Charlotte, North Carolina



THOMAS KUBIK

CERTIFICATE OF SERVICE

I certify that I have this day served the foregoing **Declaration of Thomas Kubik** 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:
- 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 17th day of August, 2011.

/s/ John W. Gresham
Attorney for Defendants