

1                   IN THE UNITED STATES DISTRICT COURT  
2                   FOR THE DISTRICT OF ARIZONA  
3                   CASE NO. : CV-13-00471-PHX-ROS

4                   \_\_\_\_\_)  
5                   Don Addington; et al.,        )  
6                                    Plaintiffs,                    )  
7                   vs.    )  
8                   US Airline Pilots Ass'n, et al.,) )  
9                                    Defendants.                        )  
                  \_\_\_\_\_)

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12                   DEPOSITION OF DAVID E. CIABATTONI

13                                   (Taken by Plaintiffs)

14                                   Charlotte, North Carolina

15                                   Tuesday, September 17, 2013

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25                                   Reported in Stenotype by  
                  V. Dario Stanziola, CSR (N.J.), RPR, CRR

1 APPEARANCES

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23 Also Present:

24 BRIAN STOCKDELL  
25 JOHAN de VICQ

26 DEPOSITION OF DAVID E. CIABATTONI,  
27 a witness called on behalf of the Plaintiffs,  
28 before V. Dario Stanziola, CSR (N.J.), RPR, CRR,  
29 Notary Public, in and for the State of North  
30 Carolina, held at the offices of Huseby, Inc., 1230  
31 West Morehead Street, Suite 104, Charlotte, North  
32 Carolina, on Tuesday, September 17, 2013,  
33 commencing at 2:32 p.m.

1 INDEX OF EXAMINATIONS

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3 By Mr. Harper PAGE 5

4

INDEX OF EXHIBITS

5

NUMBER EXHIBIT MARKED

6 Exhibit Number 1025: An e-mail string 11  
7 with the top from Dean Colello to Dave  
8 Ciabattoni dated 8/1/12, Bates USAPA  
9 221216

10 19

11 Exhibit Number 1026: An e-mail string  
12 with the top from Dave Shryack to Woody  
13 Menear dated 7/30/12, Bates USAPA 216075  
14 - 079

15 23

16 Exhibit Number 1027: An e-mail string  
17 with the top from Steve Bradford to Gary  
18 Hummel dated 9/18/12, Bates USAPA 224779

19 29

20 Exhibit Number 1028: An e-mail string  
21 with the top from Dave Ciabattoni to  
22 Jess Pauley dated 12/31/12

23 34

24 Exhibit Number 1029: An e-mail string  
25 with the top from Dave Ciabattoni to  
26 Jamie Weidner dated 1/9/13, Bates USAPA  
27 232101 - 232104

28 38

29 Exhibit Number 1030: E-mail string with  
30 the top from Dave Ciabattoni to Joe  
31 Stein dated 1/19/13, Bates USAPA 232096  
32 - 100

33 42

34 Exhibit Number 1031: E-mail string with  
35 the top from Dave Ciabattoni dated  
36 1/12/13, Bates USAPA 310193 - 199

37 43

38 Exhibit Number 1032: E-mail string with  
39 the top from Jamie Weidner dated  
40 1/13/13, Bates USAPA 297703 - 710

41 46

42 Exhibit Number 1033: Document written to  
43 Board of Pilot Representatives, Bates  
44 USAPA 003888 - 928

45

1 Exhibit Number 1034: E-mail string with 56  
2 the top from Dave Ciabattoni dated  
3 1/10/13

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1                   DAVID E. CIABATTONI,  
2   having first been duly sworn, was examined and  
3   testified as follows:

4                   EXAMINATION

5   BY MS. AXEL:

6           Q.    Good afternoon, Captain Ciabattoni.   Am I  
7   close enough?

8           A.    Pretty good.

9           Q.    All right.  Do you hold a position with  
10   USAPA?

11          A.    Say that again.  Do I hold?

12          Q.    A position with USAPA?

13          A.    Yes, I do, grievance chairman.

14          Q.    And what does that position entail?

15          A.    Contract enforcement.

16          Q.    Anything else?

17          A.    Contract interpretation, education about  
18   the contract to the pilots.

19          Q.    And what type of contracts are you  
20   referring to?

21          A.    Our collective work -- the bargaining  
22   agreements on the property.

23          Q.    Okay.  And how long have you been grievance  
24   chairman?

25          A.    For a year and a half.

1 Q. Were you elected or appointed?

2 A. You're appointed and then the board  
3 confirms it through an election.

4 Q. Board of pilot representatives

5 A. Correct.

6 Q. BPR?

7 A. Right.

8 Q. And appointed you?

9 A. President Hummel.

10 Q. Did you have to apply for the job?

11 A. No.

12 Q. Do you know how he came to appoint you?

13 A. He called me, asked me if I was  
14 interested.

15 Q. Okay. And do you report to Captain Hummel  
16 or the BPR?

17 A. I report to -- to the BPR.

18 Q. Are you familiar with what we are calling  
19 MOU I?

20 A. Vaguely.

21 Q. Vaguely. And what do you understand MOU I  
22 to be?

23 A. It's an agreement between USAPA and the  
24 company, U.S. Airways, on a proposed merger.

25 Q. Were you involved in negotiating that

1 agreement at all?

2 A. Can you define MOU I, because there were  
3 was a few iterations.

4 Q. Well, I should back up.

5 You were appointed when Mr. -- or  
6 Captain Hummel came into office so about April of  
7 '12, does that sound correct?

8 A. Um-hum. Correct.

9 Q. And after you were appointed, did you  
10 become aware that there had been a term sheet agreed  
11 to between U.S. Airways and APA?

12 A. Yes.

13 Q. How did you learn that?

14 A. It was public knowledge. I don't -- you  
15 know, I don't remember. It was within a few days  
16 of us taking office there was announcement of the  
17 merger, the intent to merge. So I don't -- I don't  
18 remember exactly when I was told or when I became  
19 aware of it.

20 Q. And after that point did USAPA begin  
21 negotiating with a company for a similar agreement  
22 or...

23 A. To the best of my knowledge, I wasn't  
24 involved with the direct negotiations, so I really  
25 don't know how it -- how it transpired.

1 Q. Okay.

2 A. There must have been something,  
3 obviously, to get a document.

4 Q. Right.

5 At some point were you ever asked to  
6 actually go with anyone to New York to work on the  
7 MOU I?

8 A. Yes.

9 Q. And when was that?

10 A. Boy. I don't recall. Either it was in  
11 the -- in the spring sometime, I would say March or  
12 April, if I had to guess.

13 Q. Of 2012?

14 A. No. Of -- oh, boy. No, it would have  
15 been 2000 -- I'm lost. You have to give me the  
16 dates. I don't know when the MOU came out.

17 Q. Okay. We'll back up.

18 Who asked you to go to New York?

19 A. Captain Hummel.

20 Q. Captain Hummel did.

21 And did he say -- did he have a specific  
22 reason for asking you?

23 A. Yes. He said he wanted us to get  
24 involved, myself and John Owens, with the initial  
25 phases of -- best of my recollection, there was a



1 document out that I saw at the USAPA office that I  
2 was critical of, and I raised some concerns with  
3 Gary. And he -- it seemed like a few weeks later  
4 as things started to heat up again with  
5 negotiations, there was some indication the company  
6 wanted to negotiate on the issue. He asked me to  
7 go to New York and try to interject what my  
8 concerns were into the document to get it cleaned  
9 up.

10 Q. Do you recall what your concerns were?

11 A. Generally just it was not -- it was  
12 ambiguously written. If you've got the document, I  
13 can maybe help if I can -- but I don't remember  
14 what -- there was a lot of concerns I had with the  
15 original document.

16 Q. Why don't we look at Exhibit 1006. And in  
17 front of you is the exhibits that were marked this  
18 morning. And this should be one of them. There we  
19 go.

20 A. 1006?

21 Q. Yep.

22 A. Yeah, this was not -- it was before this  
23 document. This was August of 2012. It was -- it  
24 was a document I saw was a lot -- it wasn't as much  
25 to it. It was the initial phases, I guess, of this

1 document.

2 Q. Okay.

3 A. But yeah, I had some concerns with the  
4 initial document. I asked who it -- you know, who  
5 had written it and what was the goals, and I had  
6 some concerns, so he asked me to go down there and  
7 try and work on it.

8 Q. Did you get answers to those questions as  
9 to who had written it?

10 A. No.

11 Q. Or what the goals were?

12 A. No.

13 Q. Prior to you going to -- you went to work  
14 with John Owens; is that correct?

15 A. I went on my own. But I met John there.

16 Q. Were you part of the merger committee at  
17 that point?

18 A. No.

19 Q. Or the NAC?

20 A. No.

21 Q. Okay. Were there -- was the NAC actively  
22 negotiating the MOU at that point?

23 A. No. I don't believe so.

24 Q. Okay. And when you went to New York, were  
25 you given any specific instructions on anything to

1 negotiate with respect to the MOU by Captain Hummel?

2 A. No, it was just other than I was -- I  
3 voiced some concerns, he said go there and see if  
4 you can alleviate your own concerns with the  
5 document.

6 Q. Okay. Did you guys discuss seniority at  
7 all, you and Captain Hummel, before you went?

8 A. You mean relative to the MOU?

9 Q. Yes.

10 A. No.

11 Q. Did you have any discussions with him about  
12 seniority generally with respect to the MOU?

13 A. No.

14 Q. Do you recall if your concerns were  
15 directed at seniority?

16 A. They were not.

17 Q. They were not.

18 (Exhibit Number 1025: An e-mail string  
19 with the top from Dean Colello to Dave  
20 Ciabattoni dated 8/1/12, Bates USAPA 221216  
21 marked for identification, as of this date.)

22 A. You want me to read this whole thing or  
23 do you have -- it's helping me refresh my memory.

24 Q. Yeah, that's pretty much the point of it.

25 A. Okay.

1 Q. Take as long as you want, if you want to  
2 read it, go ahead.

3 A. Okay.

4 So the answer would have been July  
5 probably. You asked me what -- when did we go? I  
6 guess based on this document -- well, I really  
7 still can't tell you it was -- it was June or July.  
8 I don't remember when we went to New York.

9 Q. Do you recall if you and John went before  
10 or after you wrote the series of e-mails?

11 A. Let's see. Well, this was August 20th --  
12 well, I think I'm discussing the O'Dwyer document,  
13 which I think this would have been after we went  
14 there then.

15 Q. Okay. So there was --

16 A. It would have been prior to July 31st.

17 Q. So there would have been a version of MOU I  
18 that you saw prior to the trip to New York and then a  
19 version you saw after; would that be fair?

20 A. Yes.

21 Q. Okay. And were you given those to review  
22 in your capacity as grievance chairman?

23 A. No, the original document from what I --  
24 that I viewed that I had concern with, I reviewed  
25 at the office and it was actually marked, had a

1 number in the corner and they passed out, I don't  
2 know, four, five, six of them in the room. And we  
3 reviewed that document and turned it back in. So  
4 that -- that's the only exposure to the document I  
5 have or had.

6 Q. Who else reviewed that document with you,  
7 with that small group?

8 A. I think Steve Bradford was there, Doug  
9 Mowery who was there, I guess we were doing a  
10 system board or something. He's an ex grievance  
11 chairman, ex negotiator, he reviewed it with me. I  
12 can't say for sure who else. There was somebody --  
13 couple other people, but I don't remember who they  
14 were.

15 Q. Okay. Do you recall if there was any West  
16 pilots in that group?

17 A. Not that I recall.

18 Q. So you look at it, you say I think there's  
19 some problems here and Captain Hummel says, okay,  
20 well, you go up to New York. You try and fix them?

21 A. A little later. I think there was a  
22 period of time.

23 Q. Okay.

24 A. I expressed concerns when I read that  
25 first pass with a lot of the language different

1 areas in there which we -- I think we continued to  
2 identify in here.

3 Q. Okay.

4 A. And then he says later when things start  
5 moving again, he says, hey, why don't you go up to  
6 New York and see if you can alleviate some of your  
7 concerns.

8 Q. Okay. And although it looks like you have  
9 a number of different concerns, was one of your  
10 primary concerns the change of control issue during  
11 this time frame?

12 A. No, no.

13 Q. Okay.

14 A. After reviewing this, I think what was  
15 enforcement of the agreement was a big concern of  
16 mine, and then the scope relief when you say change  
17 of control, that is specific within scope. But the  
18 waiver of scope, the rights and privileges of both  
19 the West and the East were of concern to me. And  
20 still are of concern to me.

21 Q. Okay. Was it your understanding that most  
22 of the elements of the MOU were negotiated by -- let  
23 me scratch that question.

24 The APA and U.S. Airways entered into a  
25 term sheet that set a number of pay rates and number

1 of different factors, correct?

2 A. Correct.

3 Q. Is it your understanding that USAPA  
4 essentially was given the same pay rates and other  
5 contractual terms that had already been negotiated  
6 with U.S. Airways?

7 A. Can you rephrase that? Ask that again.

8 MS. AXEL: Well, could you read that  
9 question back for me?

10 (THE QUESTION WAS READ BACK.)

11 A. No.

12 Q. So they were negotiating a separate  
13 contract from APA with separate terms?

14 A. It was definitely distinct from the APA  
15 deal, if that's what you're asking. It was not --  
16 the terms eventually would be the same. But the  
17 interim, it was not. So I can't answer that --

18 Q. Okay.

19 A. -- question the way it's been framed. I  
20 mean, eventually we're going to end up there. But  
21 if we're negotiating something that takes two years  
22 to get there, things are different in between that  
23 point, so... That's what the MOU was.

24 Q. Okay. Could you go to page two of  
25 Exhibit 1025.

1 A. Okay.

2 Q. And paragraph seven is discussion -- is  
3 discussing seniority, correct?

4 A. Yes.

5 Q. Okay.

6 A. You mean the number seven on my list  
7 here?

8 Q. Number seven, yes.

9 A. Yep.

10 Q. And it's talking about two seniority lists.  
11 Do you recall?

12 A. Yes.

13 Q. And what was your frustration with the two  
14 seniority lists?

15 A. Well, I don't know. Do you have the  
16 language that this was referencing?

17 Q. I don't, unfortunately. I don't know that  
18 that was given to us.

19 A. It looks like I'm upset with language. I  
20 say, the O'Dwyer draft clearly covered the reality  
21 of our current situation, two seniority lists, what  
22 the F is going on with this situation, who's  
23 tricking who? See, I mean, there must have been  
24 something in the document that was of concern to me  
25 because it was ambiguous. It was most of my



1 concern about the document was the ambiguous  
2 nature, not understanding it.

3 Q. Okay.

4 A. So...

5 Q. Did you feel that the first MOU adequately  
6 compensated USAPA pilots for giving up scope  
7 protections?

8 A. When you say M -- first MOU, we're  
9 talking about?

10 Q. That document or previous iterations of it.

11 MR. O'DWYER: 1006.

12 MS. AXEL: 1006. Yes. Thank you.

13 A. 1006, the answer would be no.

14 Q. And why is that?

15 A. A number of reasons. Without going -- I  
16 can speak more of the document we have now, but my  
17 concerns have been pretty much consistent along the  
18 path. My largest concern -- my largest concern now  
19 is the ability for the company to operate two  
20 certificates, not a single operating certificate  
21 requirement in the agreement.

22 The other issue I had was with the --  
23 what I view is a concession given by the block  
24 hours going from min fleet, daily utilization,  
25 standards that we currently have now allowing us to

1 go to block hours measured on a rolling 12 was a  
2 concession. And I believe that we -- the East and  
3 West had done our part as far as helping the  
4 company recover from bankruptcies and so on and  
5 that we should not be sharing or subsidizing  
6 another bankruptcy AMR.

7 Another issue that I had was I don't  
8 believe the returns for the East and West pilots  
9 was adequate. I felt there was a imbalance of the  
10 returns that were going to the APA pilots compared  
11 to the U.S. Airways pilots.

12 I could go on, but...

13 Q. Anything else specifically you remember?

14 A. Oh, boy. Without referring to my -- I  
15 did a study of the current MOU, more detailed than  
16 this one, and I kind of listed -- my committee  
17 actually listed out all of our concerns. So...

18 Q. I think I have that. And we'll get --  
19 we'll get to that, I think.

20 A. Because I don't -- yeah, I mean, I had  
21 more. But general ambiguous nature some of the  
22 language was concerning.

23 Q. Do you recall that around this July, August  
24 time period the NAC chairman was removed?

25 A. He was removed. I can't tell you a date

1 or time.

2 Q. Okay.

3 A. He was the chairman when I went to  
4 New York.

5 Q. And do you recall why he was removed?

6 A. I was not in the room.

7 (Exhibit Number 1026: An e-mail string  
8 with the top from Dave Shryack to Woody Menear  
9 dated 7/30/12, Bates USAPA 216075 - 079 marked  
10 for identification, as of this date.)

11 A. It's a long e-mail.

12 Q. Yeah, and I'm just going to ask you mostly  
13 about the front page.

14 A. Okay.

15 Q. But my first question is it looks like this  
16 e-mail chain gets to you from an e-mail address of  
17 ciaalpha@comcast.net.

18 Do you see that at the bottom of page one?

19 A. Yeah.

20 Q. Do you know whose e-mail address that is?

21 A. That's my old one.

22 Q. That's your old one?

23 A. Doesn't exist anymore.

24 Q. Okay. So you got it and e-mailed it to  
25 yourself; is that correct?

1 A. I don't know how that came from -- I  
2 haven't had Comcast at this time. I have no idea.

3 Q. Okay. And some of the other pilots are  
4 concerned with the removal of Paul DiOrio as NAC  
5 chairman and generally with the negotiation of the  
6 MOU. Would that be a fair way to characterize this  
7 document?

8 A. That's what it looks like.

9 Q. Okay. Did you share any of those concerns?

10 A. Did I share the concerns expressed in  
11 this -- in this -- yeah, I don't remember being  
12 concerned one way or the other.

13 Q. Okay. And Steve Bradford sends you an  
14 e-mail and says this needs a compass correction in  
15 all caps on page one.

16 Do you see that?

17 A. Yeah, I do.

18 Yeah.

19 Q. And what is a compass correction; do you  
20 know?

21 A. There's a -- it's a communication  
22 distribution that guys put out on the -- been  
23 around for years, got a large distribution, maybe a  
24 thousand pilots that gets out to the pilots. It's  
25 a distribution e-mail trail, whatever.

1 Q. Okay.

2 A. Blog.

3 Q. And do you generate it or are you part of  
4 the people that generate it?

5 A. No, no, not since I've been in a USAPA  
6 position.

7 Q. Okay. And you -- you respond to  
8 Mr. Bradford's e-mail with a vehement no. And your  
9 recommendation is that Gary set the record straight  
10 first. And why did you say that?

11 A. Well, I just -- from a political  
12 standpoint, instead of fueling a political war of  
13 people saying one thing and a distribution from a  
14 non-USAPA source saying another thing that I feel  
15 that the president should say why he's changing  
16 horses. And it just it should be handled that way  
17 not -- people in the union should not be  
18 encouraging outside communications to do the job.

19 Q. And did you feel at this time that  
20 Captain Hummel was doing a good job with  
21 communicating with the members?

22 A. Around this time, I believe he was doing  
23 okay. I was starting to have some concerns. But  
24 yeah, generally, I can't remember when -- when I  
25 expressed some concerns to him. It was probably

1 around this -- this -- around MOU I, I think, when  
2 it was coming out.

3 Q. Why did you have concerns?

4 A. I remember having a conversation with  
5 President Hummel in Steve Smyser's office giving  
6 him my recommendation that the union not sell a  
7 deal, that the union should present the deal, the  
8 board endorses the deal and let the debate --  
9 political debate pro and con happen naturally in  
10 the pilot ranks. I did not -- I do not and did not  
11 believe that the union should try to sell any deal.  
12 And I had this discussion with Gary. Gary  
13 indicated to me that if the deal was what met the  
14 standards that the direction that the negotiators  
15 in the union were given by the board that they  
16 should be able to sell it and I didn't think so, so  
17 we had that discussion sometime around MOU I.

18 And he actually took my counsel and  
19 said -- he eventually said yeah, I see your point.  
20 So it was just a discussion. Up to that point I  
21 was pretty happy with Gary's performance and I  
22 didn't -- I was busy doing my own job really to get  
23 involved too much with -- with the other stuff.

24 Q. Somewhere around August or September, MOU I  
25 was taken off the table; is that correct?

1 A. August 20th here, I think this is MOU I,  
2 correct.

3 Q. Correct.

4 A. I don't know if I would -- you said taken  
5 off the table?

6 Q. Taken off the table.

7 A. It was -- it was voted down by the board  
8 of pilot representatives, I think.

9 Q. Probably for some of the concerns that you  
10 had previously addressed?

11 A. Could have been, yeah.

12 (Exhibit Number 1027: An e-mail string  
13 with the top from Steve Bradford to Gary  
14 Hummel dated 9/18/12, Bates USAPA 224779  
15 marked for identification, as of this date.)

16 A. And now you're helping my memory, this is  
17 good.

18 Q. Good.

19 A. Okay.

20 Q. In this bottom e-mail, who are you writing  
21 it to? It's a little unclear.

22 A. It says grievance team. So that's my  
23 committee.

24 Q. Okay.

25 A. Which includes a couple attorneys.

1 Q. Okay. And does this refresh your  
2 recollection at all about the MOU binding USAPA to  
3 the term sheet negotiated with -- by APA?

4 A. Yeah, it does help. This was after  
5 MOU 1. And my concerns are summed up here in that  
6 last paragraph where I had an issue with  
7 recognition. That was -- now you're helping me  
8 with my memory. The first -- one of the major  
9 problem I saw was that the agreement that was  
10 negotiated between U.S. Airways and APA, we were  
11 not privy to. We were not at the table.

12 And in my view of the RLA, there's a  
13 obligation on the company to negotiate with the  
14 collective bargaining agent that's elected to  
15 represent the pilots on this property. And I  
16 viewed Parker's action as kind of circumventing the  
17 normal RLA process by going to the APA pilots and  
18 negotiating the term sheet and then coming to us  
19 and saying, here you go, here's the term sheets.  
20 So that was my -- those were my early concerns.

21 Q. Okay.

22 A. And from a grievance enforcement guy  
23 like -- that we're charged with, how do you enforce  
24 contract language that you weren't even -- your  
25 group wasn't involved with negotiating, which is



1 the term sheet, once we get to the term sheet,  
2 we'll be relying on APA to tell us what the meaning  
3 of the language is.

4 Q. Do you feel the same way about the MOU 2?

5 A. I do.

6 Q. Are you ever involved in or participate in  
7 Pilot For Pilot conference calls?

8 A. Occasionally I've been asked to be on  
9 them, yes.

10 Q. But you don't regularly participate in  
11 them?

12 A. Not unless I'm invited or asked.

13 Q. Okay. Do you recall in early October of  
14 2012 that Judge Silver in Arizona issued an opinion  
15 about a declaratory judgment action that the company  
16 had filed?

17 A. Yes.

18 Q. What was the reaction, if you recall, at  
19 the USAPA office to that opinion?

20 A. I don't remember a reaction at all.

21 Q. Okay. Were you ever told by anyone that  
22 USAPA is now free to use whatever seniority list they  
23 wanted?

24 A. No.

25 Q. Did you believe that the Nic was

1 essentially dead after that opinion?

2 A. Essentially, yeah, I would agree with  
3 that.

4 Q. Okay. And how did you have that  
5 understanding? Did somebody tell you that?

6 A. Not that I recall. I mean, it's -- I'd  
7 have to review her ruling again to give you -- if  
8 you can put a document in front of me like these,  
9 it helps me come back. There's a lot of stuff that  
10 we've done over the last year and a half, contract  
11 enforcement, my mind's in a lot of different areas,  
12 I can't pull back and remember what she wrote,  
13 but...

14 Q. Do you recall any general sentiment or  
15 expression by USAPA officers that the Nic was dead?

16 A. I don't remember any, no, anybody  
17 expressing that that was a foregone conclusion.

18 Q. Did anyone express that USAPA would have to  
19 use the Nic at any point, that that might be a  
20 possibility?

21 A. No, I don't remember anybody expressing  
22 that either.

23 Q. Okay. Now, sometime in, I believe,  
24 November-ish, the company started negotiating MOU 2,  
25 what became the final MOU; is that correct?

1           If you know.

2           A.    Yeah, I guess.

3           Q.    When was the first time you heard about the  
4 MOU coming back to life?

5           A.    Can't recall.

6           Q.    Were you involved in the negotiations at  
7 all with the -- the second MOU like you were with the  
8 first?

9           A.    No, I don't believe I was involved at all  
10 with MOU 2.  No, no, whoa, whoa, whoa.  I did get  
11 involved in block hour, the conversion of min fleet  
12 and daily utilization of block hour.

13           THE COURT REPORTER:  I'm sorry?  The  
14           conversion of?

15           A.    I did -- I did get involved on a couple  
16 conference calls related to converting the min  
17 fleet and daily utilization that we had in our  
18 existing contracts to the minimum block hours that  
19 is in the MOU.  So -- and I think that was in  
20 December.

21           Q.    And who -- and that was in -- who were the  
22 conference calls with?

23           A.    Conference calls were with the chairman  
24 Dean Colello, Paul DiOrio was asked to help, he had  
25 certain expertise in the block hours side, Mark

1 King, who was the scope committee chairman and on  
2 some of the calls were members of the APA. Their  
3 scope committee chairman was on a call along with  
4 Neil Roghair. And I don't know if I have the  
5 timing right, but I believe that was December. I  
6 believe.

7 MS. AXEL: Can we take a quick break?

8 Sorry. I'm missing a document.

9 (A BRIEF RECESS WAS TAKEN.)

10 A. I thought of another name on those calls,  
11 you asked who was on those calls --

12 Q. Okay.

13 A. -- for sure that I knew. On not every  
14 call, but there was probably five or six calls on  
15 the majority, Patrick O'Neil.

16 Q. Okay.

17 A. He was a West pilot that was on the call.

18 Q. And this is the calls in December time  
19 frame, around --

20 A. I believe it was December and it was --  
21 had to do with the moving towards block hours.

22 Q. Okay.

23 A. Something I did not favor.

24 Q. Okay.

25 MS. AXEL: And I apologize, this document

1 does not have a Bates number and does not have  
2 writing on it. It's one of yours, and I can  
3 get you a Bates number later, if you would  
4 like.

5 MR. HARKIN: That would be good. Thank  
6 you.

7 (Exhibit Number 1028: An e-mail string  
8 with the top from Dave Ciabattoni to Jess  
9 Pauley dated 12/31/12 marked for  
10 identification, as of this date.)

11 MR. HARKIN: That has been marked?

12 MS. AXEL: Yes.

13 MR. HARKIN: 1028?

14 Q. Are you -- what is your understanding of  
15 McCaskill-Bond? Do you have any understanding of it?

16 A. Yeah.

17 Q. What is it?

18 A. It's a legislative law that was passed  
19 sometime, I don't remember the date, '09, '10 in  
20 response to the American/TWA merger.

21 Q. And did you understand that if the merger  
22 is consummated between American and US Airways, the  
23 McCaskill-Bond would apply to the seniority  
24 integration process?

25 A. If absent an agreement between the two

1 unions, correct.

2 Q. Okay. And in this e-mail you're talking  
3 about an arbitration. Are you talking about the  
4 McCaskill-Bond arbitration?

5 A. Yes.

6 Q. Okay. And it appears that you are just  
7 advocating for the company to stay neutral; is that  
8 correct?

9 A. Correct.

10 Q. Do you have any position on whether or not  
11 the West pilots are entitled to participate in the  
12 McCaskill-Bond arbitration process?

13 A. Do I have an opinion?

14 Q. Yes.

15 A. My opinion is they do not have -- through  
16 USAPA they have the right to participate.

17 Q. And do you believe USAPA can adequately  
18 represent the West pilots' interests with respect to  
19 the Nicolau award at the arbitration?

20 A. Yes, I do.

21 Q. And why do you believe that?

22 A. Because we have a duty to.

23 Q. Okay. Do you believe that the -- that  
24 either version of the MOU spoke with any finality on  
25 the seniority issue?

1 A. Other than to put it to McCaskill-Bond.

2 Q. Okay.

3 A. No, that's what --

4 Q. And did you have any understanding that  
5 under the current or either version of the MOU  
6 whether or not the West pilots would have party  
7 status under McCaskill-Bond?

8 A. Repeat that again.

9 MS. AXEL: Read it back.

10 (THE QUESTION WAS READ BACK.)

11 A. My understanding of the MOU is they would  
12 not.

13 Q. Okay. How do you have -- where did you get  
14 that understanding from?

15 A. From understanding the law that  
16 McCaskill-Bond legislation and the language,  
17 although I did have some concerns, I wanted it  
18 clear, but that's what I thought the intent of the  
19 language was to be.

20 Q. To exclude the West pilots from the  
21 McCaskill-Bond process?

22 A. To include USAPA and APA.

23 Q. And prior to the election or the  
24 ratification vote on the MOU, you had some concerns  
25 about the document, correct?

1 A. Correct.

2 Q. And you had attempted to disseminate those  
3 concerns to the broader membership, correct?

4 A. Correct.

5 Q. And on a number of occasions those  
6 concerns -- or those communications were not sent  
7 out; is that correct?

8 A. It would be fair to say that, yeah.

9 Q. And were you ever told why?

10 A. No.

11 Q. Who did you ask?

12 A. I remember being frustrated with the  
13 communications committee for not putting out  
14 some -- and I would back up, I would say my  
15 concerns and I also had some educational pieces  
16 that wanted to educate the membership coming into a  
17 vote to, you know, understand what we had compared  
18 to what we were going to, so they could make an  
19 informed choice. And some of those efforts were  
20 blocked, I felt, by USAPA by the Comm. And I don't  
21 know where it came from, where it emanated from,  
22 but bottom line we couldn't get really our concerns  
23 out, I felt.

24 Q. Did that information ever end up being  
25 disseminated?



1           A.    I disseminated it to the board where I  
2 could, and I think it filtered out.  A lot of  
3 people commented, a lot of people saw it.  So --  
4 but as far as being a official publication out of  
5 Comm, some -- some of our concerns were expressed,  
6 but not the majority of them, I don't believe.

7           Q.    And you never got an answer as to why?

8           A.    No.

9           Q.    Do you feel like that was fair to you or  
10 the pilot membership?

11          A.    No.

12          Q.    Do you recall seeing the glossy flight plan  
13 to merger brochures?

14          A.    I've seen it.

15          Q.    And do you think that was an adequate  
16 explanation of the benefits of the MOU?

17          A.    The benefits, it wasn't bad.  It wasn't  
18 bad.  I would say I can't -- you know, you've got  
19 one, I can look at it and study it.  But I think it  
20 was fairly accurate and covered the benefits.  I  
21 was more on the negative side but, you know.

22          Q.    That was my next question.

23          A.    Okay.

24          Q.    Did you think that there was any  
25 publication by USAPA to the pilots that informed them

1 of the scope protections that they were going to give  
2 up by agreeing to the MOU?

3 A. Not enough.

4 Q. Okay. What else do you think they could  
5 have done?

6 A. I think they could have put out our  
7 committee concerns.

8 (Exhibit Number 1029: An e-mail string  
9 with the top from Dave Ciabattoni to Jamie  
10 Weidner dated 1/9/13, Bates USAPA 232101 -  
11 232104 marked for identification, as of this  
12 date.)

13 Q. So this is what I've marked as Exhibit 1029  
14 is a series of e-mails between you and Jamie Weidner,  
15 if I'm saying that correctly, regarding the grievance  
16 update. And it appears, as we've been discussing,  
17 that he is confirming that he doesn't know why your  
18 pieces are not going out. And what I'd like to ask  
19 you about is this top e-mail. And it says in the  
20 second line here that the grievance committee will do  
21 a thorough review of the MOU language if and when  
22 it's available.

23 As of January 9th, had you received a copy  
24 of the MOU?

25 A. Apparently not.

1 Q. Okay. And the vote -- I believe the  
2 ratification vote was February 12th. Does that sound  
3 about right?

4 A. February 8th sticks in my mind, but...

5 Q. February 8th?

6 A. Um-hum.

7 Q. February 8th.

8 And would you have expected to receive a  
9 copy of the MOU prior to this point?

10 A. Yes.

11 Q. Did you feel like it was being withheld  
12 from you?

13 A. Yeah, I mean, I think my comment here is  
14 that if and when we were hoping to get it to take a  
15 look at it so we could start doing our review. But  
16 I don't know that it was being held or they were  
17 putting the finishes -- finishing touches on a few  
18 things. A lot of times they were down to nut  
19 cracking there with the amount of money on this or  
20 that. So I don't remember, I don't recall. You  
21 know, but obviously we wanted to get our hands on  
22 it and start reviewing it.

23 Q. And page three here, you're talking about  
24 the scope note number four?

25 A. Um-hum.

1 Q. And do you recall what the -- it appears to  
2 me the scope note for -- is something that is sort of  
3 just an informational piece designed to educate the  
4 pilots about what's in their current contract; is  
5 that fair?

6 A. Fair.

7 Q. And this was something that you just wanted  
8 to get out so that people could compare it to the  
9 scope protections and other issues in the MOU,  
10 correct?

11 A. Correct.

12 Q. And were you part of the -- were you  
13 involved with the 2005 merger between America West  
14 and U.S. Air?

15 A. Yes.

16 Q. Okay. And were pilot scope concessions  
17 part of that merger?

18 A. They always are in a merger. They always  
19 are.

20 Q. And where were those made or negotiated?

21 A. By extension of the transition agreement,  
22 you're waiving your scope provisions.

23 Q. So the transition agreement contained what  
24 would be equivalent in the MOU to the scope  
25 protections or waivers?

1 A. Yes.

2 Q. Okay.

3 A. Fair enough.

4 Q. Do you think that the MOU is a joint  
5 collective bargaining agreement?

6 A. No.

7 Q. Why not?

8 A. It's a memorandum of understanding to get  
9 to a joint collective bargaining agreement.

10 Q. Okay. What else needs to be negotiated?

11 A. What else needs to be negotiated?

12 Q. Yeah, to get to a joint collective  
13 bargaining agreement?

14 A. The actual -- the actual language of a  
15 collective bargaining agreement. MOU is just a  
16 blueprint for getting there. It's not the details  
17 in the -- of the agreement. Basically adopts the  
18 CBA 2012 in the interim until you work out the --  
19 the language in the JCBA.

20 Q. But until you get a finalized JCBA, it  
21 provides all the contractual rights and conditions of  
22 work -- working for US Airways, correct?

23 A. Right. It provides the reference to  
24 the -- to the 2012 CBA at APA, it gives you those  
25 rights.

1 Q. Okay.

2 (Exhibit Number 1030: E-mail string with  
3 the top from Dave Ciabattoni to Joe Stein  
4 dated 1/19/13, Bates USAPA 232096 - 100 marked  
5 for identification, as of this date.)

6 Q. And Exhibit 1029 -- 1030, excuse me, is a  
7 series of e-mails between -- also dated January 9th,  
8 between you and some others about the grievance  
9 updates that were not going out, correct?

10 A. Correct.

11 Q. Okay. And, again, you're still not being  
12 able to determine who's -- and I think this is your  
13 words censuring the grievance updates; is that  
14 correct?

15 A. Correct.

16 Q. And you never found out who that was?

17 A. No.

18 Q. Any suspicions about who it was?

19 A. No.

20 Q. And you write here on the bottom of the  
21 first page that the -- and you're quoting the APA  
22 that the MOU will act as a brand new collective  
23 bargaining agreement for the USAPA pilots. And is it  
24 still your position, as you just told me, that it's  
25 not a collective bargaining agreement?

1           A.    I think what I'm trying to say here is  
2 that our existing collective bargaining agreements  
3 that we have East, West and all the letter  
4 agreements would cease to exist. So the MOU  
5 creates that situation where we lose what we have  
6 and we go to CBA 2012 and the JCBA process, so...

7           Q.    Okay. And your concern is that most of the  
8 terms were negotiated by APA, correct?

9           A.    That's one of my concerns, yeah.

10          Q.    And when would you lose the existing CBAs  
11 or when would the MOUs start to govern?

12          A.    I think the language in the MOU speaks to  
13 that. You know, it's kind of when the company  
14 feels like it, to be honest with you. It says at  
15 the soonest practical time. It's the plan of  
16 reorganization, the effective date or the plan of  
17 reorganization or the soonest practical time that  
18 they can implement.

19          Q.    Okay.

20          A.    Different parts of it.

21          Q.    So at this point, though, you're aware that  
22 the plan of organization -- reorganization has been  
23 confirmed by the bankruptcy judge, correct?

24          A.    Correct.

25          Q.    So basically, once the resolution of the

1 DOJ lawsuit, if it's resolved favorably for Airways,  
2 the merger would then go into effect?

3 A. True.

4 Q. Okay.

5 A. Based on the date they select.

6 Q. And also in 1030 you are talking about a  
7 vote on Giordano.

8 Do you see that?

9 A. Correct.

10 Q. Do you know what that was about?

11 A. Per my recollection, there was a study  
12 done on our change of control language back in the  
13 2010, 2009 era. And it was by a firm, this firm,  
14 Giordano. I think they're in Jersey. And they had  
15 studied the ways a company could try to get around  
16 the change of control language in the contract,  
17 kind of had a blueprint in there for us to  
18 anticipate the company negotiating trying to get  
19 around it.

20 And since that document was a couple  
21 years old when this started to transpire, I felt it  
22 would be wise if the board would reengage that  
23 group to look at this transaction and how it would  
24 fit into the -- the study that they had done  
25 earlier.



1 Q. And was it your belief that a merger would  
2 trigger the change of control in the -- the change of  
3 control provisions in the East contract, correct?

4 A. Correct.

5 Q. And was it your belief or is it your belief  
6 that the merger would trigger the change of control?

7 A. This merger?

8 Q. Yes.

9 A. Yes.

10 Q. Okay. And the MOU supersedes or will  
11 supersede the East contract, correct?

12 A. Correct -- correct.

13 Q. And therefore, the change of control  
14 provision is essentially gone, correct?

15 A. Well, I think the MOU actually has  
16 language that gives the change of control provision  
17 up specific in the document. Just not -- doesn't  
18 happen by --

19 Q. Correct.

20 A. If my recollection's correct, I think  
21 it's -- there's a paragraph that's specific to it.

22 Q. And you may have already answered this, but  
23 will -- will the MOU be the US Airways pilot's  
24 collective bargaining agreement until it is replaced  
25 by the final joint collective bargaining agreement?

1 A. My understanding is the 2012 CBA will be  
2 our working agreement.

3 Q. The APA?

4 A. APA, yeah.

5 (Exhibit Number 1031: E-mail string with  
6 the top from Dave Ciabattoni dated 1/12/13,  
7 Bates USAPA 310193 - 199 marked for  
8 identification, as of this date.)

9 Q. On page -- I think it's about three into  
10 this document, USAPA 310195. And this is  
11 Exhibit 1031. You say that Mark King and Gary are  
12 against them going out. And are those the grievance  
13 updates on the -- your analysis of the MOU?

14 A. I'm sorry, what was that again?

15 Q. When you were saying against them going  
16 out, is that your grievance updates, your scope  
17 notes?

18 A. I think it's the scope notes and -- yeah.  
19 I'm not sure how I came to that conclusion, to be  
20 honest with you. But that was -- I guess maybe I  
21 surmised they were blocking it.

22 Q. Okay. Do you still think that is what  
23 happened today?

24 A. You can see I'm trying to get the board.  
25 I mean, that's just a theme here. I'm asking the

1 board find out what's going on, why are these not  
2 going out. And I can't -- I never really get an  
3 answer from anybody.

4 I remember Mark King put out a scope  
5 update which compared the new scope to the old  
6 scope when it came to RJs, regional jets, and seat  
7 capacity, seat limits, and I found issue with that  
8 also. And so I was assuming that they were putting  
9 out that and I couldn't put out my scope notes. So  
10 I don't -- I don't remember quite how I came to  
11 that conclusion. And, you know, as I say, they're  
12 against -- I don't know if they're the ones  
13 stopping it, but they were against it. I must have  
14 gotten some information.

15 (Exhibit Number 1032: E-mail string with  
16 the top from Jamie Weidner dated 1/13/13,  
17 Bates USAPA 297703 - 710 marked for  
18 identification, as of this date.)

19 Q. Is this top e-mail from you; do you know?

20 A. Yeah, it's -- I had more scope notes in  
21 shrack (ph) and my -- so it must be from me,  
22 correct.

23 Q. Okay. And in this bottom paragraph you say  
24 that this merger process has been one of the worst I  
25 have ever seen.

1 A. Um-hum.

2 Q. Is that true?

3 Do you still feel that way?

4 A. Yeah, I'm not too happy with it. Haven't  
5 figured that out yet.

6 Q. And you say guys, I was in the room back in  
7 August when you were all told by O'Dwyer, Wilder,  
8 paren, the Captain and Szymanski this is the best we  
9 could do and you'd better take it for a seat at the  
10 table.

11 Do you see that?

12 A. Yeah.

13 Q. Do you still believe that to be true?

14 A. Well, I said I was in the room, so I was  
15 in the room, it is true.

16 Q. Was that when you were in New York?

17 A. No, no.

18 Q. No.

19 A. This was in the -- this was in the -- a  
20 BPR meeting.

21 Q. Okay. And was that the BPR meeting where  
22 Jack Butler was present?

23 A. No.

24 Q. Okay.

25 A. This would have been -- August was MOU I.

1 Q. Okay. And essentially USAPA was told that  
2 if they didn't get go along with the deal then they  
3 wouldn't be a part of the merger; is that correct?

4 A. I wasn't in the room for that.

5 Q. Okay.

6 A. What I'm referencing here is I was in the  
7 room when our advisers and attorneys said that this  
8 was a good deal, you needed to get this deal, it  
9 was the best deal they could get, and you guys  
10 better sign on. And the board decided not to sign  
11 on, and then you guys came back with a better deal.  
12 So who was right?

13 THE WITNESS: Sorry.

14 Q. But you're writing these e-mails in  
15 January 13th, correct?

16 A. Correct.

17 Q. And was the MOU 2 that much better than the  
18 MOU I in your opinion?

19 A. It was better. It was better. It was  
20 improvements in a -- in a number of areas. But I  
21 still think we left stuff on the table.

22 Q. Good enough to give up the scope  
23 protections?

24 A. My opinion?

25 Q. Yes.

1 A. No.

2 Q. Okay.

3 A. This is a thick one.

4 (Exhibit Number 1033: Document written to  
5 Board of Pilot Representatives, Bates USAPA  
6 003888 - 928 marked for identification, as of  
7 this date.)

8 Q. I'm handing you Exhibit 1033. Are you  
9 familiar with this document?

10 A. Yes.

11 Q. Okay. And what is this document?

12 A. This was a product of our internal  
13 grievance committee's work on the MOU 2 or 3,  
14 whatever number it is.

15 Q. Okay. And did this actually end up going  
16 out to all the pilots?

17 A. No, the best of my knowledge, it did not.

18 Q. So this just went to the BPR?

19 A. I think it may have gone to the committee  
20 chairs too.

21 Q. Okay.

22 A. Officers too.

23 Q. Okay. And the major concerns are lack of a  
24 single operating certificate, which you raised  
25 earlier?

1 A. Yeah, that's the -- that was one of the  
2 largest -- largest issues.

3 Q. Lack of a representation during the pre  
4 merger process and beyond. So this refers to APA  
5 negotiating the term sheet and the collective  
6 bargaining agreement that would cover USAPA pilots,  
7 correct?

8 A. Correct.

9 Q. Dispirit treatment between American Airline  
10 pilots and USAPA pilots; is that correct?

11 A. Yeah.

12 Q. Do you believe American Airlines pilots got  
13 better treatment under the MOU than USAPA pilots?

14 A. Under the MOU, you mean what we -- what  
15 we gathered -- what we gained from the MOU? Yes,  
16 they got a better deal than we did under the MOU.

17 Q. Okay. You say seniority integration  
18 between East and West is ambiguous at best?

19 A. Um-hum.

20 Q. And what did you mean by that?

21 A. I think -- let me go back to the -- if  
22 you flip back to, I don't know, paragraph ten, the  
23 committee gets specific to what issues were  
24 ambiguous. So it's stated right there. Looks like  
25 we had a number of issues -- a few issues with Tim,

1 most of it language.

2 Q. And you say here that -- you make the note  
3 that the pilots at both airlines, correct?

4 A. Correct.

5 Q. And what is your concern that that should  
6 be union?

7 A. My concern was there wouldn't be a  
8 misunderstanding with some of the pilots thinking  
9 that they got to choose the arbitrators, that it  
10 would have to be -- it would only be between the  
11 two unions that would have the right to strike for  
12 arbitration.

13 Q. Okay.

14 A. Or arbitrators.

15 Q. And then you also say here that section 10H  
16 does not protect against an arbitrator changing the  
17 seniority list currently in effect at US Airways?

18 A. Yes. Normally from past mergers there's  
19 always a clause that you can't reorder a list. And  
20 I was -- I was surprised we didn't see some of that  
21 protection in there.

22 Q. Do you --

23 A. And I have to say, not everything in  
24 these paragraphs is from me. It's from the  
25 committee. What I did is I assign -- I called it a



1 homework assignment, I gave everybody the MOU when  
2 we got it and told them go through and list your  
3 concerns. And we gathered in a meeting in  
4 Charlotte at the office and went through the  
5 document one paragraph at a time, and we saw who  
6 had the same concerns, identified them. Some of  
7 them we allev- -- we -- they were taken out because  
8 we read other language that alleviated our  
9 concerns. And so this document is a committee  
10 work. But -- so when I say me or we, it's some of  
11 these were identified by other members on the  
12 committee.

13 Q. Do you believe that the MOU allows for  
14 implementation of the Nicolau award if that's what  
15 the McCaskill-Bond arbitration panel chooses?

16 A. Well, I think there's some language in  
17 the MOU that would preclude that. I'd have to --  
18 let me go back. It seems to me that the MOU has  
19 language that says that -- it's talking about the  
20 existing list should be used, can't be changed. So  
21 you're -- you're hypothetically saying if the  
22 McCaskill-Bond comes out with the Nicolau list?

23 Q. If the company -- if the US Airways pilots  
24 were to submit the Nicolau list --

25 A. Okay.

1 Q. -- there's nothing in the MOU that prevents  
2 implementation of the Nicolau list, correct?

3 MR. JACOB: Integration with the --

4 A. I have to look at the MO -- at the MOU  
5 again. I'd have to -- that's not my understanding  
6 of the MOU.

7 Q. What's your understanding?

8 A. That there's going to be a McCaskill-Bond  
9 process and it will be between USAPA and APA -- if  
10 there's a McCaskill-Bond process, it will be  
11 between USAPA and APA.

12 Q. And USAPA will submit date of hire as their  
13 list?

14 A. That's in the constitution and bylaws at  
15 USAPA to submit that.

16 Q. Going back to Exhibit 1033. I'd like to  
17 talk a little bit about the change in control, scope  
18 note number five, about halfway in the document.

19 MR. HARKIN: Can you give a Bates number?

20 MS. AXEL: USAPA 003905.

21 MR. HARKIN: Thank you.

22 A. Okay.

23 Okay.

24 Q. Did you believe that the change in control  
25 provision in the East contract had significant value?

1 A. Sure.

2 Q. Did you do any studies to determine what  
3 the exact value of that change of control provision  
4 was?

5 A. It would be over my head. Come up with a  
6 value.

7 Q. But it would be possible?

8 A. It would be possible to do an evaluation?

9 Q. Yes.

10 A. You can hire consultants to do an  
11 evaluation of anything, I assume.

12 Q. That is true. It is true.

13 Some of your scope notes did end up getting  
14 released publically; is that correct?

15 A. One or two did.

16 Q. Okay.

17 A. I'm not sure.

18 Q. And do you recall if there was reaction  
19 from the pilots about whether or not they should have  
20 been released earlier?

21 A. Seems that I did see some e-mails come  
22 across that -- well, the e-mails wanted to see  
23 that -- I think I saw some e-mails that wanted to  
24 see our analysis. But I can't sit here and tell  
25 you I remember somebody wanting to see all the

1 scope notes, I don't -- I don't recall.

2 Q. Okay. Did you go to any of the road shows?

3 A. I did.

4 Q. Which ones did you go to?

5 A. I think I went to all of them. I think I  
6 went to all of them.

7 Q. Do you recall there being said anything at  
8 the Charlotte road show about the Nicolau award?

9 A. I can't remember.

10 Q. What about the other road shows?

11 A. About the Nicolau award at those road  
12 shows?

13 Q. Yes.

14 A. Yes, I do remember the chairman, Dean  
15 Colello, saying that if you -- that this MOU was  
16 neutral on seniority and that if you wanted  
17 Nicolau, vote no; if you don't know Nicolau you  
18 should not vote no because it doesn't -- it  
19 doesn't do that, doesn't get you that list. So he  
20 was -- he was telling the pilots, just don't think  
21 you need to vote for this if you're trying to favor  
22 one position on seniority over another.

23 Q. So he told the pilots to vote on the MOU  
24 irrespective of their positions on the Nicolau award;  
25 would that be fair?

1           A.    No, I think he was saying my -- my read,  
2   that he was saying that this agreement -- this  
3   agreement does not get you a seniority integration  
4   with this agreement, that you -- if you favored  
5   Nicolau, this is not going to do it, if you don't  
6   favor -- you know, that's for another time. That's  
7   -- I think that's a little bit different than what  
8   you said, but I'm not sure.

9           Q.    Okay. Do you recall there being any  
10   discussion telling West pilots at any of the road  
11   shows that if they voted for the MOU, they would be  
12   waiving their right to pursue the Nicolau award?

13          A.    I don't remember that being said.

14          Q.    Was that your understanding?

15          A.    My understanding that they're waiving  
16   their right to ask for the Nicolau?

17          Q.    Correct.

18          A.    Request the Nicolau?

19          Q.    Pursue the Nicolau.

20          A.    Pursue the Nicolau? I'm not sure how  
21   they would get there with this document being that  
22   the McCaskill-Bond process is spelled out at the --  
23   at the end of the process if you can't come up with  
24   a seniority integration.

25          Q.    Even though you thought seniority was

1 ambiguous?

2           A.    I thought what was ambiguous was some of  
3 the language within paragraph ten to make clear  
4 that we selected a -- that the union selected the  
5 arbitrator. Was also very concerned with the  
6 single -- the term merged carrier and single  
7 carrier, whatever it was there. Because I've seen  
8 that come back to haunt us on a previous case.  
9 Single seniority list versus a merged seniority  
10 list. That was the concern of mine.

11           Q.    Why was that?

12           A.    Well, for example, what bothers me, it  
13 goes to the single certificate that the company may  
14 get a single certificate. As a grievance chairman,  
15 I'd like to see it say single seniority list so  
16 that we don't run into a situation where we end up  
17 with two operating certificates and a merged list,  
18 but one that they don't use.

19                    You know, we get a situation where we  
20 have lists that the company uses and it uses it to  
21 work us against each other. So I think to be  
22 clear, I'd rather see the term single seniority  
23 list because that means there's only one list to  
24 use.

25                    And whatever else I said in here. Let's

1 see. Protocol agreement prior to signing states  
2 does not guarantee any application of flying or any  
3 job entitlements or equities there are underlined  
4 the construction to integrate --

5 THE COURT REPORTER: I'm sorry.

6 A. I'll be quiet.

7 Right there I explain it, if we have an  
8 operationally merged instead of a traditional  
9 merged, we are not entitled to -- we don't --  
10 aren't entitled to any of the job entitlements. So  
11 those were concerns within -- embedded in paragraph  
12 ten.

13 Q. What are the job requirements?

14 A. Well, it goes back to scope. What you  
15 brought. The West right now has min fleet, daily  
16 utilization numbers and so does the East, but if we  
17 don't have a single -- single list, my concerns are  
18 we gave away those protections in this agreement,  
19 our agreements, current agreements. And we're  
20 not -- other than the block hours during the MOU,  
21 we're really not getting them in the American CBA,  
22 2012 CBA. So we could find ourselves in a weakened  
23 position and not have the protections that we have  
24 today.

25 Q. So another thing that you guys had given up

1 as part of the MOU?

2 A. The -- yes, the scope protections.

3 MS. AXEL: All right. Can we take a  
4 quick break?

5 (A BRIEF RECESS WAS TAKEN.)

6 (Exhibit Number 1034: E-mail string with  
7 the top from Dave Ciabattoni dated 1/10/13  
8 marked for identification, as of this date.)

9 Q. Looking for the MOU?

10 A. Um-hum.

11 Q. 1022.

12 Is it 1022 or 1023?

13 A. 23. Is that it?

14 Q. Yeah.

15 Just want to ask you why you were concerned  
16 that the MOU might be a third leg of the stool in the  
17 transition agreement?

18 A. Well, getting back to the language, I  
19 wanted clarity that there was no confusion. Didn't  
20 want somebody to come in and make a case that the  
21 MOU gave them a single agreement. So I felt  
22 they -- we should do more, be clear, absolutely  
23 clear what it -- what they were trying to do with  
24 that aspect of the agreement.

25 Q. Did you get clarity on that?



1           A.    Yeah, I think the negotiating committee  
2 came in, and I'm trying to find the stipulations  
3 they say that addressed that issue. My concerns  
4 were alleviated by them based on what they said --  
5 they had language that they felt was --

6           Q.    Could you look at 10H for me, it's on page  
7 seven.

8           A.    Okay.

9                    Okay.

10          Q.    Is that the provision that they told you  
11 alleviated your concerns?

12          A.    There was -- that was one. Yes, that was  
13 one. And I think there was something else. But  
14 that says US Airways agrees that neither the  
15 memorandum nor the JCBL -- JCBA shall provide a  
16 basis for changing the seniority list currently in  
17 effect at US Airways other than through the process  
18 set forth in this paragraph ten.

19          Q.    Okay. And then perhaps section 10D as  
20 well; is that another one?

21          A.    Yes.

22          Q.    And do you have any understanding about how  
23 10H came to be in the MOU?

24          A.    No.

25          Q.    Okay. But the committee explained to you

1 that that was one of the provisions that protected  
2 the implementation of the Nicolau award; is that  
3 correct?

4 A. That among other things in the agreement,  
5 they assured that my concerns were not -- the best  
6 of my recollection, yeah.

7 Q. Okay. Can you remember any of the other  
8 provisions that may have been?

9 A. Well, I think looking at four.  
10 Four basically says if there's a conflict  
11 wholly or partially inconsistent with provisions of  
12 the former agreements that the MTA would take over.  
13 So I think you can point to that. There was other  
14 areas in the agreement that would argue against  
15 that. But, you know, as the grievance chair, my --  
16 you know, my concern's always been one of clarity  
17 and absolute ironclad language and -- so that  
18 nobody goes down a wrong path, but...

19 Q. If 10H -- if we could look at 10H again.  
20 If that was not in the MOU, would you be concerned  
21 that this would cause the implementation of the  
22 Nicolau award?

23 A. Sure. I mean, it provides further  
24 clarity. So yeah, I would say if it was missing,  
25 it would be of concern.

1 Q. Okay. And do you know if -- and just so  
2 I'm -- make sure that we're clear, you were informed  
3 by the NAC or some portion of the NAC that among  
4 other provisions 10H was intended to prevent the  
5 Nicolau -- or prevent the MOU from being the third  
6 leg of the stool for the transition agreement; is  
7 that correct?

8 A. Somewhere along the negotiating  
9 committee, you know, appeased or addressed my  
10 concern. I think there was an e-mail, possibly,  
11 back here where we're talking about Dean was  
12 telling me what each section meant and so on and so  
13 forth. So there was some dialogue between the  
14 committee structures to try to alleviate our  
15 concerns.

16 Q. Have you ever had any meetings with  
17 President Hummel about the status of the litigation  
18 in Phoenix?

19 A. No.

20 Q. Meetings with anybody else at USAPA about  
21 the status of litigation in Phoenix?

22 A. Nope. No.

23 Q. I'd like for you to look at Exhibit 1. It  
24 should be on the top of this pile.

25 MR. HARKIN: 1000?

1 Q. I'm sorry, 1000.

2 A. 1000?

3 Q. Yes.

4 And specifically interrogatory number one,  
5 which starts on page two of this document and goes  
6 onto the top of page three. I just have a quick  
7 question.

8 A. Who is this? Is this --

9 Q. I assume -- well, that's a good question.  
10 Have you ever seen this document before?

11 A. No.

12 Q. And this is USAPA's response to plaintiff's  
13 interrogatories, which you can see on the front page  
14 here.

15 A. Okay.

16 Q. And our first question to USAPA was to  
17 identify and list each reason that supports the  
18 determination to agree to section 10H of the MOU,  
19 which we were just talking about. And at the top of  
20 page three, one of the -- one of the reasons was that  
21 the, quote/unquote, MOU conferred unprecedented and  
22 previously unattainable economic benefits on all US  
23 Airways pilots.

24 A. Okay.

25 Q. And my question is: Do you agree that the

1 MOU conferred unprecedented and previously  
2 unattainable economic benefits on all US Airways  
3 pilots?

4 A. Unprecedented, I would probably not use.  
5 But unattainable, I would use. That would -- I  
6 would concur with that term.

7 Q. Why were they previously unattainable?

8 A. I don't believe there was -- we'd been in  
9 a stalemate for six years. So I didn't -- this was  
10 a path to, you know, get it -- get us moving in the  
11 direction towards a new collective bargaining  
12 agreement. And so absent this, it was -- it was  
13 unattainable up to this point. It was -- there was  
14 no path. And this -- this provided it for us.

15 Q. And it was unattainable because of the  
16 seniority dispute, correct?

17 A. Because Mr. Parker liked to use the  
18 seniority dispute, yes.

19 Q. Okay. You're familiar that the company had  
20 made previous offers to USAPA that were rejected,  
21 correct? Contract offers?

22 A. The only offer I'm familiar with is the  
23 so-called Kirby proposal back to ALPA.

24 Q. Correct.

25 And that required use of the Nicolau award,

1 correct?

2 A. I don't know what the -- what the company  
3 proposed on seniority.

4 Q. But you would agree that the MOU did not  
5 confer unprecedented benefits on US Airways pilots,  
6 correct, for all the reasons that we've discussed?

7 A. I think the American guys got, you know,  
8 better deal than we did. So I don't -- it would  
9 be -- I think they set a precedent for getting a  
10 share of the company and all the things that they  
11 were able to negotiate and attain. So I don't know  
12 that if you compare what we got in the MOU, I would  
13 say is it unprecedented? No. But it was  
14 unattainable up 'til the MOU.

15 Q. And when you say share of the company,  
16 you're referring to the ownership interest that the  
17 American Airways -- or American Airlines pilots  
18 received as part of their agreement with the airline  
19 in which US Airways pilots did not receive, correct?

20 A. Correct.

21 MR. HARPER: Let's take a break just for  
22 a minute.

23 MS. AXEL: Okay. Quick break. Sorry.

24 (A BRIEF RECESS WAS TAKEN.)

25 (TIME NOTED: 4:45 p.m.)

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WITNESS' CERTIFICATE

I, DAVID E. CIABATTONI, do hereby certify that I have read and understand the foregoing transcript and believe it to be true, accurate, and complete transcript of my testimony, subject to the attached list of changes, if any.

\_\_\_\_\_

DAVID E. CIABATTONI

This deposition was signed in my presence by \_\_\_\_\_, on the \_\_\_\_\_ day of \_\_\_\_\_, 2013.

\_\_\_\_\_

NOTARY PUBLIC

My commission expires:



1 Huseby, Inc.  
1230 West Morehead Street, Suite 408 (Page 1 of 2)  
2 Charlotte, North Carolina 28208

3 E R R A T A S H E E T

4 RE: Don Addington; et al.  
vs. US Airline Pilots Association, et al.  
5 DEPOSITION OF: David E. Ciabattoni  
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1 STATE OF NORTH CAROLINA  
2 COUNTY OF MECKLENBURG

2

3 REPORTER'S CERTIFICATE

4 I, V. Dario Stanziola, a Notary Public in  
5 and for the State of North Carolina, do hereby  
6 certify that there came before me on Tuesday,  
7 September 17, 2013, the person hereinbefore named,  
8 who was by me duly sworn to testify to the truth  
9 and nothing but the truth of his knowledge  
10 concerning the matters in controversy in this  
11 cause; that the witness was thereupon examined  
12 under oath, the examination reduced to typewriting  
13 under my direction, and the deposition is a true  
14 record of the testimony given by the witness.

15 I further certify that I am neither  
16 attorney or counsel for, nor related to or employed  
17 by, any attorney or counsel employed by the parties  
18 hereto or financially interested in the action.

19 IN WITNESS WHEREOF, I have hereto set my  
20 hand, this the 24th day of September 2013.

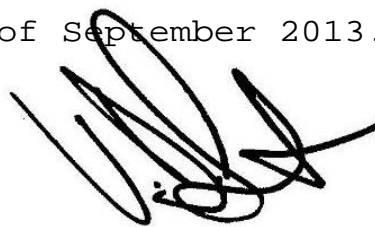
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V. DARIO STANZIOLA, CSR, RPR, CRR  
Notary Public No. 20011200120

**Don Addington vs. US Airline Pilots Ass'n  
David Ciabattoni on 09/17/2013**

**CV-13-00471-PHX-ROS  
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