

# Exhibit "2"

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**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

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In re:	:	Chapter 11
	:	
AMR CORPORATION, <i>et al.</i> ,	:	Case No. 11-15463-SHL
	:	
	:	(Jointly Administered)
Debtors.	:	
	:	
	:	
US AIRLINE PILOTS ASSOCIATION,	:	Adversary Proceeding
	:	
Plaintiff,	:	Case No. _____
	:	
v.	:	
	:	
LEONIDAS, LLC,	:	
	:	
Defendant.	:	

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**COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**

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Plaintiff US Airline Pilots Association (“**USAPA**” or “**Plaintiff**”), which represents and serves as the certified collective bargaining agent for the thousands of mainline pilots who fly for US Airways Group, Inc. (“**US Airways**”), by their undersigned attorneys, pursuant to sections 105(a) and 362(a)(3) of title 11 of the United States Code (the “**Bankruptcy Code**”), Rules 7001(7) and 7065 of the Federal Rules of Bankruptcy Procedure (“**Bankruptcy Rules**”), Rule 65 of the Federal Rules of Civil Procedure and 28 U.S.C. § 2201, seeks (1) a declaration that Leonidas, LLC (the “**Defendant**”) has impermissibly interfered with the Bankruptcy Court’s jurisdiction and mandate by announcing its intention to file an action (the “**Action**”) to enjoin the consummation of the Debtors’<sup>1</sup> merger with US Airways (the “**Merger**”); (2) a declaration that the Action violates the automatic stay embodied in 11 U.S.C. § 362(a)(3); and (3) injunctive relief preliminarily and permanently enjoining Defendant from interfering with the Bankruptcy Court’s jurisdiction over the Debtors’ chapter 11 cases and the Merger by prosecuting the claims asserted in the Action, and alleges as follows:

## **JURISDICTION AND VENUE**

1. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334, 11 U.S.C. §§ 105 and 362, Rules 7001(7) and 7065 of the Bankruptcy Rules, Rule 65 of the Federal Rules of Civil Procedure and 28 U.S.C. § 2201. This adversary proceeding relates to the jointly-administered chapter 11 cases titled *In re AMR Corp.*, Case No. 11-15463, currently pending in the United States Bankruptcy Court for the Southern District of New York.

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<sup>1</sup> Debtors in the jointly-administered chapter 11 cases titled *In re AMR Corp.*, Case No. 11-15463 are American Airlines Realty (NYC) Holdings, Inc., AMR Corporation, American Airlines, Inc., AMR Eagle Holding Corporation, Americas Ground Services, Inc., PMA Investment Subsidiary, Inc., SC Investment, Inc., American Eagle Airlines, Inc., Executive Airlines, Inc., Executive Ground Services, Inc., Eagle Aviation Services, Inc., Admirals Club, Inc., Business Express Airlines, Inc., Reno Air, Inc., AA Real Estate Holding GP LLC, AA Real Estate Holding L.P., American Airlines Marketing Services LLC, American Airlines Vacations LLC, American Aviation Supply LLC, American Airlines IP Licensing Holding, LLC.

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2. This is a core proceeding pursuant to 28 U.S.C. § 157 (b)(2)(A), among others.
3. Venue is proper before this Court pursuant to 28 U.S.C. § 1409.

## **THE PARTIES**

4. Plaintiff USAPA is a party in interest in the jointly-administered chapter 11 cases titled *In re AMR Corp.*, Case No. 11-15463, currently pending in the United States Bankruptcy Court for the Southern District of New York. USAPA was founded in 2007 by a group of pilots of the new US Airways after the merger between US Airways and America West Airlines, Inc. (“**America West**”). USAPA represents and serves as the certified collective bargaining agent for the thousands of mainline pilots who fly for US Airways. USAPA’s headquarters are located at 200 East Woodlawn Road, Suite 250, Charlotte, North Carolina 28217.

5. On information and belief, defendant Leonidas, LLC is an Arizona limited liability company with headquarters located at 3145 East Chandler Boulevard, #110-618, Phoenix, Arizona 85048-8702. Leonidas, LLC was created in August of 2007 by several former America West pilots, purportedly to safeguard the legal rights of America West pilots post-merger with US Airways. Leonidas, LLC has retained Marty Harper of Polsinelli Shughart PC in Phoenix, Arizona to represent its interests in litigation against USAPA. Andrew S. Jacob, an attorney at Polsinelli Shughart PC, is listed as the statutory agent for Leonidas, LLC on the Arizona Corporation Commission website.

## **SUBSTANTIVE ALLEGATIONS**

### **I. The Debtors’ Proposed Merger With US Airways**

6. On February 13, 2013, after the Debtors had expended significant time and resources to evaluate and analyze various alternatives in order to maximize value for all parties in interest, the Debtors entered into an Agreement and Plan of Merger with US Airways (the

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“**Merger Agreement**”). The Merger Agreement provides that, subject to and effective upon the confirmation and consummation of a chapter 11 plan of reorganization, Merger Sub, a wholly-owned subsidiary of AMR Corporation formed for the purpose of effectuating the merger, will be merged with and into US Airways, with US Airways continuing as the surviving entity as a direct, wholly-owned subsidiary of AMR. In addition, the Debtors and US Airways have executed conditional agreements with certain of their labor unions, including USAPA, which specifically contemplate the Merger and its effect upon significant portions of their unionized workforce. One such conditional agreement was reached between American Airlines, Inc., US Airways, the Allied Pilots Association (“**APA**”), and USAPA, who entered into a Memorandum of Understanding Regarding Contingent Collective Bargaining Agreements (the “**MOU**”), which spells out in detail, *inter alia*, how the Merger would affect the pilots of US Airways, setting out temporary contract terms that would be implemented in the event of a merger.

7. The consummation of the Merger is conditioned on the filing, confirmation and consummation of a plan of reorganization, which will, among other things, implement the Merger, in accordance with the requirements of the Bankruptcy Code. Debtors have concluded that the Merger is the best available option for Debtors and their stakeholders, and should be expeditiously pursued and implemented.

8. Accordingly, on February 22, 2013, Debtors filed a motion for entry of an order authorizing and approving the Merger Agreement, Debtors’ execution of and performance under the Merger Agreement and certain other related relief. The Court will hold a hearing on Debtors’ motion on March 27, 2013 at 10:00 a.m.

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## **II. The Action Seeks To Enjoin The Merger**

### A. The Dispute with Leonidas, LLC Regarding the Nicolau Award

9. Leonidas, LLC and USAPA have been on opposite sides of a pilot seniority dispute that has been the subject of ongoing litigation in the United States District Court for the District of Arizona, including a decision by the Ninth Circuit in *Addington v. US Airline Pilots Ass'n*, 606 F.3d 1174 (9th Cir. 2010). That dispute arose as the result of the 2005 merger of US Airways and America West into a single carrier operating under the name of US Airways.

10. At the time of the 2005 merger, the two pilot groups were both represented by the same union, the Air Line Pilots Association (“ALPA”). Pursuant to the internal procedures of that union, the two pilot groups attempted to integrate seniority culminating in an internal arbitration proceeding. The purpose of that arbitration was to determine the bargaining position that ALPA was to advance in the ongoing negotiations between it and the merged entity regarding seniority. That internal arbitration resulted in the issuance of what is known as the “Nicolau Award.” The Nicolau Award placed America West pilots still on probation and in ground school above US Airways pilots with more than 16 years of seniority. Thereafter, the consolidated pilot class voted to replace ALPA with USAPA, a new and independent union. As the new bargaining representative, USAPA took the position that it was not bound by the Nicolau Award, was free to propose and negotiate with US Airways concerning an integrated seniority list other than the Nicolau Award, and in fact proposed a seniority system based on date of hire with significant conditions and restrictions designed to protect the premerger career expectations of both the former US Airways and the former America West pilots.

11. In 2008, six former America West pilots sued USAPA in the United States District Court for the District of Arizona alleging, among other things, that USAPA’s failure to

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follow the Nicolau Award violated its duty of fair representation. While these pilot plaintiffs obtained a judgment in the District Court, on appeal the Court of Appeals for the Ninth Circuit held that the duty of fair representation claim was not ripe and remanded the case to the District Court with directions to vacate its judgment and dismiss the action. *Addington v. US Airline Pilots Ass'n*, 606 F.3d 1174 (9th Cir. 2010). The plaintiffs' petition for rehearing and rehearing en banc was denied, Order, *Addington v. US Airline Pilots Ass'n*, No. 09-16564 (9th Cir., July 8, 2010) [Dkt. No. 51], as was their petition for writ of certiorari to the United States Supreme Court. *Addington v. US Airline Pilots Ass'n*, 131 S. Ct. 908 (2011).

12. In July 2010, shortly after the Ninth Circuit denied rehearing in the *Addington* case, US Airways filed a civil action in the United States District Court for the District of Arizona, asking the District Court to issue a declaratory judgment on one of three alternative Counts: Count I, USAPA and US Airways were bound to follow the Nicolau Award; Count II, USAPA and US Airways were not bound to follow the Nicolau Award; or Count III, US Airways was not liable on any duty of fair representation claim without regard to whatever seniority system it might negotiate with USAPA. In that connection, US Airways stated that it "remains neutral regarding the merits of the underlying seniority dispute between the two pilot groups, but respectfully asks the Court to resolve this matter so that it and its pilots can move forward in completing negotiations for a new combined post-merger CBA." Plaintiff US Airways, Inc.'s Memorandum of Points and Authorities Pertaining to Defendants' Cross-Motions for Summary Judgment on Counts 1 and 2 of the Complaint at 3, filed Jan. 27, 2012 [D.I. 156].

13. In October 2012, on cross-motions for summary judgment, the District Court issued an order and judgment dismissing Counts I and III and issued judgment in favor of USAPA on Count II holding that USAPA is free to pursue any seniority position it wishes during

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the collective bargaining. An appeal was filed to the Ninth Circuit by US Airways on January 2, 2013, after the District Court denied a motion filed by US Airways for relief from the judgment. The issues on appeal have not yet been briefed.

B. The Membership of USAPA, Which Includes the Former America West Pilots, Ratified the MOU by an Overwhelming Margin

14. Following negotiations over many months by Debtors, US Airways, USAPA and APA, on January 4, 2013, the Board of Pilot Representatives of USAPA voted unanimously to recommend the proposed MOU to USAPA's membership for review and ratification.

15. The MOU includes substantial economic improvements, including significant pay increases, for US Airways pilots over the next six years. The MOU will not go into effect unless the Merger is consummated. Since the integration of the pilot work force is vital to the synergies required to effectuate a successful plan of reorganization, included in the MOU are extensive provisions establishing procedures for integrating the pilot work force. Those procedures provide for an orderly process to determine the seniority of the combined pilot group which culminates, if necessary, in arbitration as required by the McCaskill-Bond Amendment to the Federal Aviation Act, 49 U.S.C. § 42112 note (2008).

16. Voting by USAPA's membership commenced on January 18, 2013 and lasted until February 8, 2013.

17. The results of the vote were announced on February 8, 2013. 75.94% of the members of USAPA voted in favor of the MOU (2,693 of 3,546 voters). Of that group, 97.69% of the Phoenix-based pilots, or former pilots of America West, voted in favor of the MOU. Only 24 out of 1041 Phoenix-based pilots who voted opposed the MOU.<sup>2</sup> In other words, the

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<sup>2</sup> A copy of the 2013 MOU Referendum Results is annexed hereto as Exhibit A.

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overwhelming majority of the pilots that Leonidas, LLC purports to represent support the Merger, which Leonidas, LLC now intends to enjoin and otherwise interfere with.

C. Leonidas, LLC Announced Its Intention to Sue to Block the Merger

18. On or about February 19, 2013, Defendant, through its attorneys Polsinelli Shughart PC, served correspondence on counsel for USAPA (the "**February 19 Letter**"), a copy of which is annexed hereto as Exhibit B. The letter states that

unless USAPA agrees that the Nicolau list will be integrated with the American list, the West Pilots *will be forced to file a third round of litigation and seek an injunction of the merger process* until we can get a court order directing that the only list that can be used is the Nicolau.

February 19 Letter at 1 (emphasis added).

19. On or about February 20, 2013, Leonidas, LLC, through its attorneys Polsinelli Shughart PC, served correspondence to counsel for USAPA (the "**February 20 Letter**"), a copy of which is annexed hereto as Exhibit C. This letter was to "serve[] as written notice that the West Pilot Class . . . *anticipates litigation* and hereby requests that the US Airline Pilots Association . . . place a litigation hold on certain materials that will be discoverable in such litigation." February 20 Letter at 1 (emphasis added). This litigation hold letter makes explicit that Defendant intends to commence litigation in the near term.

20. On information and belief, similar letters were sent to the APA and US Airways, and possibly others.

21. On February 23, 2013, in the "Leonidas Update" posted on [www.cactuspilot.com](http://www.cactuspilot.com) (and annexed hereto as Exhibit D), Defendant stated that

Gary Hummel [USAPA's president] claims in his latest "President's Message" that West Pilots will attempt to delay or stop the merger. If so, this is only a consequence of USAPA's failing to provide, ". . . [t]he West Pilots a union that will not abrogate the Nicolau award without a legitimate purpose." We would like nothing better than to avoid court

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altogether but the West Pilot Class, as represented by our legal firm, will use all means at its disposal to defend our seniority rights . . . . With the recent MOU ratification along with the merger announcement, there are substantial legal activities now occurring to defend the West pilots' Seniority rights.

February 23, 2013 "Leonidas Update" at 1 (initial alteration in original).

22. The prosecution of the Action and any issuance of injunctive relief by another court related to the Merger will interfere with this Court's administration of the jointly-administered cases and will irreparably injure Debtors and other parties in interest, including USAPA.

23. If Defendant is permitted to prosecute the Action, there is no question that the action itself would distract parties in interest, such as USAPA, US Airways and Debtors, from the important negotiations and tasks attendant to the Merger, would disrupt the orderly integration of the pilot work force, and any injunctive relief granted would have a material and direct impact on the ability of Debtors to consummate the Merger.

**COUNT I  
FOR DECLARATORY RELIEF DECLARING THAT DEFENDANT'S ACTION HAS  
VIOLATED AND WOULD VIOLATE SECTION 362(a)(3) OF THE BANKRUPTCY  
CODE**

24. USAPA repeats and re-alleges each and every allegation contained in paragraphs 1 through 23 as if set forth fully herein.

25. Section 2201(a) of Title 28 of the United States Code provides that "[i]n a case of actual controversy within its jurisdiction . . . any court of the United States, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought."

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26. Bankruptcy Rule 7001(7) and (9) provide that an adversary proceeding may be brought “to obtain a declaratory judgment” which relates, among other things, to an effort “to obtain an injunction or other equitable relief.”

27. There is an actual and justiciable controversy between USAPA and Defendant regarding Defendant’s interference with the Debtors’ chapter 11 cases — and the Merger in particular — through the threat of litigation against USAPA and others to, *inter alia*, enjoin the Merger and to interfere with the negotiated procedures to provide for an orderly integration of the pilot work force.

28. The controversy between Plaintiff and Defendant is immediate and real. Section 362(a)(3) of the Bankruptcy Code stays all actions “to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate.” The Action is an attempt by Defendant to exercise control over the estates and property that is coming into the Debtors’ estates in violation of section 362(a)(3) of the Bankruptcy Code.

29. The Action seeks, among other things, to enjoin the Merger. The assets coming into the estate through the Merger — namely, US Airways and its subsidiaries — will clearly be property of the Debtors’ estates upon consummation of the Merger pursuant to the terms of the Merger Agreement and plan of reorganization.

30. This issue is ripe for adjudication.

31. Defendant has violated and would violate the automatic stay, as it seeks to preclude Debtors’ merger with US Airways. The threat of injunctive relief violates the stay. The prosecution of the Action and any injunctive relief ordered by a court will have a material and direct impact on the ability of the Debtors to consummate the Merger, and such relief would seriously jeopardize a successful reorganization and violate the stay.

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**COUNT II**  
**FOR DECLARATORY RELIEF DECLARING THAT LEONIDAS, LLC HAS**  
**IMPERMISSIBLY INTERFERED WITH THIS COURT'S JURISDICTION AND**  
**MANDATE**

32. USAPA repeats and re-alleges each and every allegation contained in paragraphs 1 through 31 as if set forth fully herein.

33. Section 2201(a) of Title 28 of the United States Code provides that “[i]n a case of actual controversy within its jurisdiction . . . any court of the United States, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought.”

34. Bankruptcy Rule 7001(7) and (9) provide that an adversary proceeding may be brought “to obtain a declaratory judgment” which relates, among other things, to an effort “to obtain an injunction or other equitable relief.”

35. There is an actual and justiciable controversy between USAPA and Defendant regarding Defendant’s interference with the Debtors’ chapter 11 cases — and the Merger in particular — through the threat of litigation to, *inter alia*, enjoin the Merger.

36. The controversy between Plaintiff and Defendant is immediate and real. The injunctive relief sought in the Action is so intertwined with the Debtors’ chapter 11 cases and the Merger that will be a component of the plan of reorganization that the Action improperly interferes with this Court’s jurisdiction and mandate.

37. This issue is ripe for adjudication.

38. Absent declaratory relief from this Court declaring that Leonidas, LLC has improperly interfered with the Bankruptcy Court’s jurisdiction and mandate by threatening an action, the estates and certain parties in interest, including USAPA, will be irreparably harmed if Defendant brings an action and obtains the injunctive relief it seeks and interferes with the

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consummation of the Merger. In that event, the estates would lose the benefits of the Merger, including the orderly integration of the pilot work force, after the parties, including USAPA and Debtors, spent many months negotiating the Merger with US Airways.

39. The potential for a successful reorganization would be irreparably jeopardized by the prosecution of the Action.

40. Therefore, USAPA is entitled to entry of an order declaring that Defendant improperly interfered with the Bankruptcy Court's jurisdiction and mandate by announcing its intention to file an action.

**COUNT III**  
**FOR INJUNCTIVE RELIEF PRELIMINARILY AND PERMANENTLY ENJOINING**  
**LEONIDAS, LLC FROM INTERFERING WITH THE MERGER BY PROSECUTING**  
**THE ACTION IN ANY COURT**

41. USAPA repeats and re-alleges each and every allegation contained in paragraphs 1 through 40 as if set forth fully herein.

42. Section 105(a) of the Bankruptcy Code authorizes this Court to "issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of" the Bankruptcy Code. This Court can issue a preliminary or permanent injunction under section 105(a) enjoining a plaintiff's prosecution of an action where such an act would defeat or impair its jurisdiction with respect to a case pending before it.

43. Federal Rule of Civil Procedure 65, made applicable to adversary proceedings by Bankruptcy Rule 7065, also authorizes this Court to grant preliminary and permanent injunctive relief.

44. Leonidas, LLC has announced its intention to file an action. Defendant seeks, among other relief, to enjoin the Merger. Debtors' motion for an order authorizing the Merger is currently pending before this Court and will be heard on March 27, 2013. Were any court to

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grant the injunctive relief threatened in the February 19 Letter, it would interfere with any order of this Court approving the Merger and authorizing Debtors to consummate it. This would invariably impede the successful reorganization of Debtors.

45. Absent issuance of a preliminary and permanent injunction enjoining Defendant from prosecuting the Action in any court, Debtors will be irreparably harmed. If the Merger has not been consummated by December 13, 2013, the parties can terminate the Merger (under certain conditions). Such termination would result in, among other things, a substantial delay in the conclusion of Debtors' chapter 11 cases. The plan of reorganization is going to be, in some form, based on the merger between AMR and US Airways. Central to the success of the plan of reorganization is the orderly integration of the pilot workforce. Without the Merger, Debtors would need to develop an alternative to their plan for exiting bankruptcy. This too would cause a substantial delay to the conclusion of these chapter 11 cases. The remedies available at law are inadequate to compensate for that injury.

46. On balance, in considering the hardships as between USAPA and Defendant, an equitable remedy is warranted. As shown by the 97% vote in favor of the Merger by the former America West pilots Leonidas, LLC purports to represent, the Merger will benefit all USAPA pilots, including those from the former America West airline. Conversely, the interference with the Merger will have negative effects on not just USAPA but every party in interest, debtor, creditor and otherwise, who has invested time and resources into a successful reorganization.

47. Issuance of a preliminary or permanent injunction would further the public interest and the fundamental bankruptcy policy of rehabilitation of debtors. Defendant should not be permitted to enjoin the Merger to the detriment of the Debtors' estates and certain of its parties in interest, including USAPA, in an effort to pressure USAPA with respect to the pilot

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seniority dispute or for any other reason. Any such injunction directed to the Merger would disserve the Debtors' goal of a successful reorganization based, at least in part, on the successful consummation of the Merger and the orderly integration of the pilot work force and would thus impede the bankruptcy proceedings.

## **REQUEST FOR RELIEF**

WHEREFORE, USAPA prays that this Court:

1. Grant judgment in favor of USAPA and (1) declare that Leonidas, LLC has impermissibly interfered with the Bankruptcy Court's jurisdiction and mandate, (2) declare that the Action violates the automatic stay embodied in 11 U.S.C. § 362(a)(3), and (3) preliminarily and permanently enjoin Leonidas, LLC from interfering with the Bankruptcy Court's jurisdiction over the Debtors' chapter 11 cases and the Merger by prosecuting the Action.
2. Award USAPA the costs it incurs in pursuing this case, including its attorneys' fees; and
3. Award such other relief as the Court deems just and proper.

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Dated: March 6, 2013

Respectfully submitted,

**CAPLIN & DRYSDALE, CHARTERED**

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# Exhibit A

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 **US AIRLINE PILOTS  
ASSOCIATION**

Representing the pilots of US Airways

**Ballot Certification  
Committee**

February 8, 2013

## 2013 MOU Referendum Results

The Ballot Certification Committee thanks all members that voted in the 2013 MOU Referendum. We are extremely pleased that 94.8% of you participated in this referendum. Pilots voted in favor of the MOU and converting the Furloughed Pilot Medical Assessment funds to fund merger related expenses.

### 2013 MOU Referendum

#### Official Results

Ballot ending: 02/08/2013 14:00:00 (Eastern)

The ballots were cast and tallied as follows.

#### TOTAL

Do you vote in favor of the MOU? (please check one)	Total	Percent
Yes, I am in favor of the MOU	2693	75.94
No, I am opposed to the MOU	853	24.06
Total	3546	
Do you authorize converting the Furloughed Pilot Medical Assessment funds to fund merger related expenses? (please check one)	Total	Percent
Yes, I am in favor converting the funds	2278	64.92

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No, I am opposed to converting the funds	1231	35.08
Total	3509	
<b>CLT TOTAL</b>		
Do you vote in favor of the MOU? (please check one)	Total	Percent
Yes, I am in favor of the MOU	939	72.40
No, I am opposed to the MOU	358	27.60
Total	1297	
Do you authorize converting the Furloughed Pilot Medical Assessment funds to fund merger related expenses? (please check one)	Total	Percent
Yes, I am in favor converting the funds	1048	81.37
No, I am opposed to converting the funds	240	18.63
Total	1288	
<b>DCA TOTAL</b>		
Do you vote in favor of the MOU? (please check one)	Total	Percent
Yes, I am in favor of the MOU	164	84.97
No, I am opposed to the MOU	29	15.03
Total	193	
Do you authorize converting the Furloughed Pilot Medical Assessment funds to fund merger related expenses? (please check one)	Total	Percent
Yes, I am in favor converting the funds	153	79.69
No, I am opposed to converting the funds	39	20.31
Total	192	
<b>PHL TOTAL</b>		
Do you vote in favor of the MOU? (please check one)	Total	Percent
Yes, I am in favor of the MOU	559	55.84
No, I am opposed to the MOU	442	44.16
Total	1001	
Do you authorize converting the Furloughed Pilot Medical Assessment funds to fund merger related expenses? (please check one)	Total	Percent
Yes, I am in favor converting the funds	772	78.06
No, I am opposed to converting the funds	217	21.94
Total	989	

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## PHX TOTAL

Do you vote in favor of the MOU? (please check one)	Total	Percent
Yes, I am in favor of the MOU	1017	97.69
No, I am opposed to the MOU	24	2.31
Total	1041	

Do you authorize converting the Furloughed Pilot Medical Assessment funds to fund merger related expenses? (please check one)	Total	Percent
Yes, I am in favor converting the funds	298	29.04
No, I am opposed to converting the funds	728	70.96
Total	1026	

- There were 3740 eligible voters, of which 3547 cast a ballot, representing 94.8% of the eligible voters.
- Of the 3547 ballots cast, 868 (24.5%) were by phone, and 2679 (75.5%) were by web.
- There were 0 ballots cast in which the voter did not make a selection.
- There were 276 ballots declared void.

## USAPA Ballot Certification Committee

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# Exhibit "2"

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# Exhibit B

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February 19, 2013

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Re: Seniority Integration in US Airways - American Merger

Dear Pat,

Now that the MOU has been ratified and the merger has been approved by both airlines, it is time once again to make very clear the West Pilots' position on seniority.

I recently sent letters to Bob Siegel and Ed James stating that unless USAPA agrees that the Nicolau list will be integrated with the American list, the West Pilots will be forced to file a third round of litigation and seek an injunction of the merger process until we can get a court order directing that the only list that can be used is the Nicolau.

Although Judge Wake's injunction was vacated for lack of ripeness, his legal analysis was sound when he held that no matter what US Airways or any union does, the West Pilots are "entitled to a union that will not abrogate the Nicolau Award without a legitimate purpose" unless they consent to something else. *Addington v. US Airline Pilots Ass'n*, No. CV 08-1633-PHX-NVW, 2009 WL 2169164, at \*28 (D. Ariz. Jul. 17, 2009). He was also correct when he ruled that USAPA would violate its duty to the West Pilots if it negotiated higher wages without implementing the Nicolau Award list. *Id.* And yet, that is precisely what USAPA did by adopting the MOU.

Thanks to the MOU, USAPA is no longer held hostage by the East Pilots' claimed right of ratification. USAPA's officers and leaders can honor the Nicolau Award without fear that the East Pilots can interfere with the American/Airways merger. It is legally immaterial that USAPA's constitution mandates date-of-hire seniority because, to the extent that a union

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Overland Park Phoenix St. Joseph St. Louis Springfield Topeka Washington, DC Wilmington  
In California, Polsinelli Shughart LLP.

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constitution requires it to breach its legal duties, it is void. *See Steele v. Louisville & Nashville R. Co.*, 323 U.S. 192, 194-95 (1944) (abrogating union constitution that excluded African-Americans from membership); *James v. Int'l Bdh. of Locomotive Engineers*, 302 F.3d 1139, 1148 (10th Cir. 2002) ("Even if a union's action is authorized under its constitution, it may still breach the duty of fair representation.").

All obstacles to satisfying the Ninth Circuit's 2010 ripeness standard were removed upon ratification of the MOU and the confirmation of the merger by the two airlines. The Ninth Circuit cautioned in its decision that the West Pilots would have a ripe DFR claim "once a contract is ratified." *Addington v. US Airline Pilots Ass'n*, 606 F.3d 1174, 1180 n.1 (9th Cir. 2010). The MOU is just such a contract. The clock, therefore, is running on the six-month limitations for the West Pilots to file a DFR claim against USAPA once again. Consequently, the West Pilots have until early August, 2013, to seek judicial relief.

This interlude gives all concerned parties (APA, US Airways, USAPA and the West Pilots) time to establish a binding pilot integration protocol that requires integrating the Nicolau Award list with the American list. I expect that APA and Airways would readily agree to such terms. I urge USAPA to put the interests of all US Airways pilots first and agree as well.

Sincerely,

  
Marty Harper

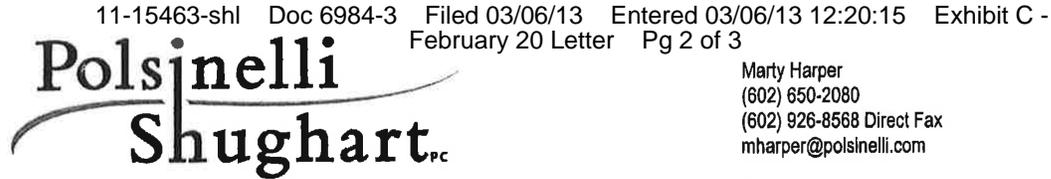
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Re: Seniority Integration in US Airways - American Merger

Dear Patrick,

This letter serves as written notice that the West Pilot Class, as certified in cause No. CV-10-01570-PHX-ROS in the United States District Court District of Arizona, anticipates litigation and hereby requests that the US Airline Pilots Association, its principles, agents, lawyers, representatives, members, directors, and assigns (collectively "USAPA"), place a litigation hold on certain materials that will be discoverable in such litigation.

Please hold, maintain, preserve and be prepared to disclose all materials now existing, or that will be created in the future, that are related to pilot seniority integration, dating back to the issuance of the Nicolau Award on May 1, 2007. This notice applies to (but is not limited to) all materials related to: (1) discussions and/or negotiations of those aspects of the February 2013 *Memorandum of Understanding Regarding Contingent Collective Bargaining Agreement* ("MOU") that relate to seniority integration (including draft language that was not adopted); (2) designating participants in all MOU seniority integration processes, including participants in the process of negotiating the Seniority Integration Protocol referenced in the MOU; (3) actual discussions and/or negotiations of, and implementation of, that Seniority Integration Protocol; (4) communications with US Airways pilots and American Airlines pilots on all issues related to seniority integration whether in their capacity as union representatives or otherwise; and (5) communications related to protecting all aforementioned materials.

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*In California, Polsinelli Shughart LLP.*

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Please note that USAPA is obligated to preserve all evidence encompassed by this request, including evidence that may be stored electronically. We anticipate the strong possibility of future litigation wherein we will need to conduct discovery of such evidence from USAPA including, but not limited to e-mails and drafts of documents, agreements, presentations and similar things, even if paper copies are available. Please be aware that this and other relevant electronic evidence may be stored on USAPA's computers, local hard drives, back-up files, back-up tapes, local servers, remote servers, personal digital assistants, and other storage sites for electronic data. As such, please advise USAPA and all relevant privies, personnel, agents and the like that they need to disable or suspend any and all routine or automatic deletion procedures and take all other necessary steps to preserve electronic evidence relevant to the requested items and the lawsuit.

As you know, courts order sanctions against parties and, in some cases, their lawyers, for failure to preserve electronic evidence. Therefore, please immediately take all necessary steps to ensure that relevant electronic evidence is preserved and not intentionally or inadvertently destroyed.

Sincerely,

  
Marty Harper

MH:asj

# Exhibit "2"

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# Exhibit D

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Leonidas Update February 23, 2013

<http://leonidas.cactuspilots.us/index.php?view=article&id=237:leonidas-...>

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## Leonidas Update February 23, 2013

Saturday, 23 February 2013 17:17 | 

On Wednesday, February 20, 2013, USAPA filed a 38–page “Motion to Expedite” with the Ninth Circuit Court of Appeals in the company’s Declaratory Judgment (DJ) case. ([Click here to view.](#))

US Airways filed a “Notice of Appeal” on December 31, 2012 and they have until the end of March to file. Will US Airways follow through with an appeal? The MOU makes the DJ case almost irrelevant as its claim was submitted on the premise of a “Hobson’s choice” – If the company did not negotiate with USAPA for a seniority scheme other than the Nicolau Award under Section 6 of the RLA, then they would be faced with a possibility of a strike versus being sued by the West pilots for not using the legitimately arbitrated seniority solution. Now, there is only one side of the “Hobson’s choice” – be sued by West pilots for aiding and abetting USAPA for not honoring the arbitrated Nicolau Award going forward.

USAPA’s filing contains many of the same tired arguments that were first considered and addressed by George Nicolau. But we find the following pair of statements to be incriminating. USAPA’s very first sentence reads:

“Defendant–Appellee US Airline Pilots Association (“USAPA”) is the **exclusive bargaining representative for all pilots** employed by Plaintiff–Appellant US Airways, Inc. (“US Airways).”

Then, on Page 4, USAPA states:

“USAPA...has repeatedly sought to engage the former America West Pilots and the West Pilot Class in substantive discussions to resolve the seniority dispute.”

How can USAPA exclusively represent US Airways Pilots and simultaneously negotiate with West Pilots? The answer is simple: They Can’t. When attempting to negotiate *with* West Pilots, USAPA defaults to what it has always done – representing just the East Pilots. This immediately places USAPA in violation of its legal obligation as the exclusive bargaining representative of *all* US Airways pilots. The second statement is an admission that USAPA is violating its DFR by not representing West pilots.

Gary Hummel claims in his latest “President’s Message” that West Pilots will attempt to delay or stop the merger. If so, this is only a consequence of USAPA’s failing to provide, “[t]he West Pilots a union that will not abrogate the Nicolau Award without a legitimate purpose.” We would like nothing better than to avoid court altogether but the West Pilot Class, as represented by our legal firm, will use all means at its disposal to defend our seniority rights. We continue to expect the company and USAPA to honor the obligations created in the 2005 America West/US Airways merger.

With the recent MOU ratification along with the merger announcement, there are substantial legal activities now occurring to defend the West pilots’ Seniority rights.

We thank you for your continued contributions as your career undoubtedly depends on it.

Leonidas, LLC

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