

# Exhibit "A" to Plaintiffs' Response on Remedy and McCaskill-Bond

CV-10-01570-PHX-ROS, December 1, 2011

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA**

US Airways, Inc., a Delaware	)	
corporation,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	CV 10-01570-PHX-ROS
	)	
Don Addington, an individual, et	)	
al.,	)	
	)	Phoenix, Arizona
Defendants.	)	December 1, 2011
	)	10:37 a.m.
and	)	
	)	
US Airline Pilots Association,	)	
	)	
Defendants.	)	
	)	

**BEFORE: THE HONORABLE ROSLYN O. SILVER, JUDGE**

**REPORTER'S TRANSCRIPT OF PROCEEDINGS**

**SCHEDULING CONFERENCE**

Official Court Reporter:  
**Elaine Cropper, RDR, CRR, CCP**  
Sandra Day O'Connor U.S. Courthouse  
401 West Washington Street,  
Suite 312, Spc. 35  
Phoenix, Arizona 85003-2150  
(602) 322-7245

Proceedings Reported by Stenographic Court Reporter  
Transcript Prepared by Computer-Aided Transcription

CV-10-01570-PHX-ROS, December 1, 2011

APPEARANCES

For the Plaintiff US Airways, Inc., a Delaware corporation:

**ROBERT A. SIEGEL, ESQ.**

O'Melveny & Myers, L.L.P.  
400 Hope Street, Suite 1227  
Los Angeles, CA 90071-2899  
213.430.6005/(fax) 213.430.8144

**KAREN GILLEN, ESQ.**

US Airways, Inc.  
111 W. Rio Salado Parkway  
Tempe, AZ 85281  
480.693.5835/(fax) 602.778.3750

For the Defendant US Airline Pilots Association:

**BRIAN O'DWYER, ESQ.**

O'Dwyer & Bernstein, L.L.P.  
52 Duane St., 5th Floor  
New York, NY 10007  
212.571.7100/(fax) 212.571.7124

**JENNIFER LYNN KROLL, ESQ.**

Martin & Bonnett, P.L.L.C.  
1850 N Central Ave., Suite 2010  
Phoenix, AZ 85004  
602.240.6900/(fax) 602.240.2345

**PATRICK J SZYMANSKI, ESQ.**

Patrick J Szymanski, P.L.L.C.  
1900 L St. NW, Suite 900  
Washington, DC 20036  
202.721.6035/(fax) 602.478.1646

**SUSAN JOAN MARTIN, ESQ.**

Martin & Bonnett P.L.L.C.  
1850 N Central Ave., Suite 2010  
Phoenix, AZ 85004  
602.240.6900/(fax) 602.240.2035.

For the Defendants US Airways West Pilots:

**MARTY HARPER, ESQ. (Telephonically)**

**ANDREW S. JACOB, ESQ.**

**KELLY J. FLOOD, ESQ.**

**KATHERINE V. BROWN, ESQ. (Telephonically)**

Polsinelli Shughart, P.C.  
1 E. Washington Street, Suite 1200  
Phoenix, AZ 85004  
602.650.2000/(fax) 602.264.7033

CV-10-01570-PHX-ROS, December 1, 2011

P R O C E E D I N G S

(Court was called to order by the courtroom deputy.)

(Present via phone are Mr. Marty Harper and Ms. Katherine Brown.)

(Proceedings begin at 10:37.)

10:36:59

THE COURT: Please be seated.

COURTROOM DEPUTY: This is case number CV-10-1570, *US Airways, Inc., v. Addington, et al.*, on for scheduling conference.

Counsel, please announce for the record.

10:37:08

MR. SIEGEL: Good morning, Your Honor. Robert Siegel for US Airways. And with me is Karen Gillen.

THE COURT: Thank you.

MS. MARTIN: Good morning, Your Honor. Susan Martin for defendant US Airline Pilots Association.

10:37:16

And with me is Patrick Szymanski and Brian O'Dwyer and also Jennifer Kroll.

THE COURT: All right.

MS. FLOOD: Good morning, Your Honor. Kelly Flood of Polsinelli Shughart on behalf of the West Pilot class. I have with me in the courtroom Andrew Jacob, and Marty Harper and Katie Brown are on the phone.

10:37:30

THE COURT: Thank you.

Did you say Jennifer Kroll?

MS. KROLL: That's me.

10:37:47

CV-10-01570-PHX-ROS, December 1, 2011

1 THE COURT: Okay. And you are here? 10:37:48

2 MS. KROLL: On behalf of the US Airlines Pilots  
3 Association.

4 THE COURT: All right.

5 And on the phone? 10:37:54

6 MR. HARPER: Your Honor, this is Marty Harper. I am  
7 in a deposition in Dallas, so I am participating by phone.  
8 Katie Brown is here but we are only on one land line, so she's  
9 just going to listen in over my shoulder.

10 THE COURT: Okay. Thank you. 10:38:09

11 Counsel, I have from you, and supplemented today by  
12 West Pilots, a supplement to the joint case management plan,  
13 also and USAPA's objection to the classification. Because  
14 that's new, I will resolve that independently. I noticed there  
15 are some differences. There will be a class notice, by the 10:38:38  
16 way, even though 23(b)(1) does not necessarily require one.

17 Okay. And then there was a request to join  
18 additional parties. Apparently, that is unopposed but let me  
19 ask the West Pilots why that's necessary.

20 MR. JACOBS: Your Honor, there were some objections 10:39:01  
21 that the class representatives that we had didn't go as high on  
22 the list as they might. So we added three pilots who were at  
23 the very top of our list. So we have representatives at each  
24 point of the seniority list.

25 THE COURT: Okay. That's fine. It's granted, then. 10:39:27

CV-10-01570-PHX-ROS, December 1, 2011

1           What I am having a problem understanding is what kind 10:39:37  
2 of discovery does USAPA really think you need. Now, this is  
3 the posture of the case as I see it. There was the Nicolau  
4 determination and then there was the lawsuit before Judge Wake  
5 and US Air was not a part of that lawsuit. It went up to the 10:40:01  
6 Court of Appeals. the Court of Appeals found the case was not  
7 ripe and remanded the case to Judge Wake to dismiss it. It was  
8 dismissed. Then it was brought in this Court and it is before  
9 me. It is before me in a declaratory judgment. I understand  
10 the three issues that have been presented to me by US Air and 10:40:22  
11 those will be resolved in that fashion. What happens  
12 afterwards I don't know, but there will be a judgment on all of  
13 those issues.

14           So the question is, what is the status of the Nicolau  
15 arbitration in this court and whether or not that issue is to 10:40:45  
16 be re-litigated in this court, meaning is that a matter of only  
17 persuasive authority? Does it -- is there any indication in  
18 the law that I should consider something else that was not  
19 presented to Judge Wake at the time Judge Wake considered  
20 whether or not to accept or reject that award? 10:41:20

21           Now, I understand what you're offering, at least in  
22 principle, and what you're offering in principle is this  
23 concept of reasonable expectations of the party which reminds  
24 me of other areas of the law where that issue is relevant and  
25 that an expert witness would be necessary to establish 10:41:45

United States District Court

CV-10-01570-PHX-ROS, December 1, 2011

1 reasonable expectations. That's new to me. I am not presaging  
2 a ruling on whether or not reasonable expectation experts are  
3 appropriate in that context because I haven't looked at the  
4 law. I haven't decided whether or not discovery is really  
5 necessary in that area.

10:41:48

10:42:07

6 So as a precursor to my deciding whether there should  
7 be additional discovery, if there should be additional  
8 discovery, I need to know what is the status in front of this  
9 court of the decision of Judge Wake as to whether or not that  
10 Nicolau agreement is binding or only persuasive on the Court?

10:42:25

11 My sense is that it would be -- because the case was  
12 dismissed, it would only be persuasive on the Court. I don't  
13 know. And that the second thing is, there's an entirely new  
14 issue, it seems to me, that wasn't presented to Judge Wake, so  
15 I'm wondering why. What happened in the interim that would  
16 allow what seems to be a legal issue, not a factual issue? And  
17 that's the first determination, as to whether or not I should  
18 allow, assuming that I can allow, a consideration of a new  
19 issue of reasonable expectations of the party in determining  
20 whether or not to accept or reject the arbitrator's decision.

10:42:49

10:43:15

21 And then the second issue, and I don't think I can  
22 certainly resolve it at this time but I will listen to the  
23 parties. It will be interesting to hear your oral argument on  
24 this is why that issue is even relevant to a review of an  
25 arbitrator's decision and then also why in two respects. Why

10:43:37

United States District Court

CV-10-01570-PHX-ROS, December 1, 2011

1 is it legally relevant or would have been legally relevant 10:43:43  
2 before Judge Wake and then, secondly, why it wasn't raised to  
3 Judge Wake at the time when he was considering whether or not  
4 to accept or reject the Nicolau agreement.

5 Okay. Seems to me I need to hear from the Union. 10:44:00

6 MR. SYZMANSKI: Your Honor, as the case management  
7 plan sets out, we think that there are two separate issues or  
8 claims in this case. One is the legal status of the Nicolau  
9 determination, which was presented before Judge Wake, but Judge  
10 Wake's decision was vacated by the Ninth Circuit. And as a 10:44:25  
11 result, his decision, in our view, has no effect on what's  
12 before the Court in this case.

13 THE COURT: Okay. I agree that it was dismissed and  
14 we have a new lawsuit.

15 I think counsel agree that there are -- at least you 10:44:47  
16 agree on this, that if I allow discovery, then in many respects  
17 additional discovery would not be needed. It could be  
18 perpetuated from the previous lawsuit; right?

19 MR. SYZMANSKI: That's right. Your Honor. We don't  
20 have an objection to using the discovery or even the testimony 10:45:05  
21 from the Addington crowd.

22 THE COURT: So what's this new issue that wasn't  
23 presented to Judge Wake that you now think is appropriate for  
24 me to consider?

25 MR. SYZMANSKI: As the Court's decision in denying 10:45:22

CV-10-01570-PHX-ROS, December 1, 2011

1 hopefully, and if I decide it resolves the entire case, that's 11:33:45  
2 the end of it, decides that it doesn't, that the Nicolau either  
3 for one or two reasons, the Nicolau agreement is not binding or  
4 if it is binding, there is still something that survives, then  
5 we'll have a status hearing to decide what to do with that. 11:34:04

6 Do you understand?

7 MR. SYZMANSKI: I understand, Your Honor. But given  
8 the nature now, which is broader than what I thought we were  
9 discussing about what the Court expects briefing on, I would  
10 suggest that the responses have at least an extra week because 11:34:22  
11 there's going to be, I know, a lot in the West pilot class  
12 presentation that they are going to file on the 17th of January  
13 that we're going to have to respond to.

14 THE COURT: All right. That's fine.

15 Then you can have another week. We'll make it -- 11:34:38  
16 I'll be generous. February 10.

17 MR. SYZMANSKI: Thank you, Your Honor. I appreciate  
18 that.

19 THE COURT: All right.

20 Anything else, Mr. Siegel? 11:34:46

21 MR. SIEGEL: No, Your Honor. Thank you.

22 THE COURT: And, Mr. Szymanski, anything else?

23 MR. SYZMANSKI: Your Honor, we have discussed in our  
24 papers a request for mediation. But I assume that since the  
25 opposition of the West class is that they don't see any reason 11:35:02



CV-10-01570-PHX-ROS, December 1, 2011

1 to participate, that the Court doesn't see any utility in that. 11:35:05

2 THE COURT: Everybody -- one side is going to stand  
3 stiffly against the other. It doesn't make any sense. It's a  
4 needless consumption of time. Thank you for raising that.

5 MR. SYZMANSKI: I appreciate that, Your Honor. 11:35:20

6 THE COURT: Mr. Harper?

7 MR. HARPER: We understand, Your Honor, and, yes, we  
8 are. We are on board.

9 THE COURT: And so that is the way we'll go and we'll  
10 see if we can resolve this case finally. 11:35:30

11 MR. SIEGEL: Your Honor, may I just ask one question?  
12 We were served this morning with a motion on the class notice,  
13 and we would like to respond and we'll do that very quickly.

14 THE COURT: Oh, you will? Okay. Do it in writing  
15 because I want this -- 11:35:43

16 MR. SIEGEL: We'll do that at the start of next week.  
17 We'll file our response.

18 THE COURT: Okay. Thank you.

19 We're adjourned.

20 COURTROOM DEPUTY: All rise. 11:35:52

21 (Whereupon, these proceedings recessed at 11:36 a.m.)

22 \* \* \* \* \*

CV-10-01570-PHX-ROS, December 1, 2011

C E R T I F I C A T E

I, ELAINE M. CROPPER, do hereby certify that I am duly appointed and qualified to act as Official Court Reporter for the United States District Court for the District of Arizona.

I FURTHER CERTIFY that the foregoing pages constitute a full, true, and accurate transcript of all of that portion of the proceedings contained herein, had in the above-entitled cause on the date specified therein, and that said transcript was prepared under my direction and control, and to the best of my ability.

DATED at Phoenix, Arizona, this 2nd day of December, 2011.

s/Elaine M. Cropper

Elaine M. Cropper, RDR, CRR, CCP

United States District Court