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

Don ADDINGTON; *et al.*,  
  
*Plaintiffs,*  
  
 vs.  
 US AIRLINE PILOTS ASS’N, *et al.*,  
  
*Defendants.*

CASE NO.

**Proposed Stipulated Facts**

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Pursuant to the Court’s May 14, 2013 Order, the parties provide the following stipulated facts:

| Abbreviation           | Reference   |
|------------------------|---|
| App. xxx               | Page in Appendix of Exhibits (at upper right corner) where cited document is reproduced.                    |
| Doc.                   | Document number in a related action otherwise indicated.  |
| Ex. xx                 | Exhibit number of document admitted into evidence in Case No. 2:08-cv-01633-NVW-PHX.                        |
| MP                     | ALPA Merger Policy.   |
| Nic. Award             | The Nicolau Opinion and Award.  |
| <del>RT at xx:xx</del> | <del>Page and line numbers from the reporter's transcript of testimony in case no. 2:08-cv-01633-NVW.</del> |
| TA                     | Transition Agreement.   |

1. In May 2005, two airlines, America West and US Airways, agreed to merge to become a single airline known as US Airways.<sup>1</sup>

~~2. At the time of the merger, including pilots on furlough, there were about 5,100 pilots who came from Old US Airways ("East Pilots") and 1,900 pilots who came from America West ("West Pilots.")<sup>2</sup>~~

~~3. At the time of the merger, all West Pilots were actively flying.<sup>3</sup>~~

~~4. At the time of the merger, approximately 1700 East Pilots were inactive (on furlough).<sup>4</sup>~~

<sup>1</sup> *Nic. Award*, 1 (May 1, 2007) (Ex. 2) [App. 001].

~~<sup>2</sup> *Nic. Award*, 5 [App. 005].~~

~~<sup>3</sup> *Id.* 28 [App. 028] (noting that on West side, "furloughs ceased to exist long before the merger took place."); *see also id.*, 5.~~

~~<sup>4</sup> *Id.* 4-5 [App. 004-005] (noting that 33% of East Pilots were on furlough at the time of the merger and that the most senior East furlougher was hired in 1988 and went on furlough in 2003).~~

1 ~~5.2.~~ At the time of the merger, Air Line Pilots Association (“ALPA”) represented  
2 both pilot groups.<sup>5</sup>

3 ~~6.3.~~ On September 23, 2005, ALPA and the two merging airlines entered into the  
4 Transition Agreement approved by the Bankruptcy Court overseeing US Airways  
5 bankruptcy.<sup>6</sup>

6 ~~7.4.~~ The Transition Agreement provided that “the seniority list of America West  
7 pilots and US Airways pilots will be integrated in accordance with ALPA Merger  
8 Policy.” ~~provides that the pilot groups would integrate their seniority lists according to~~  
9 ~~defined procedures set out in detail in the ALPA constitution and called “ALPA Merger~~  
10 ~~Policy.”~~<sup>7</sup>

11 ~~8. By the terms of the Transition Agreement, US Airways agreed in advance~~  
12 ~~(subject to predefined conditions that protected its economic interests) to accept the~~  
13 ~~outcome of the arbitration as the final resolution of this seniority integration dispute.~~<sup>8</sup>

14 ~~5. The Transition Agreement provided a detailed procedure for the resolution of~~  
15 ~~any disputes involving “the interpretation or application of” the Transition Agreement.~~<sup>9</sup>

16 ~~6. The Transition Agreement provided that it could “be modified by written~~  
17 ~~agreement.”~~<sup>10</sup>

18 ~~9. Pursuant to ALPA Merger Policy, the single integrated seniority list would be~~  
19 ~~created by two Merger Committees, representing the two pilot groups.~~<sup>11</sup>

20 <sup>5</sup> *Id.* 1 [App. 001].

21 <sup>6</sup> TA (Ex. 21) [App. 087-113].

22 <sup>7</sup> *Id.* at § IV.A [App. 092] (“~~The seniority lists of America West pilots and US~~  
23 ~~Airways pilots will be integrated in accordance with ALPA Merger Policy and submitted~~  
24 ~~to the Airline Parties for acceptance.”).~~

25 <sup>8</sup> ~~TA, § IV.A [App 092].~~

26 <sup>9</sup> *Id.*, at X.

27 <sup>10</sup> *Id.*, at XII.

28 <sup>11</sup> ~~MP, pt.1 ¶ D.3 (Aug. 10, 2005) (Ex. 3) [App. 116].~~

1       ~~10.—The two Merger Committees tried but failed to negotiate or mediate a single~~  
2 ~~integrated seniority list, beginning in August 2005.~~<sup>12</sup>

3       ~~11.—Due to that failure, ALPA Merger Policy required that the Merger Committees~~  
4 ~~arbitrate a single integrated seniority list.~~<sup>13</sup>

5       ~~12.—ALPA Merger Policy stated: “The Award of the Arbitration Board shall be~~  
6 ~~final and binding on all parties to the arbitration and shall be defended by ALPA.”~~<sup>14</sup>

7       ~~13.—ALPA Merger Policy stated: “The purpose of arbitration shall be to reach a~~  
8 ~~fair and equitable resolution consistent with ALPA policy.”~~<sup>15</sup>

9       ~~14.—Both pilot groups hired independent outside counsel to represent their interests~~  
10 ~~and eventually proceeded to arbitration.~~<sup>16</sup>

11       ~~15.—In the course of the Arbitration, there were 18 days of hearings, 20 witnesses,~~  
12 ~~and 14 volumes of exhibits.~~<sup>17</sup>

13       ~~16.—The two Merger Committees filed comprehensive post-hearing briefs.~~<sup>18</sup>

14       ~~17.—The East Merger Committee’s position, among other things, was that East~~  
15 ~~Pilots were entitled to seniority rights based upon their lengths of service (time since hire~~  
16 ~~less time on furlough), including approximately 1700 East Pilots who were on furlough at~~  
17 ~~the time of the merger.~~<sup>19</sup>

18       ~~18.—The West Merger Committee’s position, among other things, was that~~  
19 ~~approximately 1700 East Pilots who were on furlough at the time of the merger should be~~

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20       <sup>12</sup>~~RT, 395:24 to 396:7 (West Pilot Ken Stravers) [App. 292-293].~~

21       <sup>13</sup>~~MP, pt.1.H.1.b & c [App. 119].~~

22       <sup>14</sup>~~Id. pt.1.H.5 [App. 121].~~

23       <sup>15</sup>~~Id. pt.1.H.1.b [App. 119].~~

24       <sup>16</sup>~~Nic. Award, 1 [App. 001].~~

25       <sup>17</sup>~~Id. 3 [App. 003].~~

26       <sup>18</sup>~~Id.~~

27       <sup>19</sup>~~Id. 4 [App. 004]; id., 8 [App. 008]~~

1 ~~placed below all West Pilots because all West Pilots were actively working for America~~  
2 ~~West at the time of the merger.~~<sup>20</sup>

3 ~~19.7. The Arbitration board issued its award (the “Nicolau Award”) on or about~~  
4 ~~May 1, 2007.~~<sup>21</sup>

5 ~~20.—The Nicolau Award placed about 500 senior East Pilots at the top of the list~~  
6 ~~because at the time West Pilots were not operating the wide body international aircraft~~  
7 ~~generally flown by the most senior East Pilots.~~<sup>22</sup>

8 ~~21.—The Nicolau Award placed the approximately 1700 East Pilots who were~~  
9 ~~furloughed at the time of the merger at the bottom of the list.~~<sup>23</sup>

10 ~~22.—The Nicolau Award expressly found that “merging active pilots with~~  
11 ~~furlougees, despite the length of service of some of the latter, is not at all fair or~~  
12 ~~equitable under any of the stated criteria.”~~<sup>24</sup>

13 ~~23.—The Nicolau Award blended the remainder of the East Pilot list with the West~~  
14 ~~Pilot list according to relative positions on the separate seniority lists.~~<sup>25</sup>

15 ~~—On December 20, 2007, US Airways accepted the Nicolau Award.~~<sup>26</sup>

16 ~~24.8. The Nicolau Award has never been implemented, and seniority is governed~~  
17 ~~separately for the East and West pilot groups by the pre-merger US Airways and former~~  
18 ~~America West CBAs respectively, which continues in effect through the date hereof.~~<sup>27</sup>

19 <sup>20</sup> ~~*Id.* 14 App. 014].~~

20 <sup>21</sup> ~~*Nic. Award*, 35 [App. 035]; *see also id.*, 3 (explaining the procedures followed~~  
21 ~~by the arbitration) [App. 008].~~

22 <sup>22</sup> ~~*Id.* 31 & 32, n.5 [App. 031-032].~~

23 <sup>23</sup> ~~*Id.* 31 (placing “those who brought jobs to the merger” above those who did not)~~  
24 ~~[App. 031].~~

25 <sup>24</sup> ~~*Id.* 28 [App. 028].~~

26 <sup>25</sup> ~~*Id.* 31-32 [App. 031-032].~~

27 <sup>26</sup> ~~Doug Parker (Airline’s CEO), *Letter to US Airways Pilots* (Dec. 20, 2007) (Ex. 9)~~  
28 ~~[App. 130].~~

1           ~~25. — Soon after Mr. Nicolau announced his decision, the East MEC appealed to~~  
2 ~~ALPA's Executive Committee to overturn the Nicolau Award.~~<sup>28</sup>

3           ~~26. — ALPA's Executive Committee “determined that there is no ground under~~  
4 ~~ALPA Merger Policy to set aside the seniority award” and stated that the East MEC~~  
5 ~~“should also adopt a resolution recognizing that the award is to be included in the single~~  
6 ~~agreement to be negotiated under the Transition Agreement and Merger Policy.”~~<sup>29</sup>

7           ~~27. — On May 16, 2007, East Pilot Stephen Bradford wrote an email letter to the~~  
8 ~~ALPA Executive Board stating that it was necessary for East Pilots to replace ALPA so~~  
9 ~~that they could “write our own merger policy into our bylaws” and “just to protect what~~  
10 ~~little we have left.”~~<sup>30</sup>

11           ~~28. — In this email, Mr. Bradford also stated that “we don't not [sic] want to leave~~  
12 ~~ALPA, but we will just to ensure we can have some say in the next merger. We will~~  
13 ~~write our own merger policy into our bylaws and defend it in civil court if we have to.”~~<sup>31</sup>

14           ~~29. — In June 2007, Mr. Bradford and other East Pilots formed a committee.~~<sup>32</sup>

15           ~~30. — On June 9, 2007, this committee received advice from a lawyer to take care~~  
16 ~~with “the language you use in setting up your new union” and not to “give the other side~~  
17 ~~a large body of evidence that the sole reason for the new union is to abrogate an~~

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20           <sup>27</sup> Addington v. U.S. Airline Pilots Ass'n, 606 F.3d 1174, 1177 (9th Cir. 2010).

21           <sup>28</sup> ~~Minutes, MEC Special Meeting Resolutions Passed, (July 25, 2007) [App. 131].~~

22           <sup>29</sup> ~~J. Prater, Letter to J. Stephan, 2 (Oct. 1, 2007) (Ex. 19) [App. 134-135].~~

23           <sup>30</sup> ~~S. Bradford, Letter to Capt. Weber, 1 (May 16, 2007) (“We must leave ALPA if~~  
24 ~~this award stands . . . [and] [m]ake no mistake, we don't not want to leave ALPA, but we~~  
25 ~~will just to ensure we can have some say in the next merger.”) (Ex. 107) [App. 141].~~

26           <sup>31</sup> ~~Id. [App. 141]~~

27           <sup>32</sup> ~~See S. Bradford Depo., 154:8 to 154:21 (Mar. 19, 2009) (admitting that he was a~~  
28 ~~member of a committee using the name “AAApilots4fairness”) [App. 264]; see also~~  
~~¶¶ 44-46, infra., (showing purpose of committee).~~

1 ~~arbitration, the Nicolau award, that in the opinions of most judges, should be allowed to~~  
2 ~~stand due to no gross negligence or fraud.”~~<sup>33</sup>

3 ~~31. On June 14, 2007, this group met with another law firm to inquire whether~~  
4 ~~“formation of a new bargaining agent” could prevent implementation of the Nicolau~~  
5 ~~Award.~~<sup>34</sup>

6 ~~32. By August 2007, USAPA had retained counsel who provided an opinion letter~~  
7 ~~that USAPA published to the East Pilots, stating~~

8 ~~You have asked us to provide our legal opinion concerning whether~~  
9 ~~Arbitrator Nicolau’s seniority integration arbitration award could be~~  
10 ~~overturned or otherwise modified via litigation or subsequent~~  
11 ~~negotiation. Federal case law supports the conclusion that any effort to~~  
12 ~~overturn the Nicolau award via litigation would be fruitless. By contrast,~~  
13 ~~we believe that a successor union would be free to negotiate with US~~  
14 ~~Airways concerning the terms of any seniority integration.~~<sup>35</sup>

15 ~~33. In addition to a single seniority list, integration of flight operations required a~~  
16 ~~single collective bargaining agreement (“CBA”) for pilots. The TA referred to this as a~~  
17 ~~“Single Agreement.”~~<sup>36</sup>

18 ~~34. Each MEC appointed representatives to a single Joint Negotiating Committee~~  
19 ~~(“JNC”) charged with negotiating with US Airways the Single Agreement needed to~~  
20 ~~integrate pilot operations.~~<sup>37</sup>

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21 <sup>33</sup>~~-Aapilots4fairness committee member, *A Conversation with an Attorney* (Ex. 14)~~  
22 ~~[App. 143-144]; see also *Order*, 1-2 (Doc. 386, 2:08 cv 01633 NVW) (Apr. 23, 2009)~~  
23 ~~(denying motion to exclude as privileged) [App. 145-146]; S. Bradford Depo., 161:7 to~~  
24 ~~161:16 (admitting that he interviewed law firms in June 2007) [App. 271].~~

25 <sup>34</sup>~~-Aapilots4fairness Leadership Committee, *Lawyer Meeting* (June 14, 2007)~~  
26 ~~[App. 147-150]; see also S. Bradford, Depo., 158:6 to 158:22 (admitting he authored this~~  
27 ~~document) [App. 268].~~

28 <sup>35</sup>~~L. Scham, *Letter to Interim President*, 1 (Aug. 20, 2007) [App. 151].~~

<sup>36</sup>~~MP, pt.1.N.1 & 2 (Ex. 3) [App. 119];~~

<sup>37</sup>~~RT, 295:2 to 295:12 (West Pilot Douglas Dotter) [App. 286].~~

1           ~~35. On August 15, 2007, the East MEC formally resolved to boycott joint contract~~  
2 ~~negotiations: “BE IT FURTHER RESOLVED that our members of the JNC will not~~  
3 ~~reengage in Joint Contract Negotiations. . .”~~<sup>38</sup>

4           ~~36.9.~~ On January 23, 2008, the National Mediation Board certified a single  
5 transportation system and an election contest between ALPA and USAPA followed.<sup>39</sup>

6           ~~37. During the election, USAPA’s campaign materials equated retaining ALPA~~  
7 ~~with implementation of the Nicolau Award.~~<sup>40</sup>

8           ~~38. On December 8, 2007, USAPA’s website stated as follows:~~

9           ~~Will electing a new bargaining agent enhance our ability to redress the~~  
10 ~~inequities of the Nicolau award?~~

11           ~~Yes. The Nicolau is the product of an ALPA mandated process and~~  
12 ~~ALPA is bound to defend that process. The ALPA US Airways MEC~~  
13 ~~cannot prevail in its current litigation because it voluntarily submitted to~~  
14 ~~the ALPA mandated process.~~

15           ~~USAPA, however, is not bound by ALPA’s Constitution and cannot be~~  
16 ~~subjected to ALPA’s political control. USAPA will assert its right under~~  
17 ~~the Railway Labor Act to negotiate over the terms of any seniority~~  
18 ~~integration. Under the RLA, seniority is a mandatory subject of~~  
19 ~~bargaining.~~<sup>41</sup>

20  
21           <sup>38</sup> ~~East MEC, *Resolution*, at 3 (Aug. 15, 2007) [App. 183]; Jack Stephan Depo.,~~  
22 ~~100:19 to 101:4 (identifying document) [App. 311-312].~~

23           <sup>39</sup> US Airways/America West Airlines, 35 NMB 65 (2008).

24           <sup>40</sup> ~~D. Mowrey, *Letter to “Gentlemen”* (Mar. 6, 2008) (Ex. 20) (“‘Separate~~  
25 ~~Operations’ is not possible if we stick with ALPA. If we vote ALPA in, we will be forced~~  
26 ~~to eat the Nicolau award in the not too distant future. ALPA=Nicolau.”) [App. 154-56].~~

27           <sup>41</sup> ~~USAPA, *Freq. Asked Questions, Q#16* (Dec. 8, 2007) (Ex. 104) [App. 164-165];~~  
28 ~~see RT at 712:16 to 713:16 (John Bostic authenticating) [App. 296-97]; Bradford Depo.,~~  
~~33:11-34:11 (authenticating) [App. 296-97].~~



1       ~~39. In the course of the representation election, USAPA circulated messages that~~  
 2 ~~referred to its “goal of utilizing DOH [date of hire] as the lodestar for seniority~~  
 3 ~~integration.”~~<sup>42</sup>

4       ~~40. During the election, USAPA stated that it would negotiate for a date of hire~~  
 5 ~~seniority integration rather than the Nicolau Award.~~<sup>43</sup>

6       ~~41. In a letter to East Pilots, addressed to “Fellow US Airways Pilots” and dated~~  
 7 ~~February 2, 2008, Mr. Bradford (by then the President of USAPA) wrote, “the question~~  
 8 ~~of East West will be decided by a vote for ALPA or USAPA. If USAPA becomes the~~  
 9 ~~bargaining agent, there is no west and a simple majority can re-negotiate the Nicolau~~  
 10 ~~award.”~~<sup>44</sup>

11       ~~42.10.~~ USAPA won the election.<sup>45</sup>

12       ~~43.11.~~ The National Mediation Board certified USAPA as the collective  
 13 bargaining representative for the entire pilot craft (East and West) on April 18, 2008, with  
 14 Mr. Bradford as its president.<sup>46</sup> (“Craft” is the RLA term for a “bargaining unit.”)

15 \_\_\_\_\_  
 16       ~~<sup>42</sup>S. Bradford, *USAPA, President’s Message* (Mar. 20, 2007) [sic, proper date is~~  
 17 ~~2008] (Ex. 29)] (“By voting for USAPA, you vote for a Constitution with . . . a merger~~  
 18 ~~policy based on a pilot’s date of hire with conditions and restrictions to protect all pilot’s~~  
 19 ~~pre-merged career expectations.”) [App. 157-58].~~

20       ~~<sup>43</sup>USAPA, *Letter* (undated) (“Concerning future mergers with USAPA there is no~~  
 21 ~~Nic [Nicolau Award], it does not exist.”) [App. 159]; S. Bradford, *AAA AWA MEC Joint*~~  
 22 ~~*Chairman’s Msg.* (Jan. 31, 2008) (Ex. 33) [App. 161] (stating that the Nicolau Award~~  
 23 ~~“can be negotiated away by USAPA whether the West agrees or not! It really is that~~  
 24 ~~simple.”) (emphasis in original); see Bradford Depo., 89:12 to 90:9 (authenticating and~~  
 25 ~~establishing foundation) [App. 260-261].~~

26       ~~<sup>44</sup>S. Bradford, *Letter to “Fellow US Airways Pilots,”* (Feb. 2, 2008) (Ex. 34)~~  
 27 ~~(stating, “the question of East West will be decided by a vote for ALPA or USAPA. If~~  
 28 ~~USAPA becomes the bargaining agent, there is no west and a simple majority can re-~~  
 29 ~~negotiate the Nicolau award.”) [App. 173].~~

<sup>45</sup> Uncontested.

<sup>46</sup> *Id.* Doc. 74-1, NMB Certification dated April 18, 2008.

1           44.12. \_\_\_\_\_ USAPA’s Constitution states that one of the union’s objectives is “[t]o  
2 maintain uniform principles of seniority based on date of hire and the perpetuation  
3 thereof, with reasonable conditions and restrictions to preserve each pilot’s un-merged  
4 career expectations.”<sup>47</sup>

5           ~~— In September 2008, USAPA proposed a date of hire seniority list to US Airways  
6 (the “USAPA List”).<sup>48</sup>~~

7           ~~45. The USAPA List combines the existing East and West lists by date of hire  
8 (“DOH”), without regard to whether a pilot was on furlough at the time of the merger.<sup>49</sup>~~

9           ~~46. On the USAPA List, a majority of West Pilots are at or close to the bottom of  
10 the list.<sup>50</sup>~~

11           ~~47. A September 25, 2010, update from the USAPA Charlotte domicile stated  
12 “Our goal to ratify a contract that ensures a date of hire seniority solution with conditions  
13 and restrictions that protect all US Airways pilots is a USAPA Constitutional mandate.”  
14 <sup>51</sup>~~

15           ~~48. This Update also states: “Beyond the obvious seniority issues we must realize  
16 that we all have a common purpose and cause. That purpose is stated clearly above, an  
17 industry standard contract that contains a fair and equitable date of hire seniority solution  
18 that protects the entire US Airways Pilot Group.”<sup>52</sup>~~

19  
20  
21           <sup>47</sup> See USAPA Constitution [App. 200].

22           ~~<sup>48</sup> RT, at 1607:7 to 1607:13 (USAPA Vice President Randal Mowrey) [App. 305]  
23 (identifying USAPA, *US Airways Seniority Integration* (Ex. 329) [App. 186-95]); see  
24 *also id.*, at 1606:10 to 1601:23 (explaining exhibit) [App. 304].~~

25           ~~<sup>49</sup> RT, at 766:9 to 766:11 (West Pilot Brian Stockdell) [App. 301].~~

26           ~~<sup>50</sup> *Id.*~~

27           ~~<sup>51</sup> Charlotte Domicile Update Saturday, at 1 (Sept. 25, 2010) [App. 226].~~

28           ~~<sup>52</sup> *Id.* at 2 [App. 227].~~

1       ~~49. The minutes from a meeting of the USAPA Charlotte domicile reflect that on~~  
2 ~~March 31, 2011, USAPA President Michael Cleary “[a]ssured the audience that we will~~  
3 ~~not be distracted from our focus on our goals of completing a contract, fixing seniority~~  
4 ~~and leaving the union in a place to operate after present leadership is gone.”~~<sup>53</sup>

5       ~~50. The minutes from a meeting of the USAPA Charlotte domicile also reflect that~~  
6 ~~on March 31, 2011, USAPA Vice President Randy Mowrey “reminded everyone why we~~  
7 ~~are fighting this battle and that we should never forget to remember the core values of~~  
8 ~~seniority.”~~

9       ~~51. Former counsel for USAPA stated that USAPA will never voluntarily~~  
10 ~~implement the Nicolau Award.~~<sup>54</sup>

11       ~~52.13. On July 27, 2010, US Airways filed a declaratory judgment action,~~  
12 ~~claiming that it required guidance, inter alia, as to whether it would be liable if it entered~~  
13 ~~into a collective bargaining agreement with USAPA that did not implement the Nicolau~~  
14 ~~Award.~~<sup>55</sup>

15       14. The District Court granted summary judgment for USAPA.<sup>56</sup>

16       ~~53. The District Court ruled “[T]he best ‘declaratory judgment’ the Court can~~  
17 ~~offer is that USAPA’s seniority proposal does not automatically breach its duty of fair~~  
18 ~~representation.”~~<sup>57</sup>

19       ~~—The District Court ruled that USAPA’s date of hire “seniority proposal does not~~  
20 ~~breach its duty of fair representation provided it is supported by a legitimate union~~  
21 ~~purpose.”~~<sup>58</sup>

22       ~~<sup>53</sup> Charlotte Domicile Meeting Minutes, at 2 (Mar. 31, 2011) [App. 246].~~

23       ~~<sup>54</sup> RT, at 1047:1 to 1047:7 (USAPA attorney Nick Granath) [App. 302].~~

24       ~~<sup>55</sup> US Airways, Inc. v. Addington, No. CV-10-01570-PHX-ROS (D. Ariz. Jul. 26,~~  
25 ~~2010) (Doc. 1, Complaint) [App. 314].~~

26       ~~<sup>56</sup> US Airways, Inc. v. Addington, 2012 WL 5996936 (D.Ariz. Oct. 11, 2012).~~

27       ~~<sup>57</sup> Id. at 8:5 to 8:7 (emphasis added) [App. 357].~~

1           ~~54. The District Court ruled: “[D]ecertification of ALPA and the certification of~~  
2 ~~USAPA did not change the binding nature of the Transition Agreement.”~~<sup>59</sup>

3           ~~55. The District Court ruled: “Discarding the Nicolau Award places USAPA on~~  
4 ~~dangerous ground.”~~<sup>60</sup>

5           ~~56. The District Court ruled: “When the collective bargaining agreement is~~  
6 ~~finalized individuals will be able to determine whether USAPA’s abandonment of the~~  
7 ~~Nicolau Award was permissible, i.e., supported by a legitimate union purpose.”~~<sup>61</sup>

8           ~~57. After Judge Silver made her final order, USAPA’s leadership offered seven~~  
9 ~~reasons it claimed were legitimate for using a date of hire seniority list rather than the~~  
10 ~~Nicolau Award list:~~

- 11           ~~a. “USAPA has a duty to fairly represent not only former America West~~  
12 ~~Pilots, but all US Airways pilots.”~~
- 13           ~~b. “It is legitimate to integrate seniority based on date of hire.”~~
- 14           ~~c. “It is legitimate to respect pre-merger career expectations.”~~
- 15           ~~d. “It is legitimate to take into account changed circumstances including the~~  
16 ~~relative economic strength and viability of America West flying vs US~~  
17 ~~Airways flying.”~~
- 18           ~~e. “USAPA is not required to follow the ALPA Merger Policy in effect at~~  
19 ~~the time of the Nicolau Award, which eliminated length of service as a~~  
20 ~~relevant consideration, but is entitled to pursue a ‘fair and equitable’~~  
21 ~~integration.”~~

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24           ~~<sup>58</sup>Id. Amended Judgment, at 1:17 to 1:19 (Dec. 4, 2012) (Doc. 206) [App. 359].~~

25           ~~<sup>59</sup>Id. Order, at 6:6 to 6:10 (Doc. 193) [App. 355].~~

26           ~~<sup>60</sup>Id. at 7:18 to 7:19 [App. 356].~~

27           ~~<sup>61</sup>Id. at 8:3 to 8:5 [App. 357].~~

1 f. ~~“It is legitimate to place a pilot with 25 years of seniority above a pilot~~  
2 ~~with 9 years, or a pilot with 15–16 years seniority above a pilot still in~~  
3 ~~ground school.”~~

4 g. ~~“Each of the other crafts on the property integrated seniority based on~~  
5 ~~date of hire, and no case precedent holds that DOH integration violates~~  
6 ~~the duty of fair representation.”~~<sup>62</sup>

7 58. ~~After the Court’s October 2012 Order, USAPA never made a proposal to the~~  
8 ~~West Pilots to use anything other than the date of hire for purposes of seniority~~  
9 ~~integration.~~

10 15. ~~American Airlines’ parent company, AMR, (“AMR”)~~ filed a Chapter 11  
11 petition on November 29, 2011.<sup>63</sup>

12 ~~59.16.~~ On February 12, 2013, American Airlines announced a merger with US  
13 Airways, which would result in a new airline called “New American.”

14 ~~60.~~ ~~At some point thereafter, US Airways began entertaining a merger with~~  
15 ~~AMR.~~<sup>64</sup>

16 ~~61.17.~~ Defendants, the Allied Pilots Association (“APA”), and AMR–American  
17 entered into an agreement called the “Memorandum of Understanding Regarding  
18 Contingent Collective Bargaining Agreement,” (the “MOU”) ~~that sets the stage for a~~  
19 ~~merger between US Airways and AMR.~~<sup>65</sup>

20  
21  
22 <sup>62</sup> ~~*CLT Domicile Update*, at 3 (Oct. 29, 2012) [App. 365]. See J. Scherff, *Decl.*, at~~  
~~¶ 8 (authenticating) [App. 360].~~

23 <sup>63</sup> ~~*In re AMR Corporation, et al.*, Case No. 11-15463 (SHL) (Bankr. S.D.N.Y.).~~

24 <sup>64</sup> ~~*See Memorandum of Understanding Regarding Contingent Collective Bargaining*~~  
25 ~~*Agreement* (“MOU”). [App. 367]. See J. Scherff, *Aff.*, at ¶ 9 (authenticating) [App. 360].~~

26 <sup>65</sup> ~~*Id.* See *Memorandum of Understanding Regarding Contingent Collective*~~  
27 ~~*Bargaining Agreement* (“MOU”). [App. 367]. See J. Scherff, *Aff.*, at ¶ 9 (authenticating)~~  
28 ~~[App. 360].~~

1           ~~62.~~18. In January 2013, USAPA sent a brochure to its members entitled “Flight  
2 Plan to a Merger” that went through the terms of the MOU and compared them to the  
3 previous East and West collective bargaining agreements with Airways.<sup>66</sup>

4           19. Specifically, the MOU provides for the eventual implementation of the terms  
5 of the MOU, Merger Transition Agreement (“MTA”), and joint collective bargaining  
6 agreement (“JCBA”) pursuant to paragraphs 4 and 5 therein. Specifically, the East and  
7 West CBAs will continue in effect until a time after the Effective Date of the POR when  
8 the parties have fully implemented the terms of the MTA (except those terms identified in  
9 paragraphs 3 and 25 of the MOU, which go into effect upon the Effective Date of the  
10 POR). At that point the fully implemented MTA, when applicable, shall govern and  
11 displace any conflicting or wholly or partially inconsistent provision of the former US  
12 Airways pilot agreements or the status quo arising thereunder. After further negotiations  
13 between the parties are completed, the JCBA will take effect and replace the fully  
14 implemented MTA as the collective bargaining agreement for all East and West pilots  
15 formerly employed by US Airways.<sup>67</sup>

16           20. Only those terms and conditions in paragraphs 3 and 25 of the MOU have  
17 been finalized with respect to the eventual JCBA. The remaining terms and conditions  
18 must still be implemented and/or negotiated by the parties before the JCBA can take  
19 effect.<sup>68</sup>

20  
21           ~~63. — establishes changes to the following terms and conditions of the East~~  
22 ~~and West CBA’s:~~

- 23           ~~• Pay Rates~~
- 24           ~~• Increased Retirement Contribution~~

25  
26           <sup>66</sup> See Flight Plan to a Merger, Doc. 61-1.

27           <sup>67</sup> MOU ¶¶ 4-5.

28           <sup>68</sup> Id.

- 1       • ~~Interim flying protections~~
- 2       • ~~Pay protection for pilots subject to displacements~~
- 3       • ~~First Year Pay — All Aircraft~~
- 4       • ~~3 Year Parity Review~~
- 5       • ~~DC Contribution~~
- 6       • ~~Per Diem~~
- 7       • ~~Profit Sharing~~
- 8       • ~~International Override Pay~~
- 9       • ~~Monthly Line Bid Range~~
- 10      • ~~Lineholder Monthly Guarantee~~
- 11      • ~~Line Constructiooin Minimum Value~~
- 12      • ~~Voluntary Pick Up Maximum~~
- 13      • ~~Individual Monthly Maximum (IMAX)~~
- 14      • ~~Home Base Concept~~
- 15      • ~~Bidding System~~
- 16      • ~~Trip Trade System~~
- 17      • ~~Duty Period~~
- 18      • ~~Time Away From Base~~
- 19      • ~~Sit Time~~
- 20      • ~~Long Rate~~
- 21      • ~~Reserve Days of Availability~~
- 22      • ~~Reserve Guarantee~~
- 23      • ~~Reserve Maximum~~
- 24      • ~~Reserve Callout~~
- 25      • ~~Distance Learning Pay~~
- 26      • ~~Training Pay~~
- 27      • ~~Check Airman Pay~~
- 28      • ~~CK Days Scheduled~~

- 1       • ~~Fatigue Calls Paid~~
- 2       • ~~Furlough Protection~~
- 3       • ~~Sick Leave~~
- 4       • ~~Sick Rapid Accrual~~
- 5       • ~~Sick Leave Sell Back~~
- 6       • ~~Short Term Disability Benefit~~
- 7       • ~~Long Term Disability Benefit Premium~~
- 8       • ~~Long Term Disability Benefit~~
- 9       • ~~Medical Contribution Percentage~~
- 10      • ~~Survivor Income~~
- 11      • ~~Company Paid Life Insurance~~
- 12      • ~~Retiree Medical~~<sup>69</sup>

13       64.21. \_\_\_\_ On January 23, 2013, in a message to its members, USAPA stated that it  
14 would propose DOH integration in accord with the USAPA Constitution as part of the  
15 McCaskill-Bond process.<sup>70</sup>

16       65.22. \_\_\_\_ On January 23, 2013, in a message to its members, USAPA stated:

17           The MOU is completely neutral with respect to the Nicolau Award. In  
18 fact, Paragraph 10.h of the MOU says explicitly that neither the MOU  
19 nor the JCBA “shall provide a basis for changing the seniority lists  
20 currently in effect at US Airways” other than through the McCaskill-  
21 Bond process. So, no East pilot should vote against the MOU because  
22 they fear that ratifying the MOU will implement the Nicolau Award, and  
23 no West pilot should vote for the MOU because they believe the MOU  
24 will implement the Nicolau Award.<sup>71</sup>

25       66.23. \_\_\_\_ USAPA also stated that after MOU ratification:

26       <sup>69</sup> ~~*Id.*~~

27       <sup>70</sup> USAPA, *Iron Compass*, at 4-5 (Jan. 23, 2013) (“What’s Up on the Line?”) [App.  
28 389-90]. [App. 389-90]. See See J. Scherff, *Aff.*, at ¶ 11 (authenticating) [App. 360].

<sup>71</sup> USAPA, *Iron Compass*, at 4-5 (Jan. 23, 2013) (“What’s Up on the Line?”) [App.  
389-90]. [App. 389-90]. See See J. Scherff, *Aff.*, at ¶ 11 (authenticating) [App. 360].



1 USAPA will propose a DOH integration in accord with the USAPA  
 2 Constitution. At the outset of the McCaskill-Bond process, the parties  
 3 exchange accurate information about their current seniority lists and with  
 4 respect to each of the currently employed pilots (DOH, DOB, current bid  
 5 and so forth). Based on this information, the pilot groups attempt to  
 6 negotiate a mutually agreeable merged seniority list and, if they are  
 7 unsuccessful, the issue is submitted to a panel of one or three neutral  
 8 arbitrators who are required to issue a decision that in[ter]grates seniority  
 9 “in a fair and equitable manner.” As provided in the MOU, APA and  
 10 USAPA have agreed that, if there is an arbitration proceeding, it will be  
 11 a panel of three neutral arbitrators. In accord with the USAPA  
 12 Constitution, our Merger Committee will propose a DOH method for  
 13 integrating seniority.<sup>72</sup>

14 ~~67.24.~~ On February 7, 2013, USAPA’s Merger Committee stated as follows:

15 West pilots should not vote in favor of the MOU because they believe it  
 16 will revive the Nicolau Award, and the East pilots should not vote  
 17 against it because they are concerned it will cause the Nicolau Award to  
 18 be implemented. Merger Counsel reminds us that no agreement can  
 19 prevent any person from filing a lawsuit or grievance, but these and other  
 20 provisions of the MOU clearly negate any claim that ratifying the MOU  
 21 would provide a basis for implementing the Nicolau Award.<sup>73</sup>

22 25. The MOU was ratified by 75% of USAPA’s members in good standing, who  
 23 cast a vote,~~hip~~ on February 8, 2013.<sup>74</sup> More specifically, of the 1041 Phoenix-based  
 24 pilots who voted, 1017 voted in favor of the MOU and 24 voted against.<sup>75</sup>

25 ~~68. From this point forward, all aspects of the new collective bargaining~~  
 26 ~~agreement will be determined and implemented without ratification.~~<sup>76</sup>

27 <sup>72</sup> *Id.* at 5 [App. 390].

28 <sup>73</sup> USAPA Merger Committee, *Merger Committee Update*, at 1 (Feb. 7, 2013) [App. 391]. *See* J. Scherff, *Aff.*, at ¶ 12 (authenticating) [App. 360].

<sup>74</sup> Gary Hummel, *President’s Message* (Feb. 8, 2013) [App. 384]. *See* J. Scherff, *Aff.*, at ¶ 10 (authenticating) [App. 361].

<sup>75</sup> Doc. 44-1, 2013 MOU Referendum Official Results.

<sup>76</sup> ~~MOU, at ¶ 27 (providing, in the event that New American and its pilots union cannot complete all negotiations of a joint CBA (“JCBA”) “within 30 days of the NMB’s~~

1       ~~69.~~26. The MOU provides immediate pay benefits to East Pilots all US Airways  
2 pilots:

3             If the MOU is approved and the merger goes forward, all US Airways  
4 pilots will receive retrospective pay from the date of ratification  
5 (February 8), a \$40 million lump sum payment, American pay rates as of  
6 the POR date (estimated to be July 1) and an increase in pension  
7 contributions to 14%, also as of the POR date.<sup>77</sup>

8       ~~70.~~27. The MOU provides, in general, that pilot seniority integration will be  
9 conducted according to the McCaskill-Bond Amendment to the Federal Aviation Act, 49  
10 U.S.C. § 42112, note, § 117(a).<sup>78</sup>

11       ~~71. The MOU is silent on seniority integration for purposes of East Pilots and  
12 West Pilots.~~

13       ~~72.~~28. On February 21, 2013, the President of USAPA, Gary Hummel told the  
14 USAPA membership as follows:

15             Our union, our lawyers and our merger counsel have been advised that  
16 USAPA will begin the seniority integration process with APA by  
17 pursuing what Article I, Section 8 D of our Constitution requires, “To  
18 maintain uniform principles of seniority based on date of hire and the

19 ~~certification [of single carrier status], New American Airlines will offer final and binding  
20 interest arbitration under Section 7 of the RLA, and the organization [the union] will  
21 accept such proffer, to resolve once and for all the terms of the JCBA. The arbitration  
22 decision shall be issued no later than 60 days after the close of the 30-day negotiation  
23 period.”) [App. 378].~~

24       <sup>77</sup> USAPA Negotiating Advisory Committee, *NAC Update – Q&A, and PHL  
25 Roadshow Reminder*, at \*1 (Jan. 25, 2013) [App. 393-94]; *see also J. Scherff, Aff.*, at ¶ 13  
26 (authenticating) [App. 361].

27       <sup>78</sup> MOU, at ¶ 10(a) (“A seniority integration process consistent with McCaskill-  
28 Bond shall begin as soon as possible after the Effective Date. If, on the date ninety (90)  
days following the Effective Date, direct negotiations have failed to result in a merged  
seniority list acceptable to the pilots at both airlines, a panel of three neutral arbitrators  
will be designated within fifteen (15) days to resolve the dispute, pursuant to the  
authority and requirements of McCaskill-Bond.”) [App. 372]; ~~*see also Committee of  
Concerned Midwest Flight Attendants v. Int’l Bd. Of Teamsters*, 742 F. Supp. 2d 1035,  
1040 (E.D. Wis. 2010) (setting out relevant language).~~

1 perpetuation thereof, with reasonable conditions and restrictions to  
2 preserve each pilot's un-merged career expectations.”

3 This merger provides substantial and life changing benefits to all  
4 USAPA pilots, including those based in Phoenix. USAPA will  
5 aggressively oppose any efforts to slow down or stop the merger process  
6 and will be equally vigilant in adhering to our constitutionally mandated  
7 principles that reject the Nicolau Award in its entirety.<sup>79</sup>

8 ~~73. On March 6, 2013, USAPA filed an adversary proceeding against Leonidas,  
9 LLC, (not these Plaintiffs or the West Pilot Class) in the AMR Chapter 11 proceedings  
10 (the “Adversary Proceeding”) seeking a preliminary and permanent injunction against  
11 Leonidas, LLC that restrained it from filing any action against USAPA regarding the  
12 seniority dispute.<sup>80</sup>~~

13 ~~74. On March 28, 2013, USAPA filed and amended complaint in the Adversary  
14 Proceeding, naming Plaintiffs in this action as defendants.<sup>81</sup>~~

15 ~~75. The Amended Complaint requested that the bankruptcy court enter an  
16 injunction precluding Plaintiffs from continuing prosecution of its claims in this action.<sup>82</sup>~~

17 ~~76. The Bankruptcy Court held a telephonic hearing on April 3, 2013 regarding  
18 the Adversary Proceeding, among other matters.<sup>83</sup>~~

19 ~~77. On April 22, 2013, American and the Official Committee of Unsecured  
20 Creditors filed a motion to dismiss the Adversary Proceeding, asserting that “[t]his  
21 Adversary Proceeding has no place on the Court’s docket.”<sup>84</sup>~~

22 <sup>79</sup> G. Hummel, *President’s Message*, at 2 (Feb. 21, 2013) [App. 457] (self-  
23 authenticating).

24 <sup>80</sup> ~~*Id.* at ¶ 8 [App. 422].~~

25 <sup>81</sup> ~~*USAPA v. Leonidas*, Bankruptcy Court for the Southern District of New York, Case No.  
26 11-15463-SHL, Doc. 11 at pg. 22.~~

27 <sup>82</sup> ~~*Id.*~~

28 <sup>83</sup> ~~*Id.* at ¶ 13.~~

<sup>84</sup> ~~*See Adversary Proceeding*, Doc. 20.~~

1 ~~78. USAPA later dismissed the Adversary Proceeding.~~<sup>85</sup>

2 ~~79.29. The MOU contains mandatory dispute resolution procedures. provides~~  
3 ~~that any disputes over interpretation of its provisions shall be resolved by expedited~~  
4 ~~arbitration between the parties.~~<sup>86</sup>

5 ~~80.30. The MOU provides that the first step in pilot seniority integration will be~~  
6 ~~to make a “Protocol Agreement [that] will set forth the process and protocol for~~  
7 ~~conducting negotiations and arbitration, if applicable, and will include a methodology for~~  
8 ~~allocating the reimbursement provided for in Paragraph 7.”~~<sup>87</sup>

9 ~~81.31. The MOU provides that a total sum of \$5.5 million will be available to~~  
10 ~~defray the expenses incurred by pilot merger representatives and unions.~~<sup>88</sup>

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19 ~~<sup>85</sup> See Adversary Proceeding, Doc. 21.~~

20 <sup>86</sup> MOU, ¶ 20 (providing that “any dispute over the interpretation or application of  
21 this Memorandum shall be . . . arbitrated on an expedited basis directly before a  
22 specially-created one-person System Board of Adjustment.”) [App. 377].

23 <sup>87</sup> *Id.* at ¶ 10(f) [App. 374].

24 ~~<sup>88</sup> *Id.* at ¶ 7 (“US Airways shall reimburse USAPA for expenses incurred after May~~  
25 ~~1, 2012, as well as for all flight pay loss, incurred in developing and carrying out the~~  
26 ~~functions specified in this Memorandum. The reimbursement provided to USAPA~~  
27 ~~pursuant to the preceding provisions shall not be more than \$1.5 million. In addition,~~  
28 ~~New American Airlines and US Airways shall reimburse the merger representatives~~  
~~involved in the seniority integration process in an aggregate not to exceed \$4 million.”)~~  
~~[App. 369].~~

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Dated this 17th day of May, 2013.

**POLSINELLI SHUGHART, PC**

*s/ Andrew S. Jacob*

By \_\_\_\_\_

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**CERTIFICATE OF SERVICE**

~~I hereby certify that on this 17th day of May 2013, I electronically transmitted the foregoing document to the U.S. District Court Clerk's Office by using the ECF System for filing and transmittal.~~

\_\_\_\_\_  
By ~~*s/ Andrew S. Jacob*~~  
\_\_\_\_\_