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14 **IN THE UNITED STATES DISTRICT COURT**
15 **DISTRICT OF ARIZONA**

17 ADDINGTON et. al.,) Case No.: CV-13-00471-PHX-ROS
18)
19 *Plaintiffs,*) **STIPULATION OF FACTS**
20)
21 v.)
22)
23 US AIRLINE PILOTS ASS'N, et. al,)
24)
25 *Defendants.*)
26)

24 Defendant US Airline Pilots Association ("USAPA") submits the following
25 stipulated facts¹:

27 ¹ Consistent with the Court's directive at the May 14, 2013 hearing, USAPA submits
28 facts relating to the application for preliminary injunction occurring after the Court's
October 2012 decision and order in the Declaratory Judgment Action, supplemented by
significant background facts. USAPA reserves the right to submit and/or propose
additional facts in the event the Court determines to address the merits of plaintiffs'

1
2 BACKGROUND AND PROCEDURAL FACTS

3 1. At the time of the merger between America West and US Airways in 2005,
4 America West was about to file for bankruptcy. (Doc. 74-6, USAPA Ex. “105,” US
5 Airways Master Executive Council (“MEC”) Presentation to ALPA Executive Council,
6 May 21, 2007, p. 18)

7 2. In 2008, US Airways announced a restructuring of its flight operations
8 including the closure of the Las Vegas Domicile, citing low yield and high fuel prices.
9 (Second Pauley Decl., ¶ 7)

10 3. As part of that restructuring, US Airways announced the furlough of 300
11 pilots, 175 from the West and 125 from the East. (*Id.*, at ¶ 7)

12 4. Due to offers of enhanced voluntary leaves of absence negotiated by
13 USAPA, 144 West pilots and 84 East pilots were actually furloughed. (*Id.*, at ¶ 7)

14 5. The separate 10-K filings for America West and US Airways for the 18
15 month period from January 1, 2006, through June 30, 2007 show a net operating loss of
16 \$13 million for America West. (Second Owens Decl., ¶ 5)

17 6. The separate 10-K filings for America West and US Airways for the 18
18 month period from January 1, 2006, through June 30, 2007 show a net income of \$556
19 million for US Airways. (*Id.*, at ¶ 5)

20 7. The America West collective bargaining agreement provides for seniority
21 to be ordered based on date of hire. (Doc. 78-10, USAPA Ex. “143,” 2004 America West
22 CBA, § 22(A)(1))

23 8. Section 22(A)(1) of the West CBA states that “[s]eniority of a Pilot shall
24 begin on the Pilot’s Date of Hire.” (*Id.*)

25
26 claims. Moreover, in the event that the Court denies USAPA’s motion to dismiss,
27 USAPA reserves its right to take discovery on the merits of Plaintiffs’ claims including,
28 but not limited to: US Airways’ financial and operational circumstances at relevant
times, Plaintiffs’ efforts and actions to obstruct USAPA in fulfilling its representational
duties, and the factual basis for Plaintiffs’ claims that USAPA’s actions were arbitrary
and without any rational basis.

1
2 9. Prior to the merger with US Airways, and continuing to date, the West
3 pilots' respective positions on their seniority list have been determined solely by their
4 date of hire. (*Id.*)

5 10. The 1998 US Airways Collective Bargaining Agreement ("CBA"), which
6 continues to govern the terms and conditions for East pilots, provides that a pilot's
7 seniority "shall begin to accrue on the date the pilot first reports to the Company's Pilot
8 Training Program." (Doc. 78-9, USAPA Exhibit "142," 1998 US Airways CBA, Section
9 22(B)2)

10 11. In all of the major mergers that contributed to the formation of US Airways
11 prior to the 2005 merger with America West, the pilots of the merging carriers were
12 merged based on date of hire, including the mergers with Mohawk Airlines, Pacific
13 Southwest Airlines and Piedmont Airlines.

14 12. Two other mergers—with Empire Airlines and the former Trump Shuttle—
15 did not involve date-of-hire integration.

16 13. Less than 200 former Empire and Trump Shuttle pilots are still on the East
17 seniority list.

18 14. At the time of the seniority integration arbitration before Arbitrator
19 Nicolau, ALPA's Merger Policy did not allow an arbitrator to consider date of hire or
20 longevity principles in integrating two airlines' seniority lists. (Doc. 74-4, USAPA Ex.
21 "103," ALPA Merger Policy dated August 10, 2005)

22 15. ALPA's Merger Policy was never ratified by its rank and file members.
23 (ALPA Constitution, Article V, Section 2 (ALPA Executive Board "may establish or
24 change policy to be followed by the Association and its members" and "may change
25 policies previously adopted by the Board of Directors"), a true and accurate copy of
26 which is annexed hereto as Exhibit "146")

27 16. In or around August 2007, a group of West pilots formed an Arizona
28 limited liability company named Leonidas, LLC to fund their seniority dispute with

1
2 USAPA. (Leonidas, LLC Operating Agreement, a true and accurate copy of which is
3 annexed hereto as Exhibit “147”)

4 17. The sole purpose of Leonidas, LLC, pursuant to its Operating Agreement,
5 is as follows:

6 1.3. *Purpose.* The purpose and business of this Company shall consist
7 solely of soliciting funds in the form of cash and using said funds to fund
8 an independent legal campaign in the matter of the seniority integration of
9 the America West Airlines pilots and US Airways pilots, for the benefit of
10 the pilots of the former America West Airlines.

11 (*Id.*)

12 18. The stated “Objectives” of Leonidas, LLC provide, in part, that:

13 (5) We will not tolerate discrimination against the pilots of America West
14 in any form, including the dilution of the Nicolau Award by any means,
15 contractual or otherwise.

16 (6) We will not engage in fruitless debates over matters already settled.

17 (Leonidas, LLC “Objectives,” a true and accurate copy of which is annexed hereto as
18 Exhibit “148”)

19 19. The USAPA seniority proposal² made to US Airways in September 2008
20 placed West pilots on a merged seniority list according to their original dates of hire with
21 America West and included extensive conditions and restrictions that prevented East
22 pilots from displacing West pilots from their customary West assignments. (Docs. 75-1
23 through 75-3, USAPA Exs. “112”-“114,” 2008 USAPA Seniority Proposal Documents)

24 20. USAPA has never proposed a “strict” date-of-hire seniority system.

25 21. The 2008 USAPA seniority proposal also allowed West pilots to bid into
26 East flying, including wide-body aircraft and international routes, as vacancies were
27 created as the result of growth, retirements, and other normal attrition among East pilots.

28 (*Id.*)

² USAPA’s 2008 seniority proposal is USAPA Exhibit “112.” (Doc. 75-1)

1
2 22. At the time it was made in September 2008, USAPA's seniority proposal, if
3 immediately implemented, would have made 63 senior West pilots eligible to bid and
4 hold wide body Captain positions. (Davison Decl., ¶ 9)

5 23. At the current time, approximately 89 active West pilots would be eligible
6 to bid and hold wide body Captain positions if USAPA's seniority proposal were in
7 effect. (*Id.*)

8 24. Twenty-four percent of block hours currently flown by West pilots consist
9 of routes flown by East pilots before the merger. (USAPA Statement of Facts in *US*
10 *Airways, Inc. v. Addington*, No. CV-10-01570-PHX-ROS (D. Ariz. July 26,
11 2010)(referred to herein as the DJ Action”), Doc. 153, ¶53)³

12 25. This means that work equivalent to approximately 180 East Captain
13 positions and 175 First Officer positions (or a total of 355 East pilot positions) is
14 currently being performed by West pilots. (DJA Doc. 153, ¶53)

15 26. It also means that if the East and West operations were operated separately,
16 without any ability to share routes, the number of positions available to West pilots
17 would be substantially fewer, resulting in furloughs in the West and additional new hires
18 in the East. (*Id.*, at ¶ 53)

19 27. With respect to the merger between America West and US Airways, all
20 other crafts merged their seniority lists by date of hire. (Doc. 77, USAPA Ex. “122,”
21 Arbitration Opinion and Award by Arbitrator Richard Bloch in the matter of Transport
22 Workers Union (“TWU”) Local 545 and TWU Local 542, April 26, 2007, pp. 9-10)

23 28. The ALPA/Nicolau list incorrectly described 326 US Airways pilots as on
24 furlough when in fact they were actively flying at US Airways subsidiary Mid-Atlantic
25 Airlines. (Doc. 74-6, USAPA Ex. “105,” US Airways Master Executive Council
26 (“MEC”) Presentation to ALPA Executive Council, May 21, 2007)

27 29. The ALPA/Nicolau list took wide-body and international flying away from
28 US Airways pilots and gave the work to younger America West pilots who prior to the

³ Documents in the DJ Action referred to as: DJA, Doc. “ ___ ”

1 merger had no expectation of wide-body or international flying. (*Id.*)

2
3 30. The ALPA/Nicolau list gave a windfall to America West pilots. For
4 example, the ALPA/Nicolau list placed US Airways pilots with almost 17 years of active
5 service and no furlough time below America West new hires; significantly delayed and in
6 many cases deprived these same US Airways pilots of expected attrition-based
7 promotional opportunities to Captain, to wide body international flying and to larger,
8 better paying aircraft; and transferred these promotional opportunities to America West
9 pilots. For example, the ALPA/Nicolau list would place an America West First Officer
10 (“FO”) born in 1971 with 1.5 years of seniority ahead of a US Airways FO born in 1955
11 with 17.8 years of seniority. If implemented today, the ALPA/Nicolau list would delay
12 the advancement of the US Airways FO for the remaining 7 years of his career while the
13 America West FO would enjoy a significant and accelerating improvement over the
14 remaining 23 years of his career. Under the ALPA/Nicolau list, the progression of the US
15 Airways FO, in comparison to his stand alone progression, would steadily worsen until
16 his retirement, when he would be over 13% lower than he would have been otherwise.
17 Conversely, the America West FO would see an immediate jump of over 12% increasing
18 to over 27% higher than on a stand-alone basis. There are hundreds of similar examples
19 of US Airways pilots suffering significant delays in career advancement under the
20 ALPA/Nicolau list compared to America West pilots enjoying significant windfalls.
21 (Doc. 66, Davison Decl., at ¶ 6)

22 31. As a result of these and other problems created by the ALPA/Nicolau list it
23 was apparent that the East pilots, who were entitled to a separate vote, would not ratify a
24 collective bargaining agreement that included the ALPA/Nicolau list (a fact fully
25 appreciated by the Ninth Circuit in *Addington*). (DJA Doc. 153, ¶25)

26 32. During 2011, US Airways hired 47 new pilots. (Second Pauley Decl., ¶ 13)

27 33. As of the second quarter of 2011, there were 3,394 pilots on the East
28 seniority list and 1,658 on the West seniority list. (*Id.*)

1
2 34. US Airways hired 116 new pilots during 2012 and 120 new pilots in 2013
3 through the date of this declaration, all of whom were all assigned to the seniority list for
4 former US Airways pilots, sometimes known as the "East List." (*Id.*)

5 35. US Airways currently operates 219 jet passenger aircraft in its East
6 operation including 26 wide bodied aircraft (16 A330s and 10 767s). (*Id.*, at ¶ 14)

7 36. US Airways current operates 120 aircraft in its West operation, none of
8 which are wide bodied. (*Id.*, at ¶ 14)

9 37. In April 2009, after the ALPA/Nicolau Award was issued, ALPA amended
10 its Merger Policy to include longevity principles as a factor that must be considered in
11 integrating pilot seniority lists. (Doc. 74-11, USAPA Ex. "110," ALPA Merger Policy
12 dated April 30, 2009)

13 THE DECLARATORY JUDGMENT ACTION

14 38. On July 27, 2010, US Airways filed the DJ Action stating that the purpose
15 of the action was to seek guidance regarding its potential liability arising out of the
16 integration of the East and West pilot seniority lists. (DJA, Doc. 14-3)

17 39. In that action, the West Pilot Class defendants⁴ filed a cross-claim against
18 USAPA for breach of the duty of fair representation. (DJA, Doc. 34)

19 40. The Court granted USAPA's motion to dismiss the DFR cross-claim in the
20 DJ Action. (DJA, Docs. 50, 85)

21 41. The Court dismissed Counts I and III of the DJ Action and granted
22 summary judgment for USAPA on Count II. (*US Airways, Inc. v. Addington*, 2012 WL
23 5996936 (D.Ariz. Oct. 11, 2012)).

24 42. The District Court denied the summary judgment motion brought by the
25 West Pilot Class defendants in the DJ Action. (*Id.*)

26 43. The District Court denied US Airway's motion for relief from judgment
27 (DJA, Docs. 199 and 205).

28 ⁴ The named representatives of the West Pilot Class in the DJ Action are the plaintiffs in
the case at bar.

1
2 44. The West Pilot Class defendants in the DJ Action did not appeal the
3 Court's October 11, 2012 Order. (Undisputed)

4 45. On December 31, 2012, US Airways appealed the District Court's October
5 11, 2012 Order to the United States Court of Appeals for the Ninth Circuit.⁵ (DJA, Doc.
6 207)

7 46. On February 20, 2013, USAPA made a motion to expedite the DJ Appeal.
8 (DJ Appeal, Dkt. 7-1, Case: 13-15000 (9th Cir. 2013))

9 47. On March 5, 2013, the West Pilot Class defendants opposed USAPA's
10 motion to expedite the DJ Appeal even though they had not appealed, and even though
11 the named representatives of the Class (plaintiffs herein) are now seeking preliminary
12 injunctive relief in this Court in the case at bar. (DJ Appeal, Doc. 8-1, Case: 13-15000
13 (9th Cir. 2013))

14 48. US Airways took no position on the motion to expedite. (*Id.*)

15 49. On April 19, 2013, US Airways made a motion to stay the DJ Appeal
16 pending closing of the merger between US Airways and American Airlines asserting that
17 the merger would render the seniority dispute moot. (DJ Appeal, Doc. 12-1, Case: 13-
18 15000 (9th Cir. 2013))

19 50. USAPA opposed the motion on April 29, 2013 arguing that delaying the DJ
20 Appeal prejudiced USAPA by permitting the West Pilot Class defendants and US
21 Airways to reargue issues already determined in the DJ Action and presented on the
22 appeal in collateral proceedings including in this action. (DJ Appeal, Doc. 13, p. 3 Case:
23 13- 15000 (9th Cir. 2013))

24 51. By response dated May 1, 2013, the West Pilot Class defendants did not
25 oppose US Airways' motion to stay the appeal, but claimed that their seniority dispute
26 would not be moot unless this litigation produces an order mandating implementation of
27 the Nicolau list. (DJ Appeal, Doc. 15, p. 6, Case: 13-15000 (9th Cir. 2013))

28

⁵ This appeal is referred to herein as the "DJ Appeal."

1
2 52. US Airways' motion to stay the appeal was denied by the Ninth Circuit
3 Court of Appeals. (DJ Appeal, Doc. 16, Case: 13-15000 (9th Cir. 2013))

4 PROPOSED MERGER OF US AIRWAYS AND AMERICAN AIRLINES

5 53. On or about April 18, 2012, USAPA learned of US Airways' intention to
6 pursue a merger with American Airlines, Inc. ("American"). (Doc. 48-1, Owens Decl. ¶
7 8)

8 54. This announcement included the fact that US Airways had negotiated
9 various conditional labor agreements with the unions representing employees at
10 American Airlines including the Allied Pilots Association ("APA"), which represents the
11 pilots employed by American Airlines. (*Id.*, at ¶ 8)

12 55. APA is the exclusive representative under the Railway Labor Act for the
13 pilots of American Airlines. (Doc. 48-3, Pauley Decl., ¶ 13)

14 56. The APA represents over 10,000 American pilots. (*Id.*)

15 57. The APA has appointed a committee of seven pilots to their Seniority
16 Integration Committee. (*Id.*)

17 58. USAPA represents approximately 5,000 pilots. (*Id.*)

18 59. APA pilots recently voted to increase contributions to their "Seniority
19 Defense Fund." (Doc. 48-3, Pauley Decl. ¶ 14)

20 60. APA has approximately \$5,000,000 in reserve at present to protect the
21 seniority of American pilots. (*Id.*)

22 USAPA EFFORTS TO DISCUSS RESOLUTION OF THE SENIORITY DISPUTE
23 WITH WEST PILOTS FOLLOWING THE COURT'S OCTOBER 2012 DECISION

24 61. By letter dated October 12, 2012, USAPA President Gary Hummel wrote to
25 Captain John Scherff, the Phoenix Domicile Chairman for the USAPA Board of Pilot
26 Representatives ("BPR"), requesting that the East and West representatives of USAPA
27 arrange a meeting to sit down and attempt to work together towards an acceptable
28 seniority integration proposal. (Doc. 48-5, Hummel Decl., ¶ 8)

62. Prior to that time, a number of similar efforts to meet with West Pilots to

1
2 explore resolution of their seniority dispute and also to explain and answer questions
3 about USAPA's 2008 bargaining proposal on seniority had been rejected or boycotted by
4 West Pilots.

5 63. By letter dated October 16, 2012, Captain Scherff responded to President
6 Hummel, stating that the position directed by the West pilots was "Nicolau-or-nothing."
7 He did not respond to President Hummel's request for an actual meeting to discuss this
8 issue further. (Doc. 48-5, Hummel Decl., ¶ 9)

9 64. By letter dated October 12, 2012, Marty Harper, counsel for plaintiffs,
10 wrote to Patrick Szymanski, counsel for USAPA, regarding the October 11, 2012
11 decision referenced in paragraph 41 above, demanding that USAPA implement the
12 ALPA/Nicolau list. (*Id.*, at ¶ 10)

13 65. By letter dated October 15, 2012, Mr. Szymanski responded to Mr.
14 Harper's October 12, 2012 letter, requesting that the West pilots agree to sit down with
15 USAPA officials in order to have good faith discussions about USAPA's potential
16 seniority proposal in McCaskill-Bond proceedings. (*Id.*, at ¶ 11)

17 66. By letter dated October 17, 2012, Mr. Harper replied to Mr. Szymanski's
18 October 15, 2012 letter, stating that his clients indicated the same "Nicolau-or-nothing"
19 position as stated by Captain Scherff, and advising that his "clients will have no part" of
20 sitting down and negotiating with USAPA over the potential seniority proposal in
21 McCaskill-Bond proceedings. (*Id.*, at ¶ 12)

22 67. The USAPA Merger Committee and USAPA's President have been
23 actively seeking participation by West pilots on the Merger Committee, which is the
24 committee charged with negotiating over seniority with the APA if the merger is
25 effectuated. (Doc. 48-3, Pauley Decl., ¶ 15)

26 68. Two of the four members of USAPA's Negotiating Advisory Committee
27 ("NAC") are West pilots. (Doc. 48-1, Owens Decl., ¶ 5)

28 69. Since in or about 2009, dozens of West Pilots have served in various
official capacities on behalf of USAPA and on various USAPA committees, including,

1
2 but not limited to the USAPA BPR (the governing board of USAPA), the Appeal Board,
3 the Grievance Committee, the Scheduling Committee, the Negotiating Advisory
4 Committee, the Business Intelligence Committee, the Retirement and Insurance
5 Committee, the Membership Services Committee, and the Communications Committee.

6 NEGOTIATION OF THE MEMORANDUM OF UNDERSTANDING

7 70. In April 2012, USAPA began requesting negotiations with US Airways for
8 an agreement that, in the event of a merger, would afford US Airways pilots the same
9 benefits that US Airways had negotiated with the APA for American pilots. (Doc. 48-1,
10 Owens Decl., ¶ 9)

11 71. The agreement ultimately reached is titled the Memorandum of
12 Understanding regarding Contingent Collective Bargaining Agreement (“MOU”) which
13 was negotiated by USAPA, US Airways, American, and APA. (Doc. 77-8, USAPA Ex.
14 “130,” MOU)

15 72. Negotiations leading to the MOU began in December 2012 and continued
16 over the holidays and through the beginning of 2013. (Doc. 48-1, Owens Decl. ¶¶ 9, 12)

17 73. The proposed MOU was presented to the USAPA BPR in or around
18 January 2013. (*Id.*, at ¶ 12)

19 74. The BPR asked the parties to the MOU to increase the retroactive pay
20 provided for in the MOU by agreeing that, if the merger was approved, all US Airways
21 pilots would be paid at the American rates as of the date the MOU was ratified by US
22 Airways pilots (likely early February 2013) instead of a relatively short time prior to the
23 Effective Date of the POR as was then currently provided. (*Id.*)

24 75. On January 4, 2013, the Unsecured Creditors Committee American, and US
25 Airways agreed to the proposed change. (*Id.*)

26 76. As a result, on January 4, 2013, the BPR voted unanimously to send the
27 MOU out for pilot ratification with a BPR recommendation to approve. (*Id.*)

28 77. The MOU had the unanimous support of the BPR members that represent
all former US Airways East pilot domiciles (Charlotte, Washington DC, and

1 Philadelphia), and from the domicile that includes all former America West pilots
 2 (Phoenix). (Doc. 48-5, Hummel Decl., ¶ 13)

3
 4 **RATIFICATION OF THE MOU BY USAPA MEMBERSHIP**

5 78. During the negotiation and ratification periods, USAPA took numerous
 6 actions to fully inform the pilots regarding the content and effect of the MOU. (Doc. 48-
 7 1, Owens Decl., ¶ 13)

8 79. Throughout the negotiation and ratification periods, all Negotiating
 9 Advisory Committee (“NAC”) updates included the names, cellular phone numbers, and
 10 e-mail addresses for the members of the NAC. (*Id.*, at ¶ 14)

11 80. Pilots were encouraged to contact NAC members with any questions or
 12 concerns regarding the MOU. (*Id.*, at ¶ 14)

13 81. On January 15, 2013, the NAC published an update to all pilots in good
 14 standing regarding the MOU, which included a summary of some of the significant terms
 15 therein, and a schedule of the upcoming roadshow presentations being held at each
 16 domicile. (*Id.*, at ¶ 15)

17 82. The January 15, 2013 NAC Update also contained links to the actual text of
 18 the MOU and the conditional labor agreement (referred to therein as the “APA 2012
 19 Contract”). (*Id.*, at ¶ 16)

20 83. In or around January 16, 2013, USAPA published and mailed an analysis
 21 and explanation of the MOU to all pilots in good standing in a document entitled “Flight
 22 Plan to a Merger: What the Memorandum of Understanding Means to You.” (*Id.*, at ¶
 23 17)

24 84. The NAC scheduled roadshow presentations regarding the MOU as
 25 follows: (*Id.*, at ¶ 18)

Base	Dates (Times)	Location
DCA	Thurs, Jan 17th (9-2)	Conference Center, Terminal A, ground floor, next to the lobby of the old terminal
	Thurs, Jan 17th (2-5) Fri, Jan 18th (9-1)	Room 264 in terminal A
CLT	Mon, Jan 21st (4 PM)	USAPA Headquarters
	Tue, Jan 22nd (9-5)	Auditorium, above the Food Court

	Wed, Jan 23rd (9-4)	
PHX	Thurs, Jan 24th (9-5) Fri, Jan 25th (9-1)	International Concourse, Meeting Room next to British Airways Club, above B23
PHL	Mon, Jan 28th (9-5) Tue, Jan 29th (9-4)	Airport Tour Room, inside security, between concourses C&D, near Au Bon Pain

85. At each Roadshow, the pilots were told that the MOU was neutral with respect to seniority and, in particular, that voting for the MOU would not result in implementing the Nicolau Award. (*Id.*, at ¶ 19)

86. The ballots in the ratification referendum were counted on February 8, 2013. (*Id.*, at ¶ 20)

87. Over 75% of the US Airways Pilots who cast ballots during the ratification process voted to approve the MOU. (Doc. 78-4, USAPA Ex. “137,” MOU Ratification Results, February 8, 2013)

88. Of the 1,041 West pilots that voted, 1,017 voted to approve the MOU, and 24 voted to oppose it (a 97.69% approval rate). (*Id.*)

WEST PILOTS THREATEN TO ENJOIN THE MERGER

89. On February 18, 2013, plaintiffs’ counsel, Marty Harper, Esq., sent a letter to counsel for US Airways and the APA, threatening to enjoin the merger between US Airways and American Airlines. (February 18, 2013 Harper letter, a true and accurate copy of which is annexed hereto as Exhibit “149”)

90. On February 19, 2013, Mr. Harper also sent a letter to USAPA counsel Patrick Szymanski on February 19, 2013 threatening the merger process in 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 ...” (February 19, 2013 Harper letter, a true and accurate copy of which is annexed hereto as Exhibit “150”)

SIGNIFICANT TERMS AND CONDITIONS OF THE MOU

91. The MOU is “seniority-neutral,” that is, it does not make any changes to

1
2 the current two-list seniority regime at US Airways, one for the former America West
3 pilots and one for the former US Airways pilots. (Doc. 48-2, Ex. “A” to Owens Decl.)

4 92. This ensures that discussions on the economic issues of a future agreement
5 could occur without being hindered by an ongoing seniority dispute. (*Id.*)

6 93. The MOU also provides that in the event a Plan of Reorganization (“POR”)
7 (including a merger) is approved by the bankruptcy court, upon the Effective Date of the
8 POR, neither the MOU nor the future Joint Collective Bargaining Agreement (“JCBA”)
9 would provide any basis for changing the existing two-list seniority system at US
10 Airways except through the agreed upon process that is consistent with the McCaskill-
11 Bond amendments. (Doc. 48-1, Owens Decl., ¶ 11)

12 94. As a precursor to the seniority integration process in the MOU, the parties
13 agreed to create a Protocol Agreement that will “set forth the process and protocol for
14 conducting negotiations and arbitration, if applicable, and will include a methodology for
15 allocating the reimbursement provided for in Paragraph 7 of the MOU.” (Doc. 77-8,
16 USAPA Ex. “130,” MOU ¶ 10(f))

17 95. The “reimbursement” referenced in paragraphs 7 and 10(f) of the MOU is
18 in two separate amounts. (Doc. 77-8, USAPA Ex. “130,” MOU ¶ 7)

19 96. First, up to \$1.5 million is available from US Airways to reimburse USAPA
20 for its expenses associated with negotiating and administering the MOU (with the
21 exception of seniority integration expenses). (*Id.*)

22 97. Second, a separate \$4 million is provided by US Airways and American to
23 reimburse the merger representatives for expenses incurred as part of the seniority
24 integration process pursuant to paragraph 10 of the MOU. (*Id.*)

25 98. The allocation of this \$4 million will be determined by the merger
26 representatives in the Protocol Agreement as described above in paragraph 94. (*Id.*)

27 99. USAPA negotiated substantial economic improvements equally for all US
28 Airways pilots into the MOU. (Doc. 48-1, Owens Decl., ¶¶ 18-19)

100. These improvements were discussed with the pilots of US Airways at the

1 NAC roadshows in January 2013. (*Id.*)

2
3 101. These improvements were also described in a publication from the NAC
4 entitled “What the Memorandum of Understanding Means to You,” which was
5 distributed at the NAC roadshows and made available electronically to all pilots in good
6 standing. (Doc. 68, Second Owens Decl., ¶ 7)

7 102. Specifically, in the event of a successful POR, the MOU makes the pay
8 rates and other economic benefits for US Airways pilots equal to those provided to
9 American pilots upon the Effective Date of the POR. (*Id.*, at ¶ 8)

10 103. The MOU includes an industry average pay parity adjustment effective on
11 January 1, 2016, which would bring pay for all the pilots of New American⁶ into line
12 with the two other major domestic carriers – Delta Airlines and United Airlines. (*Id.*)

13 104. If a merger occurs with American in bankruptcy, the economic effects of
14 the MOU will result in substantial pay raises for all US Airways pilots upon the effective
15 date of the POR. (*Id.*, at ¶ 9)

16 105. The existing East CBA contains lower pay rates than the West CBA (e.g.
17 approximately \$20,000 less annually under the East CBA for 12-year captains on the
18 A320). (*Id.*)

19 106. The immediate pay increase on the Effective Date of the POR for 12-year
20 captains operating the Airbus A320 aircraft would be more than \$40,000 annually for
21 those pilots flying under the East CBA, and more than \$20,000 annually for those pilots
22 flying under the West CBA. (*Id.*, at ¶ 10)

23 107. Since there was never a single contract integrating the East and West pilot
24 groups, the pilots flying under the East CBA will receive a higher dollar amount raise.
25 (*Id.*, at ¶ 10)

26 108. As of the Effective Date of the POR, the defined contribution rate (made by
27 US Airways to a defined contribution plan on behalf of each eligible pilot) will increase

28

⁶ “New American” is the name used for the carrier that will exist after the merger between US Airways and American.

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2 from the current rate of 10% to 14% for all US Airways pilots in addition to the pay
3 increases. (*Id.*, at ¶ 10)

4 109. On January 1, 2014, the pay rates for all pilots will increase an additional
5 8% and the defined contribution rate will increase to 16%. (*Id.*, at ¶ 11)

6 110. The MOU also provides for a \$40 million lump sum payment to be
7 distributed to US Airways pilots shortly after the Effective Date of the POR. (*Id.*, at ¶ 12)

8 111. The MOU also provides that the pay increases implemented upon the
9 Effective Date of the POR would be retroactive to February 8, 2013. (*Id.*, at ¶ 13)

10 112. The estimated total economic impact of the MOU and the JCBA after the
11 Effective Date of the POR is projected to be approximately \$1.6 billion for the US
12 Airways pilots over the next six years. (*Id.*, at ¶14)

13 113. After the Effective Date of the POR and implementation of the MOU,
14 disputes regarding the interpretation or application of the MOU are subject to the dispute
15 resolution procedure found in paragraph 20 therein (except for those paragraphs in the
16 MOU that specifically provide for interest arbitration or another dispute resolution
17 process). (Doc. 77-8, USAPA Ex. “130,” MOU ¶ 20)

18 NEGOTIATIONS NECESSARY FOR THE JCBA

19 114. The MOU provides that as of the Effective Date of the POR, the pay rates
20 and retirement plan defined contribution amounts for all pilots employed by the merged
21 operation will be as set by the December 2012 CBA between American and APA as
22 modified by the terms of the MOU itself. The MOU further provides that the other terms
23 of the 600-page December 2012 CBA between American and APA “shall be applicable
24 to all US Airways pilots at the earliest practicable time for each such term.” (Doc. 77-8,
25 MOU ¶ 4)

26 115. The MOU further provides that the parties will commence negotiations for
27 a Joint Collective Bargaining Agreement and that those negotiations are to be completed
28 no later than 30 days after the National Mediation Board determines that the combined
operation constitutes a “single carrier” and certifies the bargaining representative for the

1 pilots of the single carrier. Under the timeline adopted by the parties, the date for
2 completing the JCBA is estimated to be 11-13 months after the POR is approved. (*Id.*,
3 MOU Timeline)
4

5 116. In the meantime, the MOU provides that the seniority integration process
6 will proceed but that any arbitration hearing cannot begin until the JCBA is final. (*Id.*,
7 MOU ¶ 10(a))

8 117. The MOU is not a final collective bargaining agreement. (*Id.*, ¶¶ 4, 5, 27)

9 118. The JCBA negotiation process is not a simple formality whereupon the
10 parties will memorialize the terms of the MOU and the Merger Transition Agreement
11 (“MTA”)⁷ into an integrated collective bargaining agreement. (*Id.*)

12 119. With the exception of those terms and conditions found in paragraphs 3 and
13 25 of the MOU, every term and condition of employment for the US Airways pilots will
14 need to be negotiated and/or implemented by the relevant parties before a final JCBA can
15 be entered into. (*Id.*)

16 120. In particular, in order to finalize the JCBA, the parties must consolidate
17 three different currently existing CBA’s—the 2004 America West CBA, the 1998 US
18 Airways CBA and the 2012 APA CBA. (Doc. 77-8, USAPA Ex. “130,” MOU ¶¶ 4 and 5;
19 Doc. 78-9, USAPA Ex. “142,” 1998 US Airways CBA; Doc. 78-10, USAPA Ex. “143,”
20 2004 America West CBA; Doc. 79, USAPA Ex. “144,” 2012 APA CBA)

21 121. Although these CBA’s contain many sections that address the same areas
22 (such as Scope, Scheduling, Vacations, Deadheading, Grievances, Insurance and so
23 forth), the particular provisions and practices regarding each are generally different and
24 the parties must agree what terms will apply to the consolidated pilots group and how the
25 transition will be made from the three existing agreement to the JCBA, (*Id.*)

26 122. The MOU (including Paragraphs 5 and 27) also does not state or imply that
27 the relevant parties to the MOU are precluded from changing the terms of the MTA

28 ⁷ Refers to the 2012 collective bargaining agreement entered into between American and
APA. (Doc. 79, Ex. “144,” USAPA Exhibit List)

1 through negotiation and voluntary agreement during the JCBA process. (Doc. 77-8,
2 MOU)

3 123. The ability to bargain freely is, of course, paramount to that process and
4 guaranteed by the Railway Labor Act (“RLA”). RLA Section 2, First and Second, 45
5 U.S.C. § 152, First and Second.
6

7 124. Further negotiations are required prior to entering into the JCBA with
8 respect to various subjects of bargaining, including, but not limited to: Scheduling, Work
9 Rules, Training, Retirement and Insurance, Vacation, International, Grievance, Sick,
10 Medical, Scope, and Leave. (Doc. 77-8, MOU)

11 125. Beginning in May 2013 and continuing to present, USAPA and the APA
12 have been conducting negotiating sessions regarding the JCBA in Dallas-Fort Worth,
13 Texas.

14 126. USAPA’s NAC, along with several other USAPA committees (including,
15 but not limited to, Scope Monitoring, Training, and Retirement & Insurance
16 Committees), have been present at several of these negotiating sessions.

17 127. There are a number of contingencies and events that must take place before
18 there is an Integrated Seniority List, including, but not limited to Bankruptcy Court’s
19 approval of the MOU and the POR, approval by the Antitrust Division of the Justice
20 Department, petition to and determination made by the National Mediation Board for
21 Single Carrier Status, and negotiation and/or arbitration of the JCBA.

22 CHANGE OF CONTROL

23 128. USAPA’s agreement to waive the change of control provisions contained in
24 the East CBA was a substantial inducement that led to the MOU. (Doc. 68, Second
25 Owens Decl., ¶ 24)

26 129. The Change of Control provisions in the East CBA require, in the event US
27 Airways enters into a merger or other corporate transaction with American or AMR that
28 satisfies the requirements of Section 1(J)(1) of the East CBA, that hourly pay rates for
East pilots automatically increase to the “Book Rates.” (*Id.*, at ¶ 19)

1
2 130. The “Book Rates” are the hourly pay rates in effect in the Restructuring
3 Agreement between US Airways and ALPA as of June 30, 2002. (*Id.*)

4 131. These rates are dramatically higher than the current pay rates under the East
5 CBA. (*Id.*)

6 132. In or around May 2012, USAPA published an update regarding Change of
7 Control that contained the applicable “Book Rates” and relevant provisions from the East
8 CBA. (Ex. 139, USAPA Exhibit List) (*Id.*, at ¶ 21)

9 133. The pay increases that would occur if the Change of Control provisions in
10 the East CBA were triggered did not apply to pilots covered by the West CBA. (*Id.*, at ¶
11 22)

12 134. The West CBA did not contain any comparable protections in the event of a
13 change of control, therefore, those pilots covered by the West CBA would be stuck with
14 sub-standard pay rates and benefits until a single bargaining representative was certified
15 by the NMB, and (potentially) the seniority integration process was completed. (*Id.*)

16 135. If USAPA did not agree to waive the Change of Control provisions in the
17 East CBA, the announced merger with American could potentially trigger those
18 provisions and result in substantial pay increases for the pilots flying under the East
19 CBA, but not for any pilots covered under the West CBA. (*Id.*, at ¶ 23)

20 136. In negotiations leading to the MOU and in the MOU itself, USAPA agreed
21 to waive the Change of Control provisions in the East CBA in exchange for the economic
22 terms in the MOU. (*Id.*, at ¶ 25)

23 137. USAPA’s decision to waive the Change of Control provisions was made
24 after deliberation and analysis of relevant information and projections of the effects of
25 each scenario over an 18-24 month period. (*Id.*)

26 138. The pay increases negotiated into the MOU are substantial, but less than the
27 increases the pilots flying under the East CBA would have been entitled to in the event of
28 a triggering of the Change of Control provisions. (*Id.*, at ¶ 27)

1
2 THE AMERICAN BANKRUPTCY PROCEEDING

3 139. On or about February 13, 2013, US Airways and American entered into an
4 Agreement and Plan of Merger (“Merger Agreement”). (Doc. 48-1, Owens Decl. ¶ 21)

5 140. On or about February 22, 2013, US Airways and American filed a joint
6 motion in the AMR bankruptcy proceeding seeking approval of the Merger Agreement.
7 (*Id.*, at ¶ 22)

8 141. On or about March 27, 2013, the Bankruptcy Court approved substantially
9 all of the Merger Agreement. (*Id.*, at ¶ 23)

10 142. On or about April 15, 2013, US Airways and American filed a joint POR in
11 the AMR bankruptcy proceeding seeking approval of AMR’s emergence from
12 bankruptcy. (*Id.*, at ¶ 24)

13 143. A hearing to set forth the procedures for approving the POR is scheduled
14 for June 4, 2013 before the Bankruptcy Court. (*Id.*)

15 144. The POR asks the Bankruptcy Court to schedule a hearing to approve the
16 POR for August 15, 2013. (*Id.*)

17 145. On May 23, 2013, USAPA filed a Response in the Bankruptcy Court to
18 AMR/US Airways’ motion to approve the MOU supporting approval of the MOU but
19 noting, contrary to some statements in the Debtors’ motion, that the terms of the MOU do
20 not preclude the parties from changing the terms of the MTA through negotiation and
21 voluntary agreement during the JCBA process and that it is the terms of the MOU which
22 contemplate bargaining during the JCBA process and not anything in the motion that will
23 govern in the event that the MOU is approved. (Doc. 8261, *In re AMR Corporation, et*
24 *al.*, Case No. 11-15463 (SHL) (Bankr. S.D.N.Y. 2011).

25 146. In or around May 2013, the United States Department of Justice filed
26 objections to the Merger Agreement.

27 USAPA ACTIONS TO FACILITATE SETTLEMENT DISCUSSIONS

28 147. On May 20, 2013, the USAPA BPR took the following actions in relation
to effectuating the District Court’s directive for the parties to engage in settlement

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discussions: agreed to reimburse plaintiffs’ representatives for lost flight pay for flights dropped in order to attend the settlement discussions directed by the Court, approved the formation of a committee to meet with plaintiffs to explore settlement; approved the selection of members of that committee; gave the committee authority to enter into settlement discussions subject to final approval of the BPR and membership ratification, if appropriate; and allocated an emergency budget for the committee.

Executed this ____ day of May 2013.

Plaintiffs

Defendant USAPA

Defendant US Airways, Inc.