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

11 Don ADDINGTON; John BOSTIC;
 12 Mark BURMAN; Afshin IRANPOUR;
 Roger VELEZ; Steve WARGOCKI;
 13 Michael J. SOHA; Rodney Albert
 BRACKIN; and George MALIGA, on
 14 behalf of themselves and all
 15 similarly situated former America
 West pilots,

16 *Plaintiffs,*

17 vs.

18 US AIRLINE PILOTS ASS'N, an
 19 unincorporated association; and
 20 US AIRWAYS, INC., a Delaware
 corporation,

21 *Defendants.*

CASE NO.

**PLAINTIFFS' MOTION FOR
 LEAVE TO FILE AMENDED
 COMPLAINT**

**(Expedited consideration
 requested)**

22
 23 Plaintiffs Don Addington, John Bostic, Mark Burman, Afshin
 24 Iranpour, Roger Velez, Steve Wargocki, Michael J. Soha, Rodney Albert
 25 Brackin, and George Maliga (the "West Pilots") file this motion for leave to
 26 file amended complaint pursuant to Fed. R. Civ. P. 15(a)(2). As indicated
 27 in its Motion for Expedited Consideration, filed herewith, the West Pilots
 28

1 ask for expedited consideration of this motion in light of the expedited
2 schedule for the evidentiary hearing set for September 24, 2013.

3 Plaintiffs filed their Complaint on March 6, 2013. (Doc. 1.) USAPA
4 filed a Rule 12(b) motion to dismiss on April 22, 2013. (Doc. 44.) USAPA
5 is due to file its Answer today, July 24, 2013.

6 At the hearing held on May 14, 2013, the Court ordered the parties
7 to brief whether, pursuant to the McCaskill-Bond amendment, the West
8 Pilots had a right to participate in the integration of pilot seniority as part
9 of the pending merger between US Airways and American Airlines
10 (hereinafter, the “McCaskill-Bond dispute”). The West Pilots and US
11 Airways asserted that the West Pilots have such right. (Docs. 97, 98.)
12 USAPA argued to the contrary (Doc. 95.)

13 In its Order filed on July 19, 2013, the Court denied USAPA’s motion
14 to dismiss. (Doc. 122.) In so doing, the Court recognized that the West
15 Pilots more clearly stated their claim in their briefing as follows: “USAPA
16 breached its [duty of fair representation] because it made a contract that
17 abandons a duty to treat the Nicolau award as final and binding.” (Doc.
18 122 at 4:8 to 4:9, quoting Doc. 52 at 9:5 to 9:5 (internal pagination).) The
19 Court did not address the McCaskill-Bond dispute in its Order.

20 The McCaskill-Bond dispute directly relates to the terms of the
21 Memorandum of Understanding (“MOU”) that is a central part of the
22 factual predicate of the West Pilots’ duty of fair representation claim.
23 Given that this Court is quite familiar with the facts underlying that
24 claim, and given that it has already received extensive briefing on the
25 McCaskill-Bond dispute, it is entirely reasonable that the matter be
26 resolved in this action.

27 There is a timely need to resolve the McCaskill-Bond dispute. The
28 Bankruptcy Court will hold a hearing on August 15, 2013, to consider

1 approval of AMR Corporation's plan of reorganization. (Doc. 121.) The
2 process of pilot seniority integration will begin soon after the Bankruptcy
3 Court grants such approval. Ideally so as to not delay or otherwise
4 interfere with that process, a court should resolve the McCaskill-Bond
5 dispute within the next few months. It would promote conservation of
6 judicial resources if this Court resolves the issue in the course of
7 resolving the pending duty of fair representation claim.

8 As indicated in the redline version of the proposed First Amended
9 Complaint, attached hereto as Exhibit 1, the proposed First Amended
10 Complaint makes these changes only: (1) adding jurisdiction allegations
11 to paragraph 29; (2) amending paragraph 99 to conform to the language
12 quoted above from Doc. 52; (3) adding Claim Four (paragraphs 120 to
13 132) to seek a declaratory ruling that the West Pilots have the right to
14 participate fully in the pending seniority integration process; and (4)
15 amending paragraph 101 to preserve its right to appeal the Court's
16 dismissal of its claim against US Airways. Pursuant to L.R. 15.1, a copy
17 of the redlined version of the proposed First Amended Complaint is
18 attached hereto as Exhibit 1. A clean copy of the proposed First
19 Amended Complaint is attached hereto and lodged with the clerk as
20 Exhibit 2.

21 Prior to seeking relief from the Court, the West Pilots requested the
22 consent of Defendant US Airline Pilots Association, which was denied.
23 The West Pilots respectfully ask the Court to enter an Order granting
24 them leave to file their proposed First Amended Complaint. A copy of a
25 proposed order is attached and has been emailed to chambers in Word
26 format.

27 Dated this 25th day of July, 2013.

28 **POLSINELLI PC**

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By /s/ Jennifer J. Axel
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CERTIFICATE OF SERVICE

I hereby certify that on this 25th day of July 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/ Jennifer J. Axel

Exhibit 1

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14 **IN THE UNITED STATES DISTRICT COURT**
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 21 behalf of themselves and all
 22 similarly situated former America
 23 West pilots,

24 *Plaintiffs,*

25 vs.

26 US AIRLINE PILOTS ASS'N, an
 27 unincorporated association; and
 28 US AIRWAYS, INC., a Delaware
 corporation,

Defendants.

CASE NO. CV-13-00471-PHX-ROS

**FIRST AMENDED COMPLAINT
 FOR DECLARATORY
 JUDGMENT ON DUTY OF FAIR
 REPRESENTATION AND ORDER
 ENJOINING PILOT
 INTEGRATION THAT DOES NOT
 USE THE NICOLAU AWARD
 SENIORITY LIST**

29 Plaintiffs Don Addington, John Bostic, Mark Burman, Afshin
 30 Iranpour, Roger Velez, Steve Wargocki, Michael J. Soha, Rodney Albert
 31 Brackin, and George Maliga file this complaint to enjoin Defendants from
 32 integrating the pilot operations in a manner that breaches Defendant
 33 USAPA's duty of fair representation.

34 For their Complaint, Plaintiffs allege as follows:

INTRODUCTION AND PARTIES

1
2 1. In 2005, US Airways (a bankruptcy debtor) and America West
3 Airlines merged to form a new airline also called US Airways.

4 2. The pilots on both sides of that merger (the “East Pilots” from
5 US Airways and the “West Pilots” from America West) agreed to an
6 arbitrated merger of their separate seniority lists.

7 3. That arbitration was conducted by George Nicolau and an
8 award creating a merged seniority list (the “Nicolau Award”) was
9 announced in May 2007.

10 4. The East Pilots immediately repudiated their agreement to treat
11 the Nicolau Award as final and binding.

12 5. In mid 2007, the East Pilots formed a single-airline union,
13 Defendant US Airline Pilots Association (“USAPA”), to oust the multi-
14 airline union that was representing these pilots, the Airline Pilots
15 Association (“ALPA”).

16 6. At the time, ALPA (which they could not control) was ordering
17 the east Pilots to use the Nicolau Award list.

18 7. The East Pilots formed USAPA and ousted ALPA because their
19 majority status in the post-merger airline allowed them to control a
20 single-airline union that only represented US Airways pilots.

21 8. In April 2008, USAPA succeeded ALPA as the bargaining
22 representative.

23 9. Under East Pilot control, USAPA also repudiated the agreement
24 to honor the Nicolau Award.

25 10. The West Pilots have been engaged in litigation with USAPA
26 since October 2008 to defend the Nicolau Award.
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1 11. Most recently, USAPA entered into a contract with US Airways
2 that further repudiates USAPA's duty to honor the Nicolau Award.

3 12. This action seeks an order enjoining USAPA from taking any
4 steps to integrate pilot operations that does not implement the seniority
5 order set out in the Nicolau Award.

6 13. Plaintiff Don Addington is a resident of the State of Arizona, who
7 at all times relevant to this Complaint, has been a West Pilot.

8 14. Plaintiff John Bostic is a resident of the State of Arizona, who at
9 all times relevant to this Complaint, has been a West Pilot.

10 15. Plaintiff Mark Burman is a resident of the State of Florida, who
11 at all times relevant to this Complaint, has been a West Pilot.

12 16. Plaintiff Afshin Iranpour is a resident of the State of Arizona,
13 who at all times relevant to this Complaint, has been a West Pilot.

14 17. Plaintiff Roger Velez is a resident of the State of Arizona, who at
15 all times relevant to this Complaint, has been a West Pilot.

16 18. Plaintiff Steve Wargocki is a resident of the State of Arizona,
17 who at all times relevant to this Complaint, has been a West Pilot.

18 19. Plaintiff Michael J. Soha is a resident of Washington State, who
19 at all times relevant to this Complaint, has been a West Pilot.

20 20. Plaintiff Rodney Albert Brackin is a resident of Arizona, who at
21 all times relevant to this Complaint, has been a West Pilot.

22 21. Plaintiff George Maliga is a resident of Arizona, who at all times
23 relevant to this Complaint, has been a West Pilot.

24 22. Defendant USAPA is an unincorporated association with a
25 principal place of business in Charlotte, North Carolina.

26 23. Defendant US Airways, Inc., is a Delaware corporation having
27 its principal place of business in Tempe, Arizona.

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1 24. The Allied Pilots Association (“APA”) is an unincorporated
2 association with a principal place of business in Fort Worth, Texas.

3 25. APA is not named as a defendant.

4 26. AMR Corporation (“AMR”), a Delaware corporation with a
5 principal place of business in Fort Worth, Texas, is currently a Chapter
6 11 debtor.

7 27. AMR is not named as a defendant.

8 **JURISDICTION AND VENUE**

9 28. This Complaint asserts a claim arising under the Railway Labor
10 Act, 45 U.S.C. § 151, *et seq.*, and seeks declaratory judgment pursuant
11 to 28 U.S.C. § 2801, and injunctive relief pursuant to Federal Rule of
12 Civil Procedure 65(b).

13 29. This Court has original federal question jurisdiction over the
14 claim against Defendants USAPA and US Airways pursuant to 28 U.S.C.
15 § 1331 and 49 U.S.C. § 42112.

16 30. Venue is proper in the District of Arizona, pursuant to 28 U.S.C.
17 § 1391(b), because:

18 a) A substantial part of the events or omissions giving rise to
19 the claims occurred in that judicial district; or were
20 directed at affecting one or more Plaintiffs residing in that
21 district; and/or

22 b) The principal place of business of Defendant US Airways is
23 situated in that judicial district.

24 31. Any requirement to exhaust intra-union hearing procedures is
25 satisfied because internal union remedies here are inadequate or illusory
26 and because exhaustion would be futile due to USAPA’s consistent
27 position in opposition to Plaintiffs.

28

1 32. This action became ripe on or about February 13, 2013, when
2 USAPA, APA, US Airways and AMR entered into the *Memorandum of*
3 *Understanding Regarding Contingent Collective Bargaining Agreement* in
4 which USAPA dishonors the Nicolau Award without any legitimate union
5 purpose for doing so, in breach of its duty of fair representation.

6 **FACTUAL ALLEGATIONS**

7 33. In May 2005, the former US Airways was in Chapter 11
8 bankruptcy for the second time in two years.

9 34. The US Airways reorganization plan called for it to merge with
10 America West to form a new airline that would also be known as US
11 Airways, pursuant to a contract referred to as the "Transition
12 Agreement."

13 35. At the time of the merger, there were significant differences
14 between the two airlines and their pilot groups.

15 36. US Airways was a larger airline; including pilots on furlough,
16 East Pilots outnumbered West Pilots, approximately 5,100 to 1,900.

17 37. All of the West Pilots were active (had flying jobs).

18 38. In contrast, approximately 1,700 of the East Pilots were on
19 furlough.

20 39. At the time of the merger, the Air Line Pilots Association
21 ("ALPA") represented both pilot groups.

22 40. Under ALPA governance, each pilot group was represented by a
23 Master Executive Council ("MEC").

24 41. The chairmen of each ALPA MEC signed the Transition
25 Agreement on behalf of their pilot groups.

26 42. The Transition Agreement provided, among other things, that
27 the pilot groups would create a single integrated seniority list according
28

1 to defined procedures set out in detail in the ALPA constitution and
2 called "ALPA Merger Policy."

3 43. Pursuant to ALPA Merger Policy, the single integrated seniority
4 list would be created by two Merger Committees, appointed by each MEC
5 and representing the pilot group governed by that MEC.

6 44. Under ALPA Merger Policy, if the Merger Committees cannot
7 negotiate or mediate seniority integration they proceed to arbitration.

8 45. The purpose of such arbitration is to determine a "final and
9 binding," "fair and equitable" seniority integration.

10 46. The two pilots groups, East and West, proceeded into
11 arbitration.

12 47. The East Merger Committee argued in the arbitration that the
13 East Pilots on furlough at the time of the merger were entitled to
14 seniority rights based upon their dates of hire at US Airways, even if that
15 would put hundreds of them ahead of West Pilots who were not on
16 furlough.

17 48. The West Merger Committee argued that West Pilots who had
18 been active at the time of the merger should be placed ahead of East
19 Pilots who were on furlough at the time of the merger.

20 49. Subject to predefined conditions that protected its economic
21 interests, US Airways agreed in advance to accept the outcome of the
22 arbitration as the final resolution of this seniority integration dispute.

23 50. Mr. Nicolau issued his decision on May 1, 2007, in a document
24 referred to as the Nicolau Award.

25 51. Mr. Nicolau rejected the date-of-hire integration advocated by
26 the east Pilots because "merging active pilots with furloughees, despite
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1 the length of service of some of the latter, is not at all fair or equitable
2 under any of the stated criteria.”

3 52. The Nicolau Award created an integrated seniority list that
4 placed approximately 500 of the most senior East Pilots at the top of the
5 list because they flew wide-body aircraft and no West Pilot flew such
6 aircraft.

7 53. At the other end, the Nicolau Award placed all East Pilots who
8 were on furlough when the airlines merged at the bottom of the list
9 because they did not bring jobs to the merger.

10 54. The Nicolau Award blended the remainder of the two pilot lists.

11 55. On December 20, 2007, the Airline accepted the Nicolau Award
12 integrated seniority list.

13 56. The East MEC appealed to ALPA’s Executive Committee to
14 overturn the Nicolau Award.

15 57. ALPA’s Executive Committee ordered the East Pilots to
16 implement the Nicolau Award.

17 58. In May 2007, East Pilot Stephen Bradford began to plan to
18 create a new union (USAPA) to oust ALPA.

19 59. Upon information and belief, Mr. Bradford envisioned that East
20 Pilots would control USAPA because they were in the majority.

21 60. Upon information and belief, Mr. Bradford reasoned that
22 USAPA, unlike ALPA, would “protect” East Pilot interests over those of
23 the West Pilots.

24 61. A representation election between USAPA and ALPA was held in
25 early 2008.

26 62. USAPA won the election and began to represent a bargaining
27 unit comprised of both pilot groups on April 18, 2008.

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1 63. Later in 2008, USAPA presented, and to this day has not
2 withdrawn, a date-of-hire seniority proposal to US Airways—a proposal
3 that would put hundreds of West Pilots below the East pilots who were
4 on furlough at the time of the merger.

5 64. USAPA consistently expresses that it has no intention to ever
6 consider implementing the Nicolau Award list.

7 65. On September 4, 2008, six West Pilots filed an action in the
8 District of Arizona, alleging that USAPA breached the duty of fair
9 representation (“DFR”) by refusing to implement the Nicolau Award list
10 for improper reasons.

11 66. After a 10-day trial, a jury found that USAPA breached the DFR
12 because its sole reason to frustrate implementation of the Nicolau Award
13 was to benefit East Pilots, rather than to benefit the bargaining union as
14 a whole.

15 67. The District Court (Judge Wake) ruled: “The West Pilots remain
16 entitled to a union that will not abrogate the Nicolau Award without a
17 legitimate purpose. Any waiver of that right must be consensual.”

18 68. The District Court permanently enjoined and ordered USAPA to:

- 19 a) Make all reasonable efforts to negotiate and implement a
20 single CBA that will implement the Nicolau Award seniority
21 proposal;
22 b) Make all reasonable efforts to support and defend the
23 Nicolau Award in negotiations with US Airways; and
24 c) Not negotiate for separate collective bargaining agreements
25 for the separate pilot groups.

26 69. The Ninth Circuit vacated the District Court order on the basis
27 that the dispute was not ripe.
28

1 70. Notwithstanding finding lack of ripeness, the Ninth Circuit
2 cautioned USAPA that unless it “bargain[ed] in good faith pursuant to its
3 DFR, with the interests of all members—both East and West—in mind,”
4 there would be “an unquestionably ripe DFR suit, once a contract is
5 ratified.”

6 71. On Jul 27, 2010, US Airways filed a declaratory judgment
7 action, claiming that it required guidance, *inter alia*, as to whether it
8 would be liable if it entered into a collective bargaining agreement with
9 USAPA that did not implement the Nicolau Award.

10 72. The District Court (Judge Silver) certified a class with these
11 Plaintiffs as class representatives.

12 73. The District Court found that the Ninth Circuit’s ripeness ruling
13 constrained it from providing US Airways full guidance, stating that
14 “[p]ursuant to the Ninth Circuit’s decision, any claim for breach of the
15 duty of fair representation will not be ripe until a collective bargaining
16 agreement is finalized.”

17 74. Nonetheless, the District Court provided important guidance by
18 ruling that USAPA’s date-of-hire “seniority proposal” would “breach its
19 duty of fair representation” unless it were “supported by a legitimate
20 union purpose.”

21 75. The District Court provided additional guidance with the
22 following rulings:

- 23 a) “[D]ecertification of ALPA and the certification of USAPA did
24 not change the binding nature of the Transition
25 Agreement”;
- 26 b) “Discarding the Nicolau Award places USAPA on dangerous
27 ground”; and
28

1 c) “When the collective bargaining agreement is finalized
2 individuals will be able to determine whether USAPA’s
3 abandonment of the Nicolau Award was permissible, *i.e.*,
4 supported by a legitimate union purpose.”

5 76. USAPA did not appeal.

6 77. AMR filed a Chapter 11 petition on November 29, 2011.

7 78. On or about February 14, 2013, the two Defendants, APA and
8 AMR entered into the *Memorandum of Understanding Regarding*
9 *Contingent Collective Bargaining Agreement* (the “MOU”) that set the stage
10 for a merger between US Airways and AMR.

11 79. The MOU was ratified by 75% of USAPA’s membership on
12 February 8, 2013.

13 80. The MOU provides substantially improved wages to the East
14 Pilots.

15 81. The MOU provides that seniority integration between pilots of
16 US Airways and American will be done according to the McCaskill-Bond
17 Amendment to the Federal Aviation Act.

18 82. The MOU does not address the Nicolau Award or any aspect of
19 East-West seniority integration.

20 83. Remaining aspects of the pilot collective bargaining agreement
21 that will be used in the merger will be determined and implemented
22 without requiring approval by USAPA or additional ratification by its
23 members.

24 84. Upon information and belief, USAPA considers itself absolutely
25 bound to repudiate the Nicolau Award by its constitutional date-of-hire
26 agenda.

27 **CLASS ACTION ALLEGATIONS**

28

1 85. Plaintiffs bring this action, pursuant to Rule 23 of the Federal
2 Rules of Civil Procedure, on their own behalf and on behalf of the West
3 Pilot Class of all persons similarly situated.

4 86. The West Pilot Class is defined as: All pilots who are on the
5 America West seniority list currently incorporated into the West CBA.

6 87. Because the West Pilot Class has approximately 1600 members,
7 the class is so numerous that joinder of all such persons is
8 impracticable.

9 88. There exist common questions of law and fact affecting the
10 members of the putative West Pilot Class.

11 89. The standing of the named Plaintiffs to enjoy and protect the
12 seniority rights established by the Nicolau Award arise from their status
13 as West Pilots and is, therefore, the same as that for any other West
14 Pilot.

15 90. The named Plaintiffs will fairly and adequately represent the
16 interests of the putative West Pilot Class because:

- 17 a) They have moral and financial support from many West
18 Pilots;
- 19 b) One or more of them will suffer the kind of injuries that
20 will be suffered by other West Pilots if seniority
21 integration is done using USAPA's date-of-hire seniority
22 list;

23 and

- 24 c) They each have a good understanding of the issues
25 underlying this litigation and have demonstrated a
26 willingness to invest the necessary time and efforts to
27 fulfill their duties as representative parties.
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1 91. Material questions of law and fact arising from this action are
2 common to the named Plaintiffs and other members of the putative West
3 Pilot Class; these include the following:

- 4 a) Whether the named Plaintiffs and other West Pilots have
5 standing to obtain the relief requested in this action;
6 b) Whether the MOU violates USAPA's duty of fair
7 representation;
8 c) Whether USAPA and US Airways are subject to
9 injunctive remedy to prevent seniority integration that
10 does not implement the Nicolau Award list; and
11 d) Whether under common benefit doctrine USAPA must
12 pay Plaintiffs' reasonable litigation expenses that have
13 been incurred enforcing USAPA's duty of fair
14 representation, including attorneys' fees?

15 92. All West Pilots have the right, under the RLA, to fair union
16 representation.

17 93. All West Pilots have an interest in USAPA adhering to its duty of
18 fair representation by adopting and promoting the arbitrated compromise
19 of a seniority dispute that all had agreed would be final and binding.

20 94. Plaintiffs have retained counsel experienced in class action
21 litigation to prosecute these claims.

22 95. This action merits class action treatment because the factors
23 enumerated herein satisfy the requirements of Rule 23(a) and Rule
24 23(b)(1)(A).

25 **CAUSES OF ACTION**

1 **I. Claim One: Breach of the Duty of Fair Representation**

2 96. Plaintiffs re-allege each and every allegation set forth above as
3 if fully set forth herein.

4 97. Pursuant to the duty of fair representation, USAPA must have a
5 legitimate union purpose to use anything other than the Nicolau Award
6 list to integrate East Pilots and West Pilots.

7 98. USAPA does not have a legitimate union purpose to use
8 anything other than the Nicolau Award list to integrate East Pilots and
9 West Pilots.

10 99. USAPA, therefore, breached the duty of fair representation by
11 entering into the MOU ~~with~~because the ~~firm intention of using~~MOU
12 abandons a date-of-hire seniority list rather thanduty to treat the Nicolau
13 Award ~~list~~as final and binding.

14 100. Plaintiffs are entitled to a declaratory judgment to that effect
15 and to other remedy sought below.

16 **II. Claim Two: Breach of Transition Agreement by US Airways**

17 101. Plaintiffs re-allege each and every allegation set forth above as
18 if fully set forth herein- and reallege this Claim, which was dismissed by
19 the Court [Doc. 122], solely to preserve their rights to appeal that ruling.

20 102. The Transition Agreement had an implied covenant of good
21 faith and fair dealing.

22 103. The Transition Agreement envisioned a "Single Agreement" that
23 would be made by US Airways and USAPA that would replace material
24 terms in the separate contracts governing the employment of the West
25 Pilots (the West CBA) and the East Pilots (the east CBA).

26 104. That implied covenant constrained the terms of the Single
27 Agreement such that it could not provide materially improved wages for
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1 US Airways pilots (East and West) without also providing terms needed to
2 integrate pilot operations consistent with the Transition Agreement.

3 105. The MOU is a single agreement that provides materially
4 improved wages for US Airways pilots (East and West).

5 106. The MOU fails to provide terms needed to integrate pilot
6 operations.

7 107. The Transition Agreement requires that pilot seniority will be
8 implemented using to the integrated seniority list created according to
9 ALPA Merger Policy and accepted by US Airways – the Nicolau Award list.

10 108. The MOU fails to provide that pilot seniority will be
11 implemented using the Nicolau Award list.

12 109. Based on the forgoing, adopting the MOU is a breach of the
13 Transition Agreement implied covenant.

14 110. Despite vigorous protests by the West Pilots, USAPA refuses to
15 assert breach of the Transition Agreement implied covenant.

16 111. This Court, consequently, has hybrid jurisdiction to hear this
17 implied covenant claim that would otherwise be a minor dispute subject
18 to system board arbitration.

19 112. Plaintiffs are entitled to a declaratory judgment that the MOU is
20 a breach of the Transition Agreement implied covenant by US Airways.

21 **III. Claim Three: Attorneys' Fees**

22 113. Plaintiffs re-allege each and every allegation set forth above as
23 if fully set forth herein.

24 114. USAPA has several million dollars in reserve collected as dues
25 and agency fees from all US Airways Pilots.

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1 115. Plaintiffs brought this action and the 2008 action and appeared
2 as defendants in the 2010 action to vindicate the right of all US Airways
3 pilots to fair representation by USAPA.

4 116. By obtaining the rulings in the 2008 and 2010 actions and by
5 prevailing in this action, Plaintiffs conferred a substantial benefit on all
6 US Airways Pilots.

7 117. Under common benefit doctrine, the expenses of achieving
8 those benefits should, in all fairness, be spread among all those who so
9 benefitted.

10 118. The expenses of achieving those benefits would be fairly spread
11 among all US Airways Pilots if paid by USAPA.

12 119.-The Court should, therefore, make an award in favor of
13 Plaintiffs and against USAPA for all reasonable litigation expenses,
14 including attorneys' fees incurred bringing this action, incurred by
15 Plaintiffs in the actions noted above.

16 **IV. Claim Four: Declaratory Claim**

17 120. Plaintiffs re-allege each and every allegation set forth above as
18 if fully set forth herein.

19 121. McCaskill-Bond provides that employees affected by an airline
20 merger have the right to a fair and equitable seniority integration.

21 122. The West Pilots are employees affected by the US Airways-
22 American Airlines merger.

23 123. In the process of obtaining a fair and equitable seniority
24 integration of the US Airways and American Airlines pilots that will
25 commence soon after AMR's Petition of Reorganization is approved and
26 final (hereinafter the "MOU Seniority Integration"), which is expected to
27 occur within approximately the next two months, USAPA and its
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1 representatives and counsel are bound by USAPA's constitution to
2 advance a date-of-hire seniority order for US Airways pilots.

3 124. The West Pilots have an interest to see proper implementation
4 of the Nicolau Award seniority list in the course of the MOU Seniority
5 Integration.

6 125. USAPA and its representatives and counsel have an unwaivable
7 conflict of interest with the West Pilots in regard to seniority integration.

8 126. USAPA and its representatives and counsel, therefore, cannot
9 fairly represent the West Pilot's interests in the course of the MOU
10 Seniority Integration.

11 127. The West Pilots contend that they have the right to fully
12 participate in each phase of the MOU Seniority Integration process. (Doc.
13 97 at 5:23 to 5:25.)

14 128. US Airways also contends that the West Pilots have the right to
15 participate fully (with counsel of their own choice) in the MOU Seniority
16 Integration process and that such participation will promote a more
17 effective process. (Doc. 98 at 1:6 to 1:10.)

18 129. USAPA contends that the West Pilots have no legitimate right to
19 participate in any phase of the Airways-American McCaskill-Bond
20 process. (Doc. 95 at 10:17 to 11:6.)

21 130. There is a substantial controversy, therefore, between the West
22 Pilots and USAPA as to whether the West Pilots have a right to
23 participate in the MOU Seniority Integration process.

24 131. Consequently, there is a substantial controversy, between
25 parties having adverse legal interests, of sufficient immediacy and reality
26 to warrant the issuance of a declaratory judgment.

27
28

1 132. The West Pilots are entitled, pursuant to 28 U.S.C. § 2201, to
2 an order declaring that they have party status and the right (but not the
3 obligation) to participate fully (with counsel of their own choice) in the
4 MOU Seniority Integration process.

5 **IV.V. Prayer for Relief**

6 Plaintiffs respectfully ask the Court for the following relief:

7 ~~120,133.~~ Judgment that USAPA violated the duty of fair
8 representation by, among other things, entering into a contract, the
9 MOU, that provided substantially better wages for East Pilots without
10 requiring their agreement to implement the Nicolau Award list;

11 ~~121,134.~~ Judgment that USAPA is continuing to violate the duty of
12 fair representation by insisting that it will use a date-of-hire seniority list
13 rather than the Nicolau Award list;

14 ~~122,135.~~ Judgment that US Airways, with the consent of USAPA, is
15 in breach of the implied covenant of the Transition Agreement;

16 ~~123,136.~~ An injunction requiring Defendants to conduct seniority
17 integration according to the MOU procedures but using the seniority
18 order in the Nicolau Award list to order the US Airways pilots;

19 137. Judgment that the West Pilots are entitled to an order declaring
20 that they have party status and the right (but not the obligation) to
21 participate fully (with counsel of their own choice) in the MOU Seniority
22 Integration process; and

23 ~~124,138.~~ Judgment awarding Plaintiffs the reasonable litigation
24 expenses, including ~~attorneys'~~attorneys fees, incurred since 2008
25 protecting the fair representation rights of the US Airways Pilots.

26 Dated this ~~6th~~25th day of ~~March~~July, 2013.

27 **POLSINELLI SHUGHART, PC**

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 /s/ Andrew S. Jacob
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CERTIFICATE OF SERVICE

I hereby certify that on this 25th day of July 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/ Jennifer J. Axel

Exhibit 2

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 8 *Attorneys for Plaintiffs*

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

11 Don ADDINGTON; John BOSTIC;
 12 Mark BURMAN; Afshin IRANPOUR;
 Roger VELEZ; Steve WARGOCKI;
 13 Michael J. SOHA; Rodney Albert
 BRACKIN; and George MALIGA, on
 14 behalf of themselves and all
 15 similarly situated former America
 West pilots,

16
 17 *Plaintiffs,*

18 vs.

19 US AIRLINE PILOTS ASS'N, an
 20 unincorporated association; and
 US AIRWAYS, INC., a Delaware
 corporation,

21 *Defendants.*

CASE NO. CV-13-00471-PHX-ROS

**FIRST AMENDED COMPLAINT
 FOR DECLARATORY
 JUDGMENT ON DUTY OF FAIR
 REPRESENTATION AND ORDER
 ENJOINING PILOT
 INTEGRATION THAT DOES NOT
 USE THE NICOLAU AWARD
 SENIORITY LIST**

22
 23 Plaintiffs Don Addington, John Bostic, Mark Burman, Afshin
 24 Iranpour, Roger Velez, Steve Wargocki, Michael J. Soha, Rodney Albert
 25 Brackin, and George Maliga file this complaint to enjoin Defendants from
 26 integrating the pilot operations in a manner that breaches Defendant
 27 USAPA's duty of fair representation.

28 For their Complaint, Plaintiffs allege as follows:

INTRODUCTION AND PARTIES

1
2 1. In 2005, US Airways (a bankruptcy debtor) and America West
3 Airlines merged to form a new airline also called US Airways.

4 2. The pilots on both sides of that merger (the “East Pilots” from
5 US Airways and the “West Pilots” from America West) agreed to an
6 arbitrated merger of their separate seniority lists.

7 3. That arbitration was conducted by George Nicolau and an
8 award creating a merged seniority list (the “Nicolau Award”) was
9 announced in May 2007.

10 4. The East Pilots immediately repudiated their agreement to treat
11 the Nicolau Award as final and binding.

12 5. In mid 2007, the East Pilots formed a single-airline union,
13 Defendant US Airline Pilots Association (“USAPA”), to oust the multi-
14 airline union that was representing these pilots, the Airline Pilots
15 Association (“ALPA”).

16 6. At the time, ALPA (which they could not control) was ordering
17 the east Pilots to use the Nicolau Award list.

18 7. The East Pilots formed USAPA and ousted ALPA because their
19 majority status in the post-merger airline allowed them to control a
20 single-airline union that only represented US Airways pilots.

21 8. In April 2008, USAPA succeeded ALPA as the bargaining
22 representative.

23 9. Under East Pilot control, USAPA also repudiated the agreement
24 to honor the Nicolau Award.

25 10. The West Pilots have been engaged in litigation with USAPA
26 since October 2008 to defend the Nicolau Award.

27 11. Most recently, USAPA entered into a contract with US Airways
28 that further repudiates USAPA’s duty to honor the Nicolau Award.

1 12. This action seeks an order enjoining USAPA from taking any
2 steps to integrate pilot operations that does not implement the seniority
3 order set out in the Nicolau Award.

4 13. Plaintiff Don Addington is a resident of the State of Arizona, who
5 at all times relevant to this Complaint, has been a West Pilot.

6 14. Plaintiff John Bostic is a resident of the State of Arizona, who at
7 all times relevant to this Complaint, has been a West Pilot.

8 15. Plaintiff Mark Burman is a resident of the State of Florida, who
9 at all times relevant to this Complaint, has been a West Pilot.

10 16. Plaintiff Afshin Iranpour is a resident of the State of Arizona,
11 who at all times relevant to this Complaint, has been a West Pilot.

12 17. Plaintiff Roger Velez is a resident of the State of Arizona, who at
13 all times relevant to this Complaint, has been a West Pilot.

14 18. Plaintiff Steve Wargocki is a resident of the State of Arizona,
15 who at all times relevant to this Complaint, has been a West Pilot.

16 19. Plaintiff Michael J. Soha is a resident of Washington State, who
17 at all times relevant to this Complaint, has been a West Pilot.

18 20. Plaintiff Rodney Albert Brackin is a resident of Arizona, who at
19 all times relevant to this Complaint, has been a West Pilot.

20 21. Plaintiff George Maliga is a resident of Arizona, who at all times
21 relevant to this Complaint, has been a West Pilot.

22 22. Defendant USAPA is an unincorporated association with a
23 principal place of business in Charlotte, North Carolina.

24 23. Defendant US Airways, Inc., is a Delaware corporation having
25 its principal place of business in Tempe, Arizona.

26 24. The Allied Pilots Association (“APA”) is an unincorporated
27 association with a principal place of business in Fort Worth, Texas.

28 25. APA is not named as a defendant.

1 26. AMR Corporation (“AMR”), a Delaware corporation with a
2 principal place of business in Fort Worth, Texas, is currently a Chapter
3 11 debtor.

4 27. AMR is not named as a defendant.

5 **JURISDICTION AND VENUE**

6 28. This Complaint asserts a claim arising under the Railway Labor
7 Act, 45 U.S.C. § 151, *et seq.*, and seeks declaratory judgment pursuant
8 to 28 U.S.C. § 2801, and injunctive relief pursuant to Federal Rule of
9 Civil Procedure 65(b).

10 29. This Court has original federal question jurisdiction over the
11 claim against Defendants USAPA and US Airways pursuant to 28 U.S.C.
12 § 1331 and 49 U.S.C. § 42112.

13 30. Venue is proper in the District of Arizona, pursuant to 28 U.S.C.
14 § 1391(b), because:

- 15 a) A substantial part of the events or omissions giving rise to
16 the claims occurred in that judicial district; or were
17 directed at affecting one or more Plaintiffs residing in that
18 district; and/or
19 b) The principal place of business of Defendant US Airways is
20 situated in that judicial district.

21 31. Any requirement to exhaust intra-union hearing procedures is
22 satisfied because internal union remedies here are inadequate or illusory
23 and because exhaustion would be futile due to USAPA’s consistent
24 position in opposition to Plaintiffs.

25 32. This action became ripe on or about February 13, 2013, when
26 USAPA, APA, US Airways and AMR entered into the *Memorandum of*
27 *Understanding Regarding Contingent Collective Bargaining Agreement* in
28

1 which USAPA dishonors the Nicolau Award without any legitimate union
2 purpose for doing so, in breach of its duty of fair representation.

3 **FACTUAL ALLEGATIONS**

4 33. In May 2005, the former US Airways was in Chapter 11
5 bankruptcy for the second time in two years.

6 34. The US Airways reorganization plan called for it to merge with
7 America West to form a new airline that would also be known as US
8 Airways, pursuant to a contract referred to as the "Transition
9 Agreement."

10 35. At the time of the merger, there were significant differences
11 between the two airlines and their pilot groups.

12 36. US Airways was a larger airline; including pilots on furlough,
13 East Pilots outnumbered West Pilots, approximately 5,100 to 1,900.

14 37. All of the West Pilots were active (had flying jobs).

15 38. In contrast, approximately 1,700 of the East Pilots were on
16 furlough.

17 39. At the time of the merger, the Air Line Pilots Association
18 ("ALPA") represented both pilot groups.

19 40. Under ALPA governance, each pilot group was represented by a
20 Master Executive Council ("MEC").

21 41. The chairmen of each ALPA MEC signed the Transition
22 Agreement on behalf of their pilot groups.

23 42. The Transition Agreement provided, among other things, that
24 the pilot groups would create a single integrated seniority list according
25 to defined procedures set out in detail in the ALPA constitution and
26 called "ALPA Merger Policy."
27
28

1 43. Pursuant to ALPA Merger Policy, the single integrated seniority
2 list would be created by two Merger Committees, appointed by each MEC
3 and representing the pilot group governed by that MEC.

4 44. Under ALPA Merger Policy, if the Merger Committees cannot
5 negotiate or mediate seniority integration they proceed to arbitration.

6 45. The purpose of such arbitration is to determine a “final and
7 binding,” “fair and equitable” seniority integration.

8 46. The two pilots groups, East and West, proceeded into
9 arbitration.

10 47. The East Merger Committee argued in the arbitration that the
11 East Pilots on furlough at the time of the merger were entitled to
12 seniority rights based upon their dates of hire at US Airways, even if that
13 would put hundreds of them ahead of West Pilots who were not on
14 furlough.

15 48. The West Merger Committee argued that West Pilots who had
16 been active at the time of the merger should be placed ahead of East
17 Pilots who were on furlough at the time of the merger.

18 49. Subject to predefined conditions that protected its economic
19 interests, US Airways agreed in advance to accept the outcome of the
20 arbitration as the final resolution of this seniority integration dispute.

21 50. Mr. Nicolau issued his decision on May 1, 2007, in a document
22 referred to as the Nicolau Award.

23 51. Mr. Nicolau rejected the date-of-hire integration advocated by
24 the east Pilots because “merging active pilots with furloughees, despite
25 the length of service of some of the latter, is not at all fair or equitable
26 under any of the stated criteria.”

27 52. The Nicolau Award created an integrated seniority list that
28 placed approximately 500 of the most senior East Pilots at the top of the

1 list because they flew wide-body aircraft and no West Pilot flew such
2 aircraft.

3 53. At the other end, the Nicolau Award placed all East Pilots who
4 were on furlough when the airlines merged at the bottom of the list
5 because they did not bring jobs to the merger.

6 54. The Nicolau Award blended the remainder of the two pilot lists.

7 55. On December 20, 2007, the Airline accepted the Nicolau Award
8 integrated seniority list.

9 56. The East MEC appealed to ALPA's Executive Committee to
10 overturn the Nicolau Award.

11 57. ALPA's Executive Committee ordered the East Pilots to
12 implement the Nicolau Award.

13 58. In May 2007, East Pilot Stephen Bradford began to plan to
14 create a new union (USAPA) to oust ALPA.

15 59. Upon information and belief, Mr. Bradford envisioned that East
16 Pilots would control USAPA because they were in the majority.

17 60. Upon information and belief, Mr. Bradford reasoned that
18 USAPA, unlike ALPA, would "protect" East Pilot interests over those of
19 the West Pilots.

20 61. A representation election between USAPA and ALPA was held in
21 early 2008.

22 62. USAPA won the election and began to represent a bargaining
23 unit comprised of both pilot groups on April 18, 2008.

24 63. Later in 2008, USAPA presented, and to this day has not
25 withdrawn, a date-of-hire seniority proposal to US Airways—a proposal
26 that would put hundreds of West Pilots below the East pilots who were
27 on furlough at the time of the merger.

28

1 64. USAPA consistently expresses that it has no intention to ever
2 consider implementing the Nicolau Award list.

3 65. On September 4, 2008, six West Pilots filed an action in the
4 District of Arizona, alleging that USAPA breached the duty of fair
5 representation (“DFR”) by refusing to implement the Nicolau Award list
6 for improper reasons.

7 66. After a 10-day trial, a jury found that USAPA breached the DFR
8 because its sole reason to frustrate implementation of the Nicolau Award
9 was to benefit East Pilots, rather than to benefit the bargaining union as
10 a whole.

11 67. The District Court (Judge Wake) ruled: “The West Pilots remain
12 entitled to a union that will not abrogate the Nicolau Award without a
13 legitimate purpose. Any waiver of that right must be consensual.”

14 68. The District Court permanently enjoined and ordered USAPA to:

- 15 a) Make all reasonable efforts to negotiate and implement a
16 single CBA that will implement the Nicolau Award seniority
17 proposal;
18 b) Make all reasonable efforts to support and defend the
19 Nicolau Award in negotiations with US Airways; and
20 c) Not negotiate for separate collective bargaining agreements
21 for the separate pilot groups.

22 69. The Ninth Circuit vacated the District Court order on the basis
23 that the dispute was not ripe.

24 70. Notwithstanding finding lack of ripeness, the Ninth Circuit
25 cautioned USAPA that unless it “bargain[ed] in good faith pursuant to its
26 DFR, with the interests of all members—both East and West—in mind,”
27 there would be “an unquestionably ripe DFR suit, once a contract is
28 ratified.”

1 71. On Jul 27, 2010, US Airways filed a declaratory judgment
2 action, claiming that it required guidance, *inter alia*, as to whether it
3 would be liable if it entered into a collective bargaining agreement with
4 USAPA that did not implement the Nicolau Award.

5 72. The District Court (Judge Silver) certified a class with these
6 Plaintiffs as class representatives.

7 73. The District Court found that the Ninth Circuit's ripeness ruling
8 constrained it from providing US Airways full guidance, stating that
9 "[p]ursuant to the Ninth Circuit's decision, any claim for breach of the
10 duty of fair representation will not be ripe until a collective bargaining
11 agreement is finalized."

12 74. Nonetheless, the District Court provided important guidance by
13 ruling that USAPA's date-of-hire "seniority proposal" would "breach its
14 duty of fair representation" unless it were "supported by a legitimate
15 union purpose."

16 75. The District Court provided additional guidance with the
17 following rulings:

- 18 a) "[D]ecertification of ALPA and the certification of USAPA did
19 not change the binding nature of the Transition
20 Agreement";
21 b) "Discarding the Nicolau Award places USAPA on dangerous
22 ground"; and
23 c) "When the collective bargaining agreement is finalized
24 individuals will be able to determine whether USAPA's
25 abandonment of the Nicolau Award was permissible, *i.e.*,
26 supported by a legitimate union purpose."

27 76. USAPA did not appeal.

28 77. AMR filed a Chapter 11 petition on November 29, 2011.

1 78. On or about February 14, 2013, the two Defendants, APA and
2 AMR entered into the *Memorandum of Understanding Regarding*
3 *Contingent Collective Bargaining Agreement* (the “MOU”) that set the stage
4 for a merger between US Airways and AMR.

5 79. The MOU was ratified by 75% of USAPA’s membership on
6 February 8, 2013.

7 80. The MOU provides substantially improved wages to the East
8 Pilots.

9 81. The MOU provides that seniority integration between pilots of
10 US Airways and American will be done according to the McCaskill-Bond
11 Amendment to the Federal Aviation Act.

12 82. The MOU does not address the Nicolau Award or any aspect of
13 East-West seniority integration.

14 83. Remaining aspects of the pilot collective bargaining agreement
15 that will be used in the merger will be determined and implemented
16 without requiring approval by USAPA or additional ratification by its
17 members.

18 84. Upon information and belief, USAPA considers itself absolutely
19 bound to repudiate the Nicolau Award by its constitutional date-of-hire
20 agenda.

21 **CLASS ACTION ALLEGATIONS**

22 85. Plaintiffs bring this action, pursuant to Rule 23 of the Federal
23 Rules of Civil Procedure, on their own behalf and on behalf of the West
24 Pilot Class of all persons similarly situated.

25 86. The West Pilot Class is defined as: All pilots who are on the
26 America West seniority list currently incorporated into the West CBA.

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1 87. Because the West Pilot Class has approximately 1600 members,
2 the class is so numerous that joinder of all such persons is
3 impracticable.

4 88. There exist common questions of law and fact affecting the
5 members of the putative West Pilot Class.

6 89. The standing of the named Plaintiffs to enjoy and protect the
7 seniority rights established by the Nicolau Award arise from their status
8 as West Pilots and is, therefore, the same as that for any other West
9 Pilot.

10 90. The named Plaintiffs will fairly and adequately represent the
11 interests of the putative West Pilot Class because:

12 a) They have moral and financial support from many West
13 Pilots;

14 b) One or more of them will suffer the kind of injuries that
15 will be suffered by other West Pilots if seniority
16 integration is done using USAPA's date-of-hire seniority
17 list;

18 and

19 c) They each have a good understanding of the issues
20 underlying this litigation and have demonstrated a
21 willingness to invest the necessary time and efforts to
22 fulfill their duties as representative parties.

23 91. Material questions of law and fact arising from this action are
24 common to the named Plaintiffs and other members of the putative West
25 Pilot Class; these include the following:

26 a) Whether the named Plaintiffs and other West Pilots have
27 standing to obtain the relief requested in this action;
28

- 1 b) Whether the MOU violates USAPA's duty of fair
2 representation;
- 3 c) Whether USAPA and US Airways are subject to
4 injunctive remedy to prevent seniority integration that
5 does not implement the Nicolau Award list; and
- 6 d) Whether under common benefit doctrine USAPA must
7 pay Plaintiffs' reasonable litigation expenses that have
8 been incurred enforcing USAPA's duty of fair
9 representation, including attorneys' fees?

10 92. All West Pilots have the right, under the RLA, to fair union
11 representation.

12 93. All West Pilots have an interest in USAPA adhering to its duty of
13 fair representation by adopting and promoting the arbitrated compromise
14 of a seniority dispute that all had agreed would be final and binding.

15 94. Plaintiffs have retained counsel experienced in class action
16 litigation to prosecute these claims.

17 95. This action merits class action treatment because the factors
18 enumerated herein satisfy the requirements of Rule 23(a) and Rule
19 23(b)(1)(A).

20 **CAUSES OF ACTION**

21 **I. Claim One: Breach of the Duty of Fair Representation**

22 96. Plaintiffs re-allege each and every allegation set forth above as
23 if fully set forth herein.

24 97. Pursuant to the duty of fair representation, USAPA must have a
25 legitimate union purpose to use anything other than the Nicolau Award
26 list to integrate East Pilots and West Pilots.

27
28

1 98. USAPA does not have a legitimate union purpose to use
2 anything other than the Nicolau Award list to integrate East Pilots and
3 West Pilots.

4 99. USAPA, therefore, breached the duty of fair representation by
5 entering into the MOU because the MOU abandons a duty to treat the
6 Nicolau Award as final and binding.

7 100. Plaintiffs are entitled to a declaratory judgment to that effect
8 and to other remedy sought below.

9 **II. Claim Two: Breach of Transition Agreement by US Airways**

10 101. Plaintiffs re-allege each and every allegation set forth above as
11 if fully set forth herein and reallege this Claim, which was dismissed by
12 the Court [Doc. 122], solely to preserve their rights to appeal that ruling.

13 102. The Transition Agreement had an implied covenant of good
14 faith and fair dealing.

15 103. The Transition Agreement envisioned a “Single Agreement” that
16 would be made by US Airways and USAPA that would replace material
17 terms in the separate contracts governing the employment of the West
18 Pilots (the West CBA) and the East Pilots (the east CBA).

19 104. That implied covenant constrained the terms of the Single
20 Agreement such that it could not provide materially improved wages for
21 US Airways pilots (East and West) without also providing terms needed to
22 integrate pilot operations consistent with the Transition Agreement.

23 105. The MOU is a single agreement that provides materially
24 improved wages for US Airways pilots (East and West).

25 106. The MOU fails to provide terms needed to integrate pilot
26 operations.

27
28

1 107. The Transition Agreement requires that pilot seniority will be
2 implemented using to the integrated seniority list created according to
3 ALPA Merger Policy and accepted by US Airways – the Nicolau Award list.

4 108. The MOU fails to provide that pilot seniority will be
5 implemented using the Nicolau Award list.

6 109. Based on the forgoing, adopting the MOU is a breach of the
7 Transition Agreement implied covenant.

8 110. Despite vigorous protests by the West Pilots, USAPA refuses to
9 assert breach of the Transition Agreement implied covenant.

10 111. This Court, consequently, has hybrid jurisdiction to hear this
11 implied covenant claim that would otherwise be a minor dispute subject
12 to system board arbitration.

13 112. Plaintiffs are entitled to a declaratory judgment that the MOU is
14 a breach of the Transition Agreement implied covenant by US Airways.

15 **III. Claim Three: Attorneys' Fees**

16 113. Plaintiffs re-allege each and every allegation set forth above as
17 if fully set forth herein.

18 114. USAPA has several million dollars in reserve collected as dues
19 and agency fees from all US Airways Pilots.

20 115. Plaintiffs brought this action and the 2008 action and appeared
21 as defendants in the 2010 action to vindicate the right of all US Airways
22 pilots to fair representation by USAPA.

23 116. By obtaining the rulings in the 2008 and 2010 actions and by
24 prevailing in this action, Plaintiffs conferred a substantial benefit on all
25 US Airways Pilots.

26 117. Under common benefit doctrine, the expenses of achieving
27 those benefits should, in all fairness, be spread among all those who so
28 benefitted.

1 118. The expenses of achieving those benefits would be fairly spread
2 among all US Airways Pilots if paid by USAPA

3 119. The Court should, therefore, make an award in favor of
4 Plaintiffs and against USAPA for all reasonable litigation expenses,
5 including attorneys' fees incurred bringing this action, incurred by
6 Plaintiffs in the actions noted above.

7 **IV. Claim Four: Declaratory Claim**

8 120. Plaintiffs re-allege each and every allegation set forth above as
9 if fully set forth herein.

10 121. McCaskill-Bond provides that employees affected by an airline
11 merger have the right to a fair and equitable seniority integration.

12 122. The West Pilots are employees affected by the US Airways-
13 American Airlines merger.

14 123. In the process of obtaining a fair and equitable seniority
15 integration of the US Airways and American Airlines pilots that will
16 commence soon after AMR's Petition of Reorganization is approved and
17 final (hereinafter the "MOU Seniority Integration"), which is expected to
18 occur within approximately the next two months, USAPA and its
19 representatives and counsel are bound by USAPA's constitution to
20 advance a date-of-hire seniority order for US Airways pilots.

21 124. The West Pilots have an interest to see proper implementation
22 of the Nicolau Award seniority list in the course of the MOU Seniority
23 Integration.

24 125. USAPA and its representatives and counsel have an unwaivable
25 conflict of interest with the West Pilots in regard to seniority integration.

26 126. USAPA and its representatives and counsel, therefore, cannot
27 fairly represent the West Pilot's interests in the course of the MOU
28 Seniority Integration.

1 127. The West Pilots contend that they have the right to fully
2 participate in each phase of the MOU Seniority Integration process. (Doc.
3 97 at 5:23 to 5:25.)

4 128. US Airways also contends that the West Pilots have the right to
5 participate fully (with counsel of their own choice) in the MOU Seniority
6 Integration process and that such participation will promote a more
7 effective process. (Doc. 98 at 1:6 to 1:10.)

8 129. USAPA contends that the West Pilots have no legitimate right to
9 participate in any phase of the Airways-American McCaskill-Bond
10 process. (Doc. 95 at 10:17 to 11:6.)

11 130. There is a substantial controversy, therefore, between the West
12 Pilots and USAPA as to whether the West Pilots have a right to
13 participate in the MOU Seniority Integration process.

14 131. Consequently, there is a substantial controversy, between
15 parties having adverse legal interests, of sufficient immediacy and reality
16 to warrant the issuance of a declaratory judgment.

17 132. The West Pilots are entitled, pursuant to 28 U.S.C. § 2201, to
18 an order declaring that they have party status and the right (but not the
19 obligation) to participate fully (with counsel of their own choice) in the
20 MOU Seniority Integration process.

21 **V. Prayer for Relief**

22 Plaintiffs respectfully ask the Court for the following relief:

23 133. Judgment that USAPA violated the duty of fair representation
24 by, among other things, entering into a contract, the MOU, that provided
25 substantially better wages for East Pilots without requiring their
26 agreement to implement the Nicolau Award list;

27
28

1 134. Judgment that USAPA is continuing to violate the duty of fair
2 representation by insisting that it will use a date-of-hire seniority list
3 rather than the Nicolau Award list;

4 135. Judgment that US Airways, with the consent of USAPA, is in
5 breach of the implied covenant of the Transition Agreement;

6 136. An injunction requiring Defendants to conduct seniority
7 integration according to the MOU procedures but using the seniority
8 order in the Nicolau Award list to order the US Airways pilots;

9 137. Judgment that the West Pilots are entitled to an order declaring
10 that they have party status and the right (but not the obligation) to
11 participate fully (with counsel of their own choice) in the MOU Seniority
12 Integration process; and

13 138. Judgment awarding Plaintiffs the reasonable litigation
14 expenses, including attorneys fees, incurred since 2008 protecting the
15 fair representation rights of the US Airways Pilots.

16 Dated this 25th day of July, 2013.

17 **POLSINELLI PC**

18
19 By /s/ Jennifer J. Axel
20 Marty Harper
21 Andrew S. Jacob
22 Jenifer Axel
23 CityScape
24 One East Washington St., Ste. 1200
25 Phoenix, AZ 85004
26 *Attorneys for West Pilots*

27 **CERTIFICATE OF SERVICE**

1 I hereby certify that on this 25th day of July 2013, I electronically
2 transmitted the foregoing document to the U.S. District Court Clerk's
3 Office by using the ECF System for filing and transmittal.

4 By /s/Jennifer J. Axel

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