

## Exhibit “B” Maliga Declaration

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Subject: Gary Hummel for USAPA President 2  
Date: January 30, 2012 12:55:56 PM MST  
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## **Gary Hummel on Seniority**

With my first communication to you I revealed my lifelong passion for flying, record of military service to our country and a history of service to the pilots of US Airways. I will in this and future communications to you address in very clear, specific and unimpeachable terms where I stand on the issues in this election.

I will start this process by addressing the issue of seniority integration. My position on seniority is, and has always been in support of the USAPA constitutional requirement for date of hire with conditions and restrictions. I find it unconscionable, that airline pilots who were furloughed and victimized by a war thrust upon their lives, their families and their industry in the aftermath of the terrorist attacks of 9-11, would now be told that their 16 years of service and seniority meant nothing. I find it absurd that within our industry where all other employee groups successfully integrate their ranks by date of hire in several short weeks, airline pilots historically and continually consume millions of dollars and five long years trying to reinvent the wheel.

Unfortunately for our union members, it has become common practice in elections such as these, for one candidate to try and portray another candidate in an undesirable position to gain your vote. This pilot group should be disgusted at the waste of your union's time and resources that have been spent in an amateur hour attempt to discredit my position on seniority.

My attendance at PHX domicile meetings continues to be ridiculously portrayed by political opponents as somehow subverting our union when in fact, it has always promoted rapport. Make no mistake about it, it has been my pleasure to attend DCA meetings, CLT meetings and PHL base meetings whenever I can, and Phoenix is no exception. As a Union Officer, it has not only been my privilege, but it has been my duty to equitably participate and work on behalf of all Union members and I will continue to do so. That is how you effect change, and not by continually throwing mud at each other over the banks of the Mississippi and headlining a single contentious issue of disagreement. You must instead, recognize and attempt to resolve pervasive issues that affect us all. Rest assured that no one has enjoyed our Unions dysfunctional mudslinging contest more than US Airways Management.

It appears that the latest internet banter even contains reports of union officers listening to my conversations through my hotel room door. It would have been much easier for them to hear my conversation had they just knocked and said

hello, but for some it is easier to allege a conspiracy rather than defend their own failures. All of these ridiculous reports, and attempts to portray me as opposed to date of hire, or having engaged in any actions to subvert date of hire, are simply political lies at their clumsiest application and patently untrue.

So let me emphasize this point once again. My position on seniority is, and has always been in support of date of hire with conditions and restrictions. However, our seniority **will be determined by the courts** and should no longer be a contentious issue for anyone.

It's that simple, and here is the reason why.

1. In July of 2010, US Airways filed a lawsuit in the United States District Court of Arizona against the Addington Pilots and USAPA. US Airways brought this action and proposed that a defendant class be established (the "West Pilot Class"). They asked that the same class representatives as the West Pilot Class that was certified in Addington v. USAPA be certified again to represent all West pilots in this new law suit.

This suit by US Airways asked the court to determine, and to give a legal opinion on three questions.

First Claim: for a declaration that USAPA is violating its duty of fair representation under the Railway Labor Act by its insistence to not accept the Nicolau Award.

Or, in the alternative,

Second Claim: for a declaration that if US Airways accepts a seniority list that does not include the Nicolau Award, that USAPA would not be breaching its duty of fair representation and therefore, US Airways can accept a non-Nicolau award seniority list from USAPA.

Or, in the alternative,

Third Claim: that regardless of whether it would be a breach of USAPA's duty of fair representation for it to not use the Nicolau Award as its seniority list, that US Airways would not be liable if it were to accept some other seniority list.

2. The Union's original position and defense to the court from our former counsel Seham, Seham, Meltz and Peterson, was to move for a court order to drop the Addington defendants from the lawsuit. This is what SSM&P had to say in their brief to the court.

*"Without dropping the Addington defendants, the practical effect will be to allow the Addington defendants the opportunity to re-litigate their unripe DFR claim that was recently dismissed by the Ninth Circuit. That is nothing more than a backdoor end run around the Ninth Circuit's decision. In addition, without dropping the Addington defendants, USAPA will be effectively forced to face two plaintiffs, not just one. And this, even as it is exposed to a parallel case at the Supreme Court that could result in remand to yet a third forum – back to the Ninth Circuit. This amounts to unfair prejudice that is entirely avoidable at the outset of this litigation simply by dropping the unnecessary Addington defendants. Part of that bargaining process is the resolution of conflicts that arise within the bargaining unit. That is the Union's job, not the Company's. Indeed, the Company's determination to create a certified class of West pilots for the purpose of evading the existing negotiating process runs counter to its obligations under the Railway Labor Act."*

So, that was USAPA's original position until the spring of last year. Then what happened last spring that would have changed USAPA's position? How did the Addington defendants become the "West Pilot Class" representing all of the Phoenix based pilots? I'm glad you asked.

3. On May 27, 2011 Mike Cleary filed a lawsuit against defendant US Airways in the US District Court for the Eastern District of New York alleging, among other matters, that the Company had violated its duty to maintain the status quo during negotiations as required by the Railway Labor Act.

What you may not know is that your BPR was not informed of this lawsuit until the lawyers were standing on the courthouse steps. In fact, USAPA's prevailing attorney Lee Seham was also not advised prior to the filing of this lawsuit. Seham had previously advised USAPA against taking any such action. Instead of heeding this advice, our President hired a new law firm to file the lawsuit for him. One might ask why our former attorney Lee Seham was opposed to filing a lawsuit against US Airways. Because as he had previously stated, it would open the door for a counter suit by US Airways against USAPA, a lawsuit which would be detrimental to USAPA's current defense in the Arizona declaratory judgment case. It would also negatively impact our negotiations as the National Mediation Board would not look kindly on being thrust into the limelight and would result in getting us parked. Additionally, it would and has given the Company an excuse to place termination arbitrations at the end of the line because the case alleges that US Airways has abrogated its duty to the grievance process, therefore, US Airways can respond, "fine, let's go back to the first outstanding grievance and settle them all in order."

4. In July of 2011, as predicted, US Airways filed suit against USAPA in the United States District Court in North Carolina seeking a preliminary injunction to have USAPA stop its Safety Campaign, which US Airways claimed was nothing more than codeword for job action.

5. On September 28th Robert J. Conrad, Jr. Chief United States District Judge ruled in favor of US Airways and against USAPA and issued a temporary injunction against USAPA. This injunction has since been made permanent.

6. Just five days later, the Addington defendants' filed a notice of ruling in related action in Judge Silver's court in Arizona regarding their desire to be recognized as a class in that litigation. What they told Judge Silver was that the injunction order issued by Judge Conrad in North Carolina highlights labor unrest regarding the seniority list.

7. The Addington Defendants were certified by Judge Silver as the "West Pilot Class" representing all former America West Pilots. From this point forward, USAPA had to change its legal strategy which previously held that the Addington Defendants did not represent all West pilots and that seniority was not an issue for the courts, but an issue to be determined by the union under provisions of the RLA.

8. On December 1, 2011, here comes US Airways against USAPA and the West Pilot Class in Judge Silver's court where all three parties agreed that whether or not the Company must accept the Nicolau Award, **is indeed a legal issue**. The following is from the transcript of Judge Silver.

*"This is a simple issue and I think even Mr. Szyborska (sic) agrees with that, is that the issue is, the simple issue is whether or not, as you've said, this is whether USAPA and US Airways and this court is bound by the Nicolau agreement simply."* (Mr. Szyborska is Mr. Szymanski the attorney for USAPA)

So there you have it. It just doesn't matter anymore what I think about date of hire or what you think about the NIC. It is no longer an issue for the union under the RLA. USAPA attorneys have agreed with the Company and the West Pilot Class, that this is a *legal issue* that will be resolved in the courts.

For those of you who thought that this case had already been tried and won in the Ninth Circuit Court of Appeals, we are in fact trying this case once again, and in the end, after all of the appeals and perhaps even another visit to the

United States Supreme Court, my position as well as your position will be decided by the courts and ultimately by your vote to ratify a new contract.

So what is my position on seniority? It has always been and remains for date of hire with conditions and restrictions. US Airways pilots have sacrificed their retirement, their pay and their livelihood when furloughed to save this airline, they should not sacrifice their seniority.

Thank you for taking the time to consider the history of the USAPA legal strategy to date. All of these legal documents that I have cited are available on the USAPA website for your review.

Captain Gary Hummel

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