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17 Attorneys for US Airline Pilots Association

18 **IN THE UNITED STATES DISTRICT COURT**  
19 **DISTRICT OF ARIZONA**

20 Don Addington, *et. al.*,

Case No.: CV-13-00471-PHX-ROS

21 *Plaintiffs,*

**US Airline Pilots Association's  
Opposition to US Airways' Motion  
For Expedited Ruling on Its Motion  
For Limited Intervention**

22 v.

23 US Airline Pilots Association,

24 *Defendant.*

**MEMORANDUM OF POINTS AND AUTHORITIES**

1  
2 US Airways has sought leave of Court for “limited intervention.” (Doc. 128).  
3 Defendant US Airline Pilots Association (“USAPA”) opposed that application (Doc.  
4 144), on a variety of grounds, including that US Airways has no “legally protectable  
5 interest” in the claims to be tried (*i.e.*, the claims (a) that USAPA breached its DFR by  
6 failing to provide for the Nicolau Award to be used in the McCaskill-Bond process and  
7 (b) that the Plaintiffs should be granted the “right (but not the obligation)” to participate  
8 in the McCaskill-Bond process) because these are purely intra-union disputes as to which  
9 US Airways has repeatedly asserted and affirmed that it is “neutral” (a stance that it  
10 reiterated in the motion for limited intervention. Doc. 128, at 4).  
11

12 USAPA opposes the instant motion to expedite ruling on the motion to intervene  
13 because USAPA rejects the premise for the request for expedited ruling: US Airways’  
14 assertion it has the right to attend depositions of USAPA witnesses to protect its limited  
15 interests in this matter. Not only will the presence of US Airways at these depositions  
16 interfere with USAPA’s legitimate interest in protecting its confidential internal  
17 communications and bargaining strategy from being revealed to its bargaining adversary,  
18 it fails to show that attendance at these depositions relates to or advances the narrow  
19 interests it advances in support of the motion for limited intervention – *i.e.*, its belief that  
20 Plaintiffs are entitled to participate in the McCaskill-Bond proceeding in their own right  
21 and that that this question should be resolved promptly.  
22

**POINT I****US AIRWAYS’ ATTENDANCE AT DEPOSITIONS OF USAPA  
23 WITNESSES INTRUDES UPON USAPA’S LEGITIMATE  
24 INTEREST IN PROTECTING ITS CONFIDENTIAL INTERNAL UNION  
25 COMMUNICATIONS AND BARGAINING STRATEGY**

26 US Airways’ attendance at depositions of USAPA witnesses intrudes upon  
27 USAPA’s right to protect its confidential internal union communications and bargaining  
28

1 and negotiating strategy from being revealed to adverse parties. US Airways and  
2 USAPA are presently adverse parties in negotiations and it cannot be speculated as to  
3 whether or when that will change. Courts have recognized the confidentiality of  
4 bargaining strategies and have fashioned various mechanisms for protection of such  
5 matters from being revealed. *See NLRB v. Jackson Hosp. Co.*, 257 F.R.D. 302, 314, 315  
6 (D.D.C. 2009) (stating, “[a]t best, there is authority for issuing a protective order to  
7 ensure that communications that would reveal bargaining strategy are kept secret,  
8 particularly in light of the fact that the Union and [employer] continue to interact with  
9 one another.”); *Winnett v. Caterpillar*, 2008 WL 399301, at \*4 (M.D. Tenn., Feb. 6,  
10 2008) (recognizing that disclosure of bargaining information may hamper future  
11 negotiations and provides a legitimate reason to protect such information from disclosure  
12 under Fed. R. Civ. P. 26(c)(1)(G) because such confidential information could place  
13 union at competitive disadvantage in future dealings with the employer). The protective  
14 order entered in this matter, (Doc. 179), provides, *inter alia*, that confidential information  
15 is to be provided only to USAPA and the named Plaintiffs and that “no other individual  
16 or entity shall be entitled to receive “confidential” information even if such individual or  
17 entity becomes a party or enters an appearance in this litigation.” The Order defines as  
18 confidential, documents that include:

19 ii. documents that relate to USAPA’s strategic decisions to  
20 prepare for and undertake negotiations with US Airways, and/or the Allied  
21 Pilots Association and/or AMR Corporation regarding the MOU, but only  
22 to the extent such documents are internal to USAPA, not available to all  
23 pilots, not already disclosed to the parties and/or the court;

24 iii. documents that relate to USAPA’s negotiations and  
25 negotiation strategies, internal BPR matters or other information the  
26 disclosure of which could adversely impact USAPA’s bargaining position  
27 with Allied Pilots Association, and/or AMR Corporation and/or US  
28 Airways...

(Doc. 179, at 2).

It is not possible to protect the confidentiality of such documents or the testimony  
of the witnesses if the employer, which has no interest in and is adverse to the parties, is

1 permitted to attend depositions at which such confidential information will be discussed  
2 and confidential documents identified and examinations with respect thereto undertaken.  
3 Further, the presence of the employer can create a chilling effect on the ability of the  
4 witnesses, all of whom are US Airways employees, to speak freely and without fear of  
5 reprisal especially given that US Airways has so clearly aligned its interests with  
6 Plaintiffs and against USAPA in this matter. Neither the confidentiality order the parties  
7 agreed to, nor US Airways' proposal to treat the depositions or other discovery material  
8 on an "Attorneys' Eyes Only basis," satisfactorily addresses USAPA's protected interest  
9 in not having the presence of an employer during this internal union matter, revealing its  
10 confidential internal union matters and negotiating strategies to the very employer by  
11 whom they are employed and with whom they must continue to bargain. US Airways'  
12 attorneys are part of the inner circle at US Airways and will be part of the inner circle at  
13 New American. Moreover they were the negotiators for US Airways with respect to the  
14 MOU. Permitting the proposed interference in this internal union matter and allowing the  
15 employer access to depositions and other discovery material is prejudicial and could  
16 place USAPA at a significant disadvantage in its ongoing dealings and negotiations with  
17 the employer.

## 18 POINT II

### 19 US AIRWAYS' APPLICATION FOR LIMITED INTERVENTION IS 20 INCONSISTENT WITH ITS REQUEST FOR LEAVE TO PARTICIPATE 21 IN DEPOSITIONS OF USAPA WITNESSES

22 At the hearing of August 15, 2013, US Airways stated that it does not intend to  
23 present testimony or evidence at trial as a party litigant, but reserved the right to file  
24 briefs and argue issues that they believe will assist the Court. (Tr. of August 15, 2013  
25 Hearing, at 30). US Airways confirms that position here. (Doc. 188, at 2).

26 The limited interest that US Airways relies upon in its motion to intervene is its  
27 interest in a prompt determination as to whether the Plaintiffs have the right to "full and  
28

1 separate representation” in the McCaskill-Bond proceeding.<sup>1</sup> (Doc. 188, at 2). While US  
2 Airways posits there may be testimony by USAPA witnesses relating to negotiation of  
3 ¶10h of the MOU or Plaintiffs’ rights to participate in McCaskill-Bond (including  
4 statements by US Airways employees or witnesses), (*id.*), US Airways fails to show that  
5 it is necessary for it to develop (or protect) the testimonial record to advise the Court of  
6 its legal position as to Plaintiffs’ participation in McCaskill-Bond, which was already  
7 briefed in the May 2013 supplemental briefing, or to restate its interest in the prompt  
8 resolution of this matter.

9 US Airways also argues that attendance at depositions of USAPA witnesses will  
10 enable it to “know what testimony had been elicited on a subject germane to one of the  
11 grounds for us airways’ requested intervention.” (Doc. 188, at 2). This argument is  
12 unavailing. US Airways did not need discovery to determine the “legally protected  
13 interests” it sought to protect when it made this motion to intervene and it does not need  
14 to discover anything further on this subject at the present time. It made the determination  
15 to intervene for reasons known to it wholly without reference to any information from  
16 USAPA, as its motion to intervene reflects.

### 17 CONCLUSION

18 For the foregoing reasons, USAPA respectfully requests that the Court deny US  
19 Airways’ Motion to Expedite Ruling on the Motion for Limited Intervention.

20 Respectfully submitted this 11<sup>th</sup> day of September, 2013.

21  
22 **Martin & Bonnett, P.L.L.C.**

23 By: s/Susan Martin

24  
25 <sup>1</sup> It is critically significant that this interest is different than the relief sought by Plaintiffs.  
26 Whereas US Airways seeks to assure that Plaintiffs will participate in the McCaskill  
27 Bond process, all Plaintiffs seek is the “right (but not the obligation)” to participate,  
28 that is, they may or may not actually participate in the McCaskill-Bond proceeding.  
(Doc. 134 ¶132). US Airways is thus in the untenable position of seeking to intervene  
to advance a position the Plaintiffs do not themselves seek.

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**CERTIFICATE OF SERVICE**

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I hereby certify that on September 11, 2013, I electronically transmitted the attached document to the Clerk's Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to the following CM/ECF registrants:

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