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12
13 UNITED STATES DISTRICT COURT
14 FOR THE DISTRICT OF ARIZONA
15

16 Don ADDINGTON; John BOSTIC; Mark
BURMAN; Afshin IRANPOUR; Roger
17 VELEZ; Steve WARGOCKI; Michael J.
SOHA; Rodney Albert BRACKIN; and
18 George MALIGA, on behalf of themselves
and all similarly situated former America
19 West pilots,

20 **Plaintiff,**

21 **vs.**

22 US AIRLINE PILOTS ASS'N, an
unincorporated association; and US
23 AIRWAYS, INC., a Delaware Corporation,

24 **Defendant.**

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

Judge Roslyn O. Silver

25 **AMR CORPORATION'S AND AMERICAN AIRLINES, INC.'S MOTION FOR LEAVE**
26 **TO PARTICIPATE AS *AMICUS CURIAE***
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2 American Airlines, Inc., and its corporate parent, AMR Corporation, (collectively,
3 “American”) filed a motion to intervene [Docs. 56 and 57] in this case on May 7, 2013. The
4 Court denied American’s motion on July 19, 2013, but suggested that “AMR may elect to simply
5 appear as *amicus*.” See Order [Doc. 122]. American elects to do so and hereby moves for leave
6 to participate as *amicus curiae* during the course of this litigation. American does not seek
7 *amicus* status to support either party on the merits of the action, but rather seeks the opportunity
8 to voice its own unique perspective as to the manner in which the case is litigated and resolved as
9 described below.¹

10 1. American is a debtor in possession in a Chapter 11 proceeding in the United States
11 Bankruptcy Court for the Southern District of New York (“the Bankruptcy Court”).
12 As part of its Second Amended Joint Chapter 11 Plan of Reorganization, American intends to
13 merge with US Airways. That proposed merger was approved by the Bankruptcy Court on
14 March 27, 2013, and American’s Plan of Reorganization was confirmed conditionally by the
15 Bankruptcy Court on September 13, 2013.

16 2. One of the primary hurdles to be accomplished in order to effectuate the merger
17 will be integrating the pilot seniority lists of the two airlines. To facilitate that process and to
18 head off some of the difficulties that have plagued other airline mergers, including the US
19 Airways — American West merger at issue in the dispute underlying this lawsuit, American, US
20 Airways, Defendant US Airline Pilots Association (“USAPA”), and Allied Pilots Association

21 ¹ This Court and others in the Ninth Circuit have permitted participation in litigation by *amici*
22 *curiae* at the district court level. See *Silver v. Babbitt*, 166 F.R.D. 418, 434-35 (D. Ariz. 1994)
23 (denying permissive intervention but permitting movants to file *amicus* briefs; “Where proposed
24 intervenors present no new questions, Courts have preferred to confer *amicus* status rather than
25 granting permissive intervention. . . . The Court believes that *amicus* status would afford
26 proposed intervenors sufficient opportunity to ensure that their concerns . . . are fully considered
27 by this Court without adding unnecessary volume of pleadings or lengthening these
28 proceedings.”) (citations omitted); *NGV Gaming, Ltd. v. Upstream Point Molate, LLC*, 355 F.
Supp. 2d 1061, 1067-68 (N.D. Cal. 2005) (“District courts frequently welcome *amicus* briefs
from non-parties concerning legal issues that have potential ramifications beyond the parties
directly involved or if the *amicus* has ‘unique information or perspective that can help the court
beyond the help that the lawyers for the parties are able to provide.’”) (citing *Cobell v. Norton*,
246 F. Supp. 2d 59, 62 (D.D.C. 2003) (quoting *Ryan v. Commodity Futures Trading Comm’n*,
125 F.3d 1062, 1064 (7th Cir. 1997)).

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2 (American's pilot union) entered into a Memorandum of Understanding ("MOU") setting forth,
3 among other things, a specified procedure and timetable for completing the work of combining
4 the pilot seniority lists at American and US Airways. The Bankruptcy Court approved the MOU
5 on May 31, 2013.

6 3. Because the MOU is a significant component of its merger plan, American has a
7 significant interest in protecting its timetables and specific agreements from collateral attack, or
8 from any unintended conflict, that might arise in the context of this action. Moreover, American
9 has a significant interest in seeing to it that the US Airways seniority dispute at the heart of this
10 case is resolved promptly so that it does not complicate or interfere with the seniority integration
11 work to be accomplished as a result of the American/US Airways merger.

12 4. While the current version of the requested injunctive relief [Doc. 134, ¶136] in this
13 case does not interfere with the MOU process or American's restructuring, American has an
14 interest in ensuring that there are no changes or additions to the requested injunctive relief that
15 could have such an adverse impact. In particular, although American takes no position on the
16 underlying merits of this litigation, the possibility exists that injunctive relief entered here in favor
17 of the Plaintiffs (should they prevail) could interfere with the obligations of the parties to the
18 MOU (including Defendant USAPA) and could interfere with the Bankruptcy Court's jurisdiction
19 or complicate the ability of the parties to comply with that Court's Orders.

20 5. Additionally, despite this Court's July 19, 2013 Order [Doc. 122] holding that the
21 merits underlying this dispute are ripe, USAPA has continued to assert that the case is not ripe for
22 adjudication, including in its Answer filed with the Court on July 24, 2013 [Doc. 123], and its
23 Motion for Reconsideration [Doc. 183]. Although the Motion for Reconsideration has been
24 denied, USAPA has also petitioned for a writ of mandamus to the Court of Appeals for the Ninth
25 Circuit, making that same argument. USAPA has thus demonstrated that it intends continually to
26 press the issue at every available opportunity. American has a compelling interest in responding
27 to any further iterations of USAPA's claim that this dispute is not ripe for prompt resolution, or
28 any other attempt to delay or prevent a timely resolution of this matter.

6. Finally, Plaintiffs' First Amended Complaint, filed on August 2, 2013 [Doc. 134],

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2 seeks, among other things, an order declaring that Plaintiffs — the so-called West pilots — have
3 party status and the right (but not the obligation) to participate fully (with counsel of their own
4 choice) in the MOU’s seniority integration process. USAPA contends that the West pilots have
5 no such right. Because American has a unique statutory responsibility under the McCaskill-Bond
6 legislation² to facilitate a fair and equitable resolution to the merger-related seniority integration
7 process, it has a compelling interest in, and thus seeks a voice as to, the parties to the McCaskill-
8 Bond process.

9 7. American submits that it will be helpful to the Court to hear from American so that
10 it can provide its unique perspective on the issues described above as the case proceeds.

11 Accordingly, American respectfully requests the Court grant it leave to participate as
12 *amicus curiae* in this case and make its views known to the Court as the need arises during the
13 course of the litigation.

14
15 DATED: September 20, 2013

Respectfully submitted,

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17 /s/ Todd C. Duffield

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² 49 U.S.C. § 42112.

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CERTIFICATE OF SERVICE

I hereby certify that on this 20th day of September, 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.

/s/ Todd C. Duffield
Todd C. Duffield