

1 **PATRICK J. SZYMANSKI** (*pro hac vice*)
2 **PATRICK J. SZYMANSKI, PLLC**
3 1900 L Street, NW, Ste 900
4 Washington, DC 20036
5 Telephone: (202) 721-6035
6 szymanski@msn.com

SUSAN MARTIN (AZ#014226)
JENNIFER KROLL (AZ#019859)
MARTIN & BONNETT, P.L.L.C.
1850 N. Central Ave. Suite 2010
Phoenix, Arizona 85004
Telephone: (602) 240-6900
smartin@martinbonnett.com
jkroll@martinbonnett.com

6 **BRIAN J. O'DWYER** (*pro hac vice*)
7 **GARY SILVERMAN** (*pro hac vice*)
8 **JOY K. MELE** (*pro hac vice*)
9 **O'DWYER & BERNSTIEN, LLP**
10 52 Duane Street, 5th Floor
11 New York, NY 10007
12 Telephone: (212) 571-7100
bodwyer@odblaw.com
gsilverman@odblaw.com
jmele@odblaw.com

13 Attorneys for US Airline Pilots Association

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

18 Don Addington, *et. al.*,)
19)
20 *Plaintiffs,*)
21)
22 v.)
23)
24 US Airline Pilots Association, *et. al.*,)
25 *Defendants.*)
26)

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

Joint Statement of the Case

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1 Plaintiffs state as follows: Plaintiffs, a class of former America West Pilots,
2 (hereinafter "West Pilots") assert that Defendant US Airline Pilots Association
3 ("USAPA") breached its duty to represent them fairly by making a contract, the
4 Memorandum of Understanding, (the "MOU" or "MOU II") that—without an objectively
5 legitimate union purpose—purports to establish seniority integration procedures that
6 abrogate those in an existing collective bargaining agreement ("CBA") known as the
7 Transition Agreement (the "TA") that required US Airways to implement in good faith
8 an arbitrated merged seniority list known as the Nicolau Award list. Plaintiffs seek an
9 order declaring that the MOU II seniority integration procedures do not abrogate those in
10 the TA. Plaintiffs also seek a declaratory ruling that the West Pilots have the right to full
11 party status with representation by counsel of their choice in the pending process of
12 integrating the seniority of US Airways pilots with that of American Airlines pilots.
13

14 Defendant US Airline Pilots Association ("USAPA") asserts as follows: USAPA
15 asserts that there is no jurisdiction over the duty of fair representation claim on multiple
16 grounds including ripeness, absence of case and controversy, and it is a minor dispute
17 within the exclusive province of the System Board of Adjustment. USAPA denies the
18 Court has jurisdiction under the McCaskill Bond Amendment. Even if the Court had
19 jurisdiction, USAPA asserts that Plaintiff cannot prevail on any of their claims. USAPA
20 contends that Plaintiffs cannot establish that USAPA violated its duty of fair
21 representation in entering into a seniority neutral MOU that conferred significant and
22 substantial economic and non-economic benefits. The MOU was ratified by an
23 overwhelming majority of the West Pilots, who knew the MOU did not require USAPA
24 to use the Nicolau Award in the seniority integration process prior to the ratification vote
25 and that the MOU was seniority neutral, meaning that by its terms, the MOU did not
26 require USAPA to use any particular seniority integration protocol in the seniority
27 integration process. Further, it cannot be shown that the other parties to the MOU would
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1 have accepted and entered into an MOU that provided for Nicolau to be used in the
2 seniority integration process. USAPA also asserts that Plaintiffs also cannot prevail in
3 any of the previous actions and are not entitled to attorneys' fees. USAPA further asserts
4 that Plaintiffs' Claim Four, which seeks the right but not the obligation to represent the
5 West Pilots in the seniority integration proceeding under the MOU, should be denied
6 because it is completely inconsistent with the fact that USAPA has been certified by the
7 NMB as the exclusive representative of the single craft or class of US Airways pilots
8 under Section 2, Ninth of the RLA. Seniority is a subject wholly committed to the
9 exclusive bargaining representative and there is no authority to grant separate
10 representation to a group of employees who are part of a craft or class which has a
11 certified exclusive bargaining representative.
12

13 US Airways states as follows: US Airways has intervened in this lawsuit for the
14 purposes of protecting its interest in achieving a seniority integration of the US Airways
15 and American pilots in accordance with the MOU and McCaskill-Bond, and, more
16 specifically, US Airways seeks, by its intervention: 1) a prompt resolution of the merits
17 of the West Pilots' claim against USAPA for breach of the duty of fair representation;
18 and, 2) a prompt determination that the West Pilots have the right under McCaskill-Bond
19 to full and separate representation in the seniority-integration proceedings between the
20 US Airways and American pilots. USAPA's status as exclusive collective bargaining
21 representative under the RLA will be unaffected by the West Pilots' separate
22 representation in the McCaskill-Bond seniority-integration process because, in this
23 merger, the McCaskill-Bond process will not involve negotiations or arbitration between
24 US Airways and USAPA regarding formulation of the integrated seniority list or any
25 other terms and conditions of employment. Moreover, under the unique circumstances of
26 this case (e.g., that USAPA is constitutionally committed to date-of-hire seniority and to
27 oppose the Nicolau Award, a position which the West Pilots believe is diametrically
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1 opposed to their interests), separate representation for the West Pilots is essential to a
2 “fair and equitable” seniority integration process. US Airways contends that this case,
3 and, in particular, the West Pilots’ DFR claim, is ripe and that this Court has jurisdiction
4 over Plaintiffs’ claims for reasons previously briefed to the Court.

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6 Respectfully submitted this 9th day of October, 2013.

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8 **Martin & Bonnett, P.L.L.C.**

9
10 By: s/Jennifer Kroll
Susan Martin
11 Jennifer L. Kroll
12 Martin & Bonnett
13 1850 N. Central Ave., Suite 2010
Phoenix, AZ 85004

14 Patrick J. Szymanski (*pro hac vice*)
15 Patrick J. Szymanski, PLLC
16 1900 L Street, NW, Suite 900
17 Washington, DC 20036

18 Brian J. O’Dwyer (*pro hac vice*)
19 Gary Silverman (*pro hac vice*)
20 Joy K. Mele (*pro hac vice*)
O’Dwyer & Bernstien, LLP
21 52 Duane Street, 5th Floor
New York, NY 10007

22 Attorneys for US Airline Pilots Association

23 **Polsinelli PC**

24
25 By: s/Andrew Jacob (w/ permission)
26 Marty Harper
Andrew S. Jacob
27 Jennifer Axel
CityScape
28 One East Washington St., Ste. 1200

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25
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27
28

Phoenix, AZ 85004

Attorneys for Plaintiffs

O'Melveny & Myers

By: s/Chris Hollinger (w/ permission)

Robert Siegel (pro hac vice)

Chris A. Hollinger (pro hac vice)

400 South Hope Street

Los Angeles, CA 90071-2899

US Airways, Inc.

Karen Gillen, State Bar No. 018008

111 West Rio Salado Parkway

Tempe, AZ 85281

Attorneys for Intervenor US Airways, Inc.

CERTIFICATE OF SERVICE

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I hereby certify that on October 9, 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:

Marty Harper
Andrew S. Jacob
Jennifer Axel
Polsinelli PC
CityScape
One East Washington St., Ste. 1200
Phoenix, AZ 85004

Attorneys for Plaintiffs

US Airways, Inc.
Karen Gillen
111 West Rio Salado Parkway
Tempe, AZ 85281

Robert A. Siegel
Chris A. Hollinger
Ryan W. Rutledge
400 South Hope Street, Suite 1500
Los Angeles, CA 90071-2899

Attorneys for Intervenor US Airways, Inc.

s/J. Kroll