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

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

*Plaintiffs,*

vs.

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

*Defendants.*

Case No.: 2:13-CV-00471-ROS

**PROPOSED FINAL PRETRIAL  
ORDER FOR BENCH TRIAL**

Pursuant to the Scheduling Order entered August 16, 2013 (Doc. 160), following is the Joint Proposed Pretrial Order to be considered at the Final Pretrial Conference that will be scheduled as promptly as possible after this filing.<sup>1</sup>

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<sup>1</sup> In accordance with the Scheduling Order, the parties are submitting the Joint Statement of Undisputed Facts in section F and Independent Statements of Disputed Fact in sections G and H.

1           **A. TRIAL COUNSEL FOR THE PARTIES**

2           **Plaintiffs (West Pilots)**

3           MARTY HARPER (#003416); [mharper@polsinelli.com](mailto:mharper@polsinelli.com)  
4           ANDREW S. JACOB (#22516); [ajacob@polsinelli.com](mailto:ajacob@polsinelli.com)  
5           JENNIFER AXEL (#023883) [jaxel@polsinelli.com](mailto:jaxel@polsinelli.com)  
6           POLSINELLI P.C.  
7           CityScape  
8           One East Washington St., Suite 1200, Phoenix, AZ 85004  
9           Phone: (602) 650-2000 Fax: (602) 264-7033

10           **Defendant (USAPA)**

11           PATRICK J. SZYMANSKI (*pro hac vice*)  
12           PATRICK J. SZYMANSKI, PLLC  
13           1900 L Street, NW, Ste 900  
14           Washington, DC 20036  
15           Telephone: (202) 721-6035  
16           [szymanskip@msn.com](mailto:szymanskip@msn.com)

17           GARY SILVERMAN (*pro hac vice*)  
18           JOY K. MELE (*pro hac vice*)  
19           O'DWYER & BERNSTIEN, LLP  
20           52 Duane Street, 5th Floor  
21           New York, NY 10007  
22           Telephone: (212) 571-7100  
23           Fax: (212) 571-7124  
24           [bodwyer@odblaw.com](mailto:bodwyer@odblaw.com)  
25           [gsilverman@odblaw.com](mailto:gsilverman@odblaw.com)  
26           [jmele@odblaw.com](mailto:jmele@odblaw.com)

27           SUSAN MARTIN  
28           JENNIFER KROLL  
29           MARTIN & BONNETT, P.L.L.C.  
30           1850 N. Central Ave. Suite 2010  
31           Phoenix, Arizona 85004  
32           Telephone: (602) 240-6900  
33           [smartin@martinbonnett.com](mailto:smartin@martinbonnett.com)  
34           [jkroll@martinbonnett.com](mailto:jkroll@martinbonnett.com)

1           **Intervenor (US Airways)**

2           US AIRWAYS, INC.  
3           KAREN GILLEN (State Bar No. 018008)  
4           [karen.gillen@usairways.com](mailto:karen.gillen@usairways.com)  
5           111 West Rio Salado Parkway  
6           Tempe, AZ 85281  
7           Telephone: (480) 693-0800  
8           Facsimile: (480) 693-5932

9           O'MELVENY & MYERS LLP  
10           ROBERT A. SIEGEL (pro hac vice)  
11           CHRIS A. HOLLINGER (pro hac vice)  
12           [rsiegel@omm.com](mailto:rsiegel@omm.com)  
13           [chollinger@omm.com](mailto:chollinger@omm.com)  
14           400 South Hope Street  
15           Los Angeles, CA 90071-2899  
16           Telephone: (213) 430-6000  
17           Facsimile: (213) 430-6407

18           **B. STATEMENT OF JURISDICTION.**

19           **West Pilots**

20           The First Amended Complaint raises a federal question claim. 45 U.S.C. § 151, *et*  
21           *seq.* There is jurisdiction under Title 28 U.S.C. §1331.

22           **USAPA**

23           Defendant USAPA contends there is no jurisdiction. Defendant disputes jurisdiction  
24           over the duty of fair representation claim on grounds of ripeness, lack of Article III  
25           standing, and lack of subject matter jurisdiction in that plaintiffs' claim is a minor dispute  
26           within the exclusive jurisdiction of the System Board of Adjustment. Defendant denies  
27           the Court has jurisdiction under the McCaskill Bond Amendment, because the seniority  
28           integration proceeding at issue in this case is based upon the terms of MOU II and not  
              directly on the McCaskill-Bond Amendment.

**US Airways**

              US Airways contends that Plaintiffs' claim are ripe and that this Court has  
              jurisdiction under Title 28 U.S.C. §1331.

1           **C. NATURE OF ACTION**

2           **West Pilots**

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

15           **USAPA**

16           There are three claims in issue:

17           1. Claim One – Breach of the Duty of Fair Representation. The Court has framed  
18 this issue as follows:

19           "The exact claim brought by the West Pilots is: 'USAPA breached its [duty of  
20 fair representation] because it made a contract that abandons a duty to treat the  
21 Nicolau award as final and binding.' [citations omitted.] In other words, the  
22 West Pilots' claim is that USAPA breached the duty of fair representation  
23 when it entered into the MOU because the MOU does not require USAPA [to]  
24 use the Nicolau Award in the McCaskill-Bond process. " (Doc. 122, at 4)

25           2. Claim Three- Attorneys' Fees. Plaintiffs seek attorneys' fees for *Addington I*  
26 (and appeals), the Declaratory Judgment Action, and the instant matter pursuant to the  
27 "common benefit doctrine" based upon the spurious premise that they were prevailing  
28 parties in the prior actions and conferred a benefit on the West Pilots, whom they  
represented and the rest of US Airways' Pilots, whose interests they opposed.

1           3. Claim Four – Participation in McCaskill- Bond Proceedings. Plaintiffs seek a  
2 declaratory judgment that the West Pilots have the “right (but not the obligation)” (Doc.  
3 134, ¶132) to participate fully with their own counsel in the MOU seniority integration  
4 process.

5           **US Airways**

6           This lawsuit arises from a protracted seniority dispute between the East Pilots and  
7 the West Pilots following US Airways’ merger with America West. Intervenor US  
8 Airways is the air carrier formed by that merger. As a result of this ongoing seniority  
9 dispute, the East Pilots and West Pilots have continued to operate under two separate  
10 seniority lists for the past eight years and no integrated seniority list has been  
11 implemented. US Airways has intervened in this lawsuit for the limited purposes of  
12 protecting its interest in achieving a seniority integration of the US Airways and  
13 American pilots in accordance with the schedule prescribed in the MOU that was  
14 executed in connection with the US Airways/American merger by US Airways,  
15 American, USAPA representing the US Airways pilots, and the Allied Pilots Association  
16 representing the American pilots. In accordance with this interest, US Airways seeks, by  
17 its intervention:

- 18           (i) a prompt resolution of the merits of the West Pilots’ claim against defendant  
19 US Airline Pilots Association (“USAPA”) for breach of the duty of fair  
20 representation (“DFR”) – including ensuring that US Airways has the right to  
21 participate in potential additional district court and appellate proceedings with  
22 regard to the ripeness of the West Pilots’ claim; and  
23           (ii) a prompt determination that the West Pilots have the right under the federal  
24 McCaskill-Bond statute to full and separate representation in the upcoming  
25 seniority-integration proceedings between the pilots employed by US Airways  
26 and American Airlines, Inc. (“American”).

27           **D. JURY/NON-JURY**

28           This is a non-jury trial.

1           **E. CONTENTIONS OF THE PARTIES**

2           **West Pilots**

3           In order to prevail on Claim One (the DFR claim), the West Pilots will establish the  
4 following: (1) the TA procedures required US Airways to use the Nicolau Award list in  
5 good faith; (2) paragraph 10(h) of the MOU purports to replace those procedures with  
6 ones that do not require US Airways to use the Nicolau award list; (3) USAPA must have  
7 an objectively legitimate union purpose for putting or allowing paragraph 10(h) to be put  
8 into the MOU; and (4) USAPA did not have such a purpose.

9           In order to prevail against USAPA’s affirmative defense to Claim One, the West  
10 Pilots will establish the following: (1) that a West Pilots’ right to assert that paragraph  
11 10(h) breached USAPA’s duty of fair representation (“DFR”) could not be waived; and  
12 (2) that this right was not waived by the MOU ratification vote.

13           Whether or not the West Pilots prevail on Claim One, they can prevail on Claim  
14 Four (the McCaskill-Bond claim), by establishing the following: (1) employees  
15 materially affected by an airline merger are entitled to unconflicted representation in a  
16 neutral seniority integration processes; (2) West Pilots are materially affected by the  
17 merger with American Airlines; (3) USAPA and the East Pilot majority have a material  
18 conflict of interest with the West Pilots’ interests in seniority integration.

19           **USAPA**

20           Claim One, breach of the duty of fair representation. First, plaintiffs cannot prevail  
21 on this claim because it cannot be shown that USAPA acted in a manner that was  
22 “arbitrary, discriminatory or in bad faith” by entering into an MOU that did not require  
23 USAPA to use the Nicolau Award in the seniority integration process should the merger  
24 between US Airways and American Airlines is approved and goes forward. *Vaca v.*  
25 *Sipes*, 386 U.S. 171, 177, 87 S.Ct. 903, 910 (1967). To show a breach of the duty of fair  
26 representation on the basis of discrimination, a plaintiff must “adduce substantial  
27 evidence of discrimination that is intentional, severe, and unrelated to legitimate union  
28 objectives. . .” *Amalgamated Ass’n of Street, Elec. R.R. and Motor Coach Employees of*

1 *Am. v. Lockridge*, 403 U.S. 274, 301, 91 S.Ct. 1909, 1925 (1971). In the context of  
2 negotiating agreements, “the final product of the bargaining process may constitute  
3 evidence of a breach of duty only if it can be fairly characterized as so far outside a ‘wide  
4 range of reasonableness,’ . . . that it is wholly ‘irrational’ or ‘arbitrary.’” *Air Line Pilots*  
5 *Ass’n, Int’l v. O’Neill*, 499 U.S. 65, 78, 111 S.Ct. 1127, 1136 (1991)(“*O’Neill*”)(quoting  
6 *Ford Motor Co. v. Huffman*, 345 U.S., at 338, 73 S.Ct., at 686). The rationality of a  
7 union’s decision must be evaluated “in light of both the facts and the legal climate that  
8 confronted the negotiators at the time the decision was made.” *O’Neill*, 499 U.S. at 78,  
9 111 S.Ct. 1127, 1136. In view of the foregoing authorities and all of the facts that existed  
10 at the time, USAPA acted consistent with its duty of fair representation when it entered  
11 into an MOU that is neutral with respect to seniority.

12 Second, because plaintiffs cannot show that the other parties to the MOU would  
13 have accepted and entered into an MOU that included the Nicolau Award, and that an  
14 MOU that included the Nicolau Award would have been ratified, there is no causal link  
15 to USAPA’s alleged breach and plaintiffs’ alleged injury.

16 Third, the essence of plaintiffs’ claim is that the MOU is a collective bargaining  
17 agreement necessitating implementation of the Nicolau Award, which is a “minor  
18 dispute.” It is well established that under the RLA, disputes growing out of the  
19 interpretation or application of agreements concerning rates of pay, rules, or working  
20 conditions are subject to mandatory arbitration before the System Board of Adjustment.  
21 45 U.S.C. §§ 184; *Consol. Rail. Corp. v. Ry. Labor Executives’ Ass’n*, 491 U.S. 299, 303,  
22 109 S.Ct. 2477, 2480 (1989) (“*Conrail*”); *International Ass’n of Machinists and*  
23 *Aerospace Workers, AFL-CIO v. Aloha Airlines*, 776 F.2d 812, 815 (9th Cir. 1985). As  
24 such, the Court lacks subject matter jurisdiction.

25 Claim Three, attorneys’ fees. Plaintiffs cannot prevail on their claim for attorneys’  
26 fees for several reasons. First, plaintiffs did not pursue their claim for attorneys’ fees in  
27 *Addington I* after their motion for fees was denied, nor did plaintiffs make any motion for  
28 attorneys’ fees in the Declaratory Judgment Action. Had they done so, the motions

1 would have surely been denied as plaintiffs were not “prevailing” parties in either  
2 litigation. *See Park, ex rel. Park v. Anaheim Union High School Dist.*, 464 F.3d 1025,  
3 1034 (9th Cir. 2006) (“For the purposes of attorney’s fees awards, a prevailing party is  
4 defined as ‘a party which ‘succeed[s] on any significant issue in litigation which achieves  
5 some of the benefit the parties sought in bringing the suit.’”) (internal citations omitted)  
6 (emphasis included); *Kollsman v. Cohen*, 996 F.2d 702, 706 (4th Cir. 1993) (“A dismissal  
7 of an action, whether on the merits or not, generally means the defendant is the prevailing  
8 party.”). As the losing party to both cases, plaintiffs achieved no benefit to the West  
9 Pilots whose interests they represented and no benefit to the East pilots whose interests  
10 they opposed.

11 Second, plaintiffs have not produced any evidence of the amount of fees, hours or  
12 costs expended or any evidence that any fees or expenses were paid by plaintiffs or that  
13 plaintiffs owe any attorneys’ fees. *Fox v. Vice*, \_\_\_ U.S. \_\_\_, 131 S. Ct. 2205, 2216  
14 (2011) (“The fee applicant (whether a plaintiff or a defendant) must, of course, submit  
15 appropriate documentation to meet ‘the burden of establishing entitlement to an award.’”)   
16 quoting *Hensley v. Eckerhart*, 461 U.S. 424, 437 (1983)). All attorneys’ fees in  
17 *Addington I*, the Declaratory Judgment Action, and this action to date, have been paid by  
18 a third party, Leonidas. Leonidas is not a party to this action and has no legal right to  
19 seek an award of fees against defendant.

20 Claim Four, separate representation in the seniority integration proceeding.  
21 Plaintiffs seek the right, but not the obligation, to represent the West Pilots in the  
22 seniority integration proceeding set forth in the MOU. The MOU provides a seniority  
23 integration process consistent with the McCaskill-Bond Amendment to the FAA, which  
24 explicitly refers to bargaining representatives. In 2008, USAPA was certified by the  
25 National Mediation Board as the bargaining representative of the single craft or class of  
26 US Airways pilots. USAPA’s status as the exclusive bargaining representative has not  
27 changed. There is simply no authority for the Court to ignore the exclusive  
28 representative status of USAPA as the NMB-certified representative of the single craft or

1 class of US Airways pilots under Section 2, Ninth of the RLA, and for the Court to select  
2 a representative for a portion of that craft or class in a seniority integration proceeding. 45  
3 U.S.C. § 152 Fourth. Plaintiffs' (and US Airways') request to have the Court to select a  
4 representative for a discrete portion of the single craft or class to participate in the  
5 seniority integration process would improperly interfere with the exclusive jurisdiction of  
6 the National Mediation Board to determine union representation disputes under the RLA,  
7 which is "essentially unreviewable in federal court." *McNamara-Blad v. APFA*, 275 F.3d  
8 at 1170, (*citing Switchmen's Union v. NMB*, 320 U.S. 297, 303-07, 64 S. Ct. 95 (1943));  
9 *see also America West Airlines v. National Mediation Board*, 119 F.3d 772, 775 (9<sup>th</sup> Cir  
10 1997). US Airways' argument that bargaining does not implicate USAPA's status as the  
11 exclusive representative under the RLA because as the employer, US Airways agreed to  
12 remain neutral in the MOU that was *bargained* for between US Airways and USAPA has  
13 no merit. Courts do not interfere with NMB certifications and do not acquire RLA  
14 jurisdiction on an *ad hoc* basis depending on positions taken by an employer. Seniority,  
15 as a central subject of collective bargaining, is within the sole province of the exclusive  
16 bargaining representative. The seniority integration process contained in the MOU  
17 clearly implicates USAPA's status as the exclusive representative of the entire craft or  
18 class of US Airways pilots. Allowing a representative at the seniority integration  
19 proceeding that (unlike USAPA) has no duty of fair representation to any group and that  
20 seeks the right but not the obligation to represent the West Pilots, is not permitted under  
21 either McCaskill-Bond or the RLA.

22 Affirmative Defenses.<sup>2</sup>

23 First Affirmative Defense, failure to state a claim upon which relief can be granted

24 – See above under USAPA contentions.

25 Second Affirmative Defense, ripeness. See above under USAPA contentions.

26 \_\_\_\_\_  
27 <sup>2</sup> See also, USAPA Motion to Dismiss Plaintiffs' Complaint, Docs. 44, 54,  
28 incorporated herein by reference with respect to all affirmative defenses.

1        Third Affirmative Defense, minor dispute under Railway Labor Act. See above  
2 under USAPA contentions.

3        Fourth Affirmative Defense, lack of subject matter jurisdiction. See above under  
4 USAPA contentions.

5        Fifth Affirmative Defense, res judicata, collateral estoppel, issue and claim  
6 preclusion. Plaintiffs' DFR claim is that USAPA was required to include a provision in  
7 the MOU that the Nicolau Award would be used in the McCaskill-Bond process. This  
8 issue was decided by this Court in October 2012 when it granted USAPA summary  
9 judgment in the Declaratory Judgment Action and held that USAPA was free to pursue  
10 any seniority position it wishes during collective bargaining negotiations. *US Airways v.*  
11 *USAPA*, 2:10-cv-01570-ROS, Doc. 193, p.1. As such the claim is barred.

12        Sixth Affirmative Defense, unclean hands. Email messages exchanged among the  
13 plaintiffs and the principals of Leonidas LLC show that they were all fully aware in mid-  
14 January 2013 (1) that the MOU did not contain any reference to the Nicolau Award, (2)  
15 that USAPA had no intention of advancing the Nicolau Award either in any seniority  
16 integration proceeding or otherwise, (3) that the MOU provided the Transition  
17 Agreement would sunset upon the Effective Date of the POR and (4) that the MOU was  
18 neutral with respect to seniority. The Plaintiffs and the principals of Leonidas LLC were  
19 therefore fully aware of the claims made in the Amended Complaint. The West Pilots  
20 voted overwhelmingly for the MOU with this understanding. This vote is a ratification of  
21 the MOU as neutral and without any reference to the Nicolau Award, exactly the contrary  
22 of what plaintiffs now claim.

23        Seventh Affirmative Defense, waiver. See statement with respect to the Sixth  
24 Affirmative Defense.

25        Eighth Affirmative Defense, ratification of the MOU. See statement with respect to  
26 the Sixth Affirmative Defense.

27        Ninth Affirmative Defense, estoppel. See statement with respect to the Fifth and  
28 Sixth Affirmative Defenses.

1        Tenth Affirmative Defense, novation. The MOU is a novation, that is, it is new  
2 agreement negotiated among US Airways, American, APA and USAPA to replace the  
3 Transition Agreement on which Plaintiffs predicate their claim. The MOU takes effect  
4 upon the Effective Date of the POR and replaces and extinguished the Transition  
5 Agreement and any claim that might be based on the Transition Agreement. The express  
6 terms of the Transition Agreement allowed for such modification and amendment upon  
7 the agreement of the parties to the Transition Agreement. The MOU constitutes the  
8 amendment/ modification permissible under the Transition Agreement.

9        **US Airways:**

10        Claim One (“DFR claim”). US Airways remains neutral on the merits of the claim.  
11 US Airways does, however, have a significant interest in the prompt and final resolution  
12 of the plaintiffs’ DFR claim on the merits so that there is no interference with the  
13 seniority-integration process as between US Airways and American, and no delay –  
14 caused by Court order or otherwise – in the airlines’ timely realization of the operational  
15 and financial benefits from a combined pilot workforce that is contemplated by their  
16 impending merger and by the MOU.

17        To the extent a “final CBA,” or a “new, single CBA,” as that concept was used by  
18 the Ninth Circuit in *Addington v. US Airline Pilots Ass’n*, 606 F.3d 1174, 1179-1180, is a  
19 prerequisite to ripeness of the DFR claim, the requirement is satisfied. The MOU, which  
20 has already been approved by all parties and ratified by USAPA’s membership, defines  
21 the terms and conditions of employment, including significant pay raises, that will  
22 become applicable to both the East and West pilots (and the American pilots as well)  
23 upon the effective date of AMR Corporation’s Plan of Reorganization (i.e., the merger  
24 closing date) and those terms and conditions will remain in effect until at least January 1,  
25 2019. The MOU thus represents the completion of the collective bargaining process for a  
26 combined East and West labor agreement.

27        Claim Four (“McCaskill-Bond claim”). As relevant to the pending merger between  
28 US Airways and American, McCaskill-Bond provides that there must be an “integration

1 of seniority lists in a fair and equitable manner [through participation by] representatives  
2 of the employees affected.” *Allegheny-Mohawk*, 59 C.A.B. 45, 45 (1972), as referred to  
3 in Pub. L. No. 110-161, div. K, tit. I, § 117 (2007). In light of the fact that there are  
4 currently separate seniority lists for the East and West pilots (which will have to be  
5 effectively integrated as part of the overall process of integrating the US Airways pilots  
6 with the American pilots), and given the sharply-divergent views of the West Pilots and  
7 USAPA on this subject, the West Pilots are entitled to participate in the McCaskill-Bond  
8 process through a representative of their own choosing.

9 The designation of a separate subgroup consisting of all West pilots (the class of  
10 Plaintiffs certified in this action) for purposes of the McCaskill-Bond process cannot  
11 undermine or interfere with USAPA’s current status under the RLA because, in this  
12 merger, the McCaskill-Bond process will not involve negotiations or arbitration between  
13 US Airways and USAPA regarding formulation of the integrated seniority list or any  
14 other terms and conditions of employment. Rather, in this merger, US Airways role is  
15 limited as reflected in Paragraph 10(d) of the MOU: “During the McCaskill-Bond  
16 process, including any arbitration proceeding, US Airways, American or New American  
17 Airlines, or their successors (if any), shall remain neutral regarding the order in which  
18 pilots are placed on the integrated seniority list.” USAPA’s status under the RLA will  
19 therefore be unaffected by the West Pilots’ separate representation in the McCaskill-  
20 Bond seniority-integration process.

21 The East and West Pilots continue to operate under two separate seniority lists due  
22 to a dispute over pilot seniority integration. Because integration of the “West” seniority  
23 list and the “East” seniority list effectively will have to occur in order to achieve a single  
24 seniority list for all US Airways and American pilots following the merger, the East and  
25 West Pilots constitute distinct seniority interest groups. Given that USAPA is  
26 constitutionally committed to date-of-hire seniority and to oppose the Nicolau Award, a  
27 position which the West Pilots believe is diametrically opposed to their interests, separate  
28 representation for the West Pilots is essential to a “fair and equitable” seniority

1 integration process. Absent such representation, one employee group could “dictate the  
2 seniority rights of [the other group].” *Braniff-Mid Continent Merger Case*, 17 C.A.B. 19,  
3 21 (1953). Fairness and equity in seniority integration is now defined by federal statute,  
4 and it is well within the jurisdiction of this Court to determine whether that requirement  
5 can be met in a seniority integration process that excludes separate West Pilot  
6 representatives.

7 **F. STIPULATIONS AND UNDISPUTED FACTS**

8 Facts that are stipulated to and undisputed by all parties while retaining the  
9 right to object to relevance of any such facts are as follows:

10 **Merger of America West and US Airways**

11 1. In May 2005, two airlines, America West and US Airways, agreed to merge to  
12 become a single airline known as US Airways (the “2005 Merger”).

13 2. At the time of the 2005 Merger, including pilots on furlough, there were about  
14 5,100 pilots employed by US Airways (“East Pilots”) and 1,900 pilots employed by  
15 America West (“West Pilots”).

16 3. At the time of the 2005 Merger, no West Pilots were on furlough.

17 4. At the time of the 2005 Merger, approximately 1700 East Pilots were on  
18 furlough.

19 5. At the time of the 2005 Merger, the Air Line Pilots Association (“ALPA”)  
20 represented both pilot groups.

21 6. USAPA is, and has been since April 2008, the National Mediation Board  
22 certified exclusive representative of the single craft or class of US Airways pilots.

23 7. On September 23, 2005, ALPA and the two merging airlines, among other  
24 things, entered into a contract referred to as the Transition Agreement (“TA”) that was  
25 approved by the Bankruptcy Court overseeing US Airways bankruptcy.

26 8. Pursuant to the TA, the terms and conditions of employment of the East Pilots  
27 are governed by the pre-merger US Airways collective bargaining agreement and the  
28

1 terms and conditions of employment of the West Pilots are governed by the pre-merger  
2 America West collective bargaining agreement.

3 9. From the time of the 2005 merger through the present, US Airways pilots  
4 continue to bid in accordance with a two-seniority list system, one for East Pilots and the  
5 other for West Pilots.

6 10. The America West Collective Bargaining Agreement (“West CBA”) provides  
7 for seniority to be ordered based on date of hire.

8 11. Section 22(A)(1) of the West CBA states that “[s]eniority of a Pilot shall  
9 begin on the Pilot’s Date of Hire.”

10 12. Prior to the merger with US Airways, and continuing to date, the West Pilots’  
11 respective positions on their seniority list have been determined solely by their date of  
12 hire.

13 13. The 1998 US Airways Collective Bargaining Agreement (“East CBA”), which  
14 continues to govern the terms and conditions for East pilots, provides that a pilot’s  
15 seniority “shall begin to accrue on the date the pilot first reports to the Company’s Pilot  
16 Training Program.”

17 14. The TA established certain terms and conditions of employment that would  
18 apply after the merger.

19 15. The TA provided that the two merging airlines and ALPA would negotiate a  
20 contract referred to as the “Single Agreement” that would govern the employment of both  
21 East and West Pilots.

22 16. The TA also provided that Merger Committees representing the pilots from  
23 the two airlines would follow ALPA Merger Policy to create an integrated seniority list.

24 17. The controlling 2005 version of the ALPA Merger Policy states in full in Part  
25 G(5):

26 The merger representatives shall carefully weigh all the equities inherent  
27 in their merger situation. In joint session, the merger representatives  
28 should attempt to match equities to various methods of integration until a  
fair and equitable agreement is reached, keeping in mind the following  
goals, in no particular order:

- a. Preserve Jobs.
- b. Avoid windfalls to either group at the expense of the other.
- c. Maintain or improve pre-merger pay and standard of living.
- d. Maintain or improve pre-merger pilot status.
- e. Minimize detrimental changes to career expectations.

18. The ALPA Merger Policy was never ratified by its rank and file members. (ALPA Constitution, Article V, Section 2 (ALPA Executive Board “may establish or change policy to be followed by the Association and its members” and “may change policies previously adopted by the Board of Directors”).

19. The TA provided that the airline would integrate pilot operations within 12 months of three events: (a) obtaining a single operating certificate (which occurred in 2007); (b) creating a single seniority list according to ALPA Merger Policy; and (c) negotiation of the “Single Agreement.”

20. The parties present additional information regarding the TA in their disputed facts sections.

**Nicolau Award**

21. ALPA Merger Policy provided, if it was necessary to arbitrate the single seniority list, that “[t]he Award of the Arbitration Board shall be final and binding on all parties to the arbitration and shall be defended by ALPA”.

22. The two Merger Committees tried but failed to negotiate or mediate a single integrated seniority list.

23. Pursuant to ALPA Merger Policy, the two Merger Committees participated in the arbitration process required by ALPA Merger Policy.

24. The arbitration board issued its award (the “Nicolau Award”) on May 1, 2007.

25. The Nicolau Award placed about 500 senior East Pilots at the top of the list.

26. It explained that it did so because West Pilots were not operating the widebody international aircraft generally flown by the most senior East Pilots at the time of the 2005 Merger.

1           27. The Nicolau Award placed the approximately 1700 East Pilots who were  
2 furloughed at the time of the 2005 Merger at the bottom of the list.

3           28. The Nicolau Award explained that “merging active pilots with furlougees,  
4 despite the length of service of some of the latter, is not at all fair or equitable under any  
5 of the stated criteria.”

6           29. The Nicolau Award blended the remainder of the East Pilot list with the West  
7 Pilot list as explained in detail in the Award.

8           30. On December 20, 2007, US Airways accepted, but did not implement, the  
9 Nicolau Award seniority list, as it was required to do by the terms of the TA.

10           31. With respect to the merger between America West and US Airways, all other  
11 crafts merged their seniority lists by date of hire.

12           32. In April 2009, after the Nicolau Award was issued, ALPA amended its Merger  
13 Policy to include longevity as a factor that must be considered in integrating pilot  
14 seniority lists.

15           33. The US Airways MEC stated that the East Pilots, who under ALPA  
16 governance were entitled to a separate vote, would not ratify a collective bargaining  
17 agreement that included the Nicolau list.

18           34. The parties present additional information regarding the Nicolau Award in  
19 their disputed facts sections.

20           **Formation and Election of USAPA**

21           35. The East Pilots opposed the Nicolau Award.

22           36. In May 2007, East Pilot Stephen Bradford and other East Pilots began to  
23 consider forming a new union to take over representation of all US Airways pilots (East  
24 and West).

25           37. Mr. Bradford and these other pilots formed a committee that sought and  
26 received legal advice in regard to forming a new union.

27           38. The parties present their positions on the nature of this legal advice in their  
28 disputed facts sections.

1 39. Mr. Bradford and other East Pilots formed USAPA to replace ALPA.

2 40. On January 23, 2008, the National Mediation Board found a US  
3 Airways/America West single transportation system.

4 41. An election contest between ALPA and USAPA followed.

5 42. The parties present their positions on the events of this election campaign in  
6 their disputed facts sections.

7 43. USAPA won the election.

8 44. The National Mediation Board certified USAPA as the collective bargaining  
9 representative for the entire pilot craft or class (East and West) on April 18, 2008. (“Craft  
10 or class” is the Railway labor Act term for a “bargaining unit.”)

11 **Subsequent Events at US Airways**

12 45. US Airways has operated separate East and West flight operations since 2005.

13 46. In 2008, US Airways announced a restructuring of its flight operations, citing  
14 low yield and high fuel prices.

15 47. As part of that restructuring, US Airways announced the furlough of 300  
16 pilots, 175 from the West and 125 from the East.

17 48. Due to offers of enhanced voluntary leaves of absence negotiated by USAPA,  
18 144 West Pilots and 84 East Pilots were actually furloughed.

19 49. The parties present their positions on the financial status of the East and West  
20 operations of US Airways in their disputed facts sections.

21 **USAPA’s Position on Seniority**

22 50. USAPA’s Constitution states that one of its objectives is “[t]o maintain  
23 uniform principles of seniority based on date of hire and the perpetuation thereof, with  
24 reasonable conditions and restrictions to preserve each pilot’s un-merged career  
25 expectations.”

26 51. USAPA’s leaders and attorneys have consistently stated, and maintain to this  
27 date, that USAPA will not voluntarily agree to implement the Nicolau Award.  
28

1           52. The West Pilot class leaders and their attorneys have consistently stated, and  
2 maintain to this date, that the West Pilots members will not voluntarily agree to anything  
3 other than an unmodified Nicolau Award.

4           53. USAPA's leaders and attorneys have consistently stated, and maintain to this  
5 day, that USAPA has a valid legal right to not agree to implement the Nicolau Award.

6           54. USAPA proposed a date-of-hire seniority system that included conditions and  
7 restrictions in September 2008.

8           55. USAPA has never proposed a date-of-hire seniority system that did not  
9 include conditions and restrictions.

10          56. US Airways has never responded to the September 2008 proposal and USAPA  
11 has never withdrawn this seniority proposal.

12          57. Conditions and restrictions specify how a particular seniority list operates.  
13 They can afford pilots opportunities to bid and hold flying that would otherwise not be  
14 available to someone in their seniority position and can restrict pilots from opportunities  
15 that would otherwise be available to someone in their seniority position.

16          58. Conditions and restrictions that apply to a pilot group before a merger may or  
17 may not carry forward in a seniority integration proceeding with another pilot group.

18          59. USAPA's September 2008 seniority proposal combines the existing East and  
19 West lists by date-of-hire, without regard to whether a pilot was on furlough at the time  
20 of the merger.

21          60. The parties present their positions on the nature of this seniority proposal in  
22 their disputed facts sections.

23           **The Declaratory Judgment Action**

24          61. On July 27, 2010, US Airways filed a declaratory judgment action, alleging  
25 that it required guidance, inter alia, as to whether it would be liable if it entered into a  
26 collective bargaining agreement with USAPA that did not implement the Nicolau Award.

27          62. The parties present their positions on the outcome of the declaratory judgment  
28 litigation in their disputed facts sections.

1           **Single Agreement Negotiations**

2           63. In May 2007, US Airways made a comprehensive collective bargaining  
3 agreement proposal to ALPA, which is known as the “Kirby Proposal.”

4           64. The parties present additional positions on the nature of the Kirby Proposal  
5 and contract negotiations in their disputed facts sections.

6           **Current Status of US Airways**

7           65. During 2011, US Airways hired 49 new pilots.

8           66. US Airways hired 115 new pilots during 2012 and 182 new pilots in 2013  
9 through September 30, 2013, all of whom were assigned to the seniority list for former  
10 US Airways pilots, sometimes known as the "East List."

11           67. As of September 30, 2013, US Airways operated 224 jet passenger aircraft in  
12 its East operation including 296 wide-bodied aircraft (19 A330s and 10 767s).

13           68. As of September 30, 2013, US Airways operated 120 aircraft in its West  
14 operation, none of which are wide bodied.

15           **Merger with American Airlines**

16           69. On November 29, 2011, AMR Corporation (“AMR”) and its subsidiaries,  
17 including American Airlines, Inc. (“American”), commenced a voluntary Chapter 11 case  
18 in the United States Bankruptcy Court for the Southern District of New York, *In re AMR*  
19 *Corp.*, Case No. 11-15463.

20           70. On February 13, 2013, US Airways Group, Inc. (the corporate parent of US  
21 Airways) and AMR entered into an Agreement and Plan of Merger (“Merger  
22 Agreement”) that, among other things, contemplated the combination of US Airways and  
23 American.

24           71. On February 22, 2013, AMR and its related debtors filed a motion in the AMR  
25 bankruptcy proceeding seeking approval of the Merger Agreement.

26           72. On March 27, 2013, the Bankruptcy Court heard the motion and orally  
27 indicated that it would grant the motion with certain caveats not relevant here. The  
28 Bankruptcy Court’s decision was entered on April 11, 2013.

1           73. On April 15, 2013, AMR and its related debtors filed a Plan of Reorganization  
2 (“POR”), and a motion for confirmation of same, in the AMR bankruptcy proceeding  
3 seeking approval of AMR’s emergence from bankruptcy.

4           **MOU Negotiations**

5           74. In 2012, prior to April 13, 2012, US Airways began negotiating labor contract  
6 terms with the Allied Pilots Association (“APA”), the union for American Airlines pilots,  
7 that would go into effect if and when there was a merger in bankruptcy involving US  
8 Airways and AMR.

9           75. On April 23, 2012, APA and US Airways executed an agreement that has  
10 been referred to as the “Conditional Labor Agreement” (“CLA”) or “APA Term Sheet.”

11           76. US Airways initially advised USAPA that it did not need USAPA’s  
12 participation in the discussions with the APA regarding the CLA, and subsequently  
13 maintained the same position with respect to the discussions that resulted in MOU I and  
14 MOU II (discussed below). It was USAPA’s position that any merger-related labor  
15 agreement should guarantee appropriate terms, conditions, and protections for US  
16 Airways pilots in the event of a merger. US Airways subsequently agreed to negotiate  
17 with USAPA concerning terms, conditions, and protections in addition to those stated in  
18 the CLA that would be guaranteed to US Airways pilots in the event of a merger.

19           77. At the time US Airways informed USAPA President Hummel about the CLA  
20 it had negotiated with APA and about its plan to merge with American, US Airways took  
21 the position that any merger-related labor agreement with USAPA would only address  
22 seniority integration by providing for its resolution through a process consistent with the  
23 McCaskill-Bond Amendment.

24           78. The USAPA Negotiating Advisory Committee (“NAC”) was responsible for  
25 negotiating the labor terms, and provisions regarding integration of US Airways and  
26 American pilots, in connection with a potential US Airways/American merger.

27           79. West Pilots comprised two of the four members of the NAC involved in the  
28 negotiations with respect to the MOU.

1 80. The additional terms, conditions, and protections that emerged from the  
2 negotiations between US Airways and the NAC were memorialized in what was to be a  
3 three-party agreement (along with the APA) entitled “Memorandum of Understanding  
4 Regarding Contingent Collective Bargaining Agreement” (“MOU I”).

5 81. Negotiators for US Airways and USAPA tentatively approved MOU I on  
6 August 20, 2012.

7 82. USAPA demanded a lump sum payment to its pilots as part of MOU I and US  
8 Airways ultimately agreed to a \$40 million payment to its pilots if MOU I became  
9 effective.

10 83. The USAPA Board of Pilot Representatives (“BPR”) concluded that there  
11 were deficiencies in MOU I and directed the NAC to negotiate further to address those  
12 deficiencies.

13 84. The parties present their positions on the nature of the concerns in MOU I  
14 identified by the BPR, as well as other aspects of MOU I, in their disputed facts sections.

15 85. When the NAC went to Dallas to address those concerns as well as to consider  
16 the APA’s reaction to MOU I, US Airways said that it was about to sign a non-disclosure  
17 agreement with AMR to facilitate the exchange of confidential business information and  
18 an evaluation by the two companies of a potential merger and that, at AMR’s request, it  
19 had agreed to discontinue negotiations with USAPA and APA. US Airways, therefore did  
20 not meet with the NAC and the APA to further discuss MOU I.

21 86. American, US Airways, USAPA and APA went to Dallas in mid-December  
22 2012 to negotiate a multi-party agreement to establish terms and conditions, protections  
23 and procedures that would apply to the pilots in the event of a merger between American  
24 and US Airways.

25 87. From December 10, 2012, through January 2, 2013, the parties were able to  
26 negotiate a tentative agreement titled “Memorandum of Understanding Regarding  
27 Contingent Collective Bargaining Agreement” (“MOU II”).

28 88. USAPA was represented in these negotiations principally by the NAC.

1 89. On January 2, 2013, the NAC presented the tentative MOU II to the USAPA  
2 BPR with its recommendation for approval.

3 90. The BPR asked for an increase in the retroactive pay provided for as part of  
4 MOU II such that, if the merger was approved, all US Airways pilots would be paid at  
5 the American rates as of the date MOU II was ratified by US Airways pilots (likely early  
6 February 2013) instead of a relatively short time prior to the Effective Date of the POR as  
7 was then currently provided.

8 91. On January 4, 2013, American and US Airways agreed to the proposed  
9 change.

10 92. MOU II (as did MOU I) provides that pilot seniority integration between  
11 pilots of US Airways and American Airlines will be governed by a process consistent  
12 with McCaskill-Bond.

13 93. MOU II provides, in Paragraph 10(h): “US Airways agrees that neither this  
14 Memorandum nor the JCBA [Joint Collective Bargaining Agreement] shall provide a  
15 basis for changing the seniority lists currently in effect at US Airways other than through  
16 the process set forth in this Paragraph 10.”

17 94. During the course of negotiations of MOU II, USAPA proposed the inclusion  
18 of what ultimately became Paragraph 10(h).

19 95. USAPA’s original proposal for what became Paragraph 10(h) was: “This  
20 MOU is not intended to nor shall it constitute the “Single Agreement” referred to in  
21 Paragraph VI.A. of the September 23, 2005 Transition Agreement.”

22 96. MOU II does not change the East and West seniority lists.

23 97. The parties present additional characterizations of the events that led to  
24 Paragraph 10(h), as well as other provisions of MOU II, in their disputed facts sections.

25 98. MOU II contains substantial economic improvements for US Airways pilots.

26 99. MOU II establishes terms and conditions that are the same for all US Airways  
27 pilots, including identical wages, defined contribution retirement plan contribution rates,  
28 vacation, and no furlough guarantees.

1 100. These improvements were discussed with the pilots of US Airways at the  
2 NAC roadshows in January 2013.

3 101. These improvements were also described in a publication from the NAC  
4 entitled “What the Memorandum of Understanding Means to You,” which was  
5 distributed at the NAC roadshows and made available electronically to all pilots in good  
6 standing.

7 102. MOU II provides that as of the Effective Date of the POR, the pay rates and  
8 defined contribution retirement plan contribution rates for all US Airways pilots  
9 employed by the merged operation will be as set by the December 2012 CBA between  
10 American and APA as modified by the terms of MOU II itself. MOU II further provides  
11 that the other terms of the 600-page December 2012 CBA between American and APA  
12 “shall be applicable to all US Airways pilots at the earliest practicable time for each such  
13 term.”

14 103. MOU II, through its incorporation of the 2012 CBA between American and  
15 APA, includes an industry average pay parity adjustment effective on January 1, 2016,  
16 which would bring pay for all the US Airways/American pilots into line with Delta  
17 Airlines and United Airlines.

18 104. If a merger occurs with American in bankruptcy, the economic effects of  
19 MOU II will result in substantial pay raises for all US Airways pilots upon the effective  
20 date of the POR.

21 105. The existing East CBA contains lower pay rates than the West CBA (*e.g.*  
22 approximately \$20,000 less annually under the East CBA for 12-year captains on the  
23 A320).

24 106. USAPA estimates that the immediate pay increase on the Effective Date of the  
25 POR for 12-year captains operating the Airbus A320 aircraft would be more than \$40,000  
26 annually for those pilots flying under the East CBA, and more than \$20,000 annually for  
27 those pilots flying under the West CBA.  
28

1 107. As of the Effective Date of the POR (assuming that date is prior to January 1,  
2 2014), the defined contribution rate (paid by US Airways to a defined contribution  
3 retirement plan on behalf of each eligible pilot) will increase from the current rate of 10%  
4 to 14% for all US Airways pilots in addition to the pay increases.

5 108. On January 1, 2014, the pay rates for all pilots will increase an additional 8%  
6 and (assuming the POR Effective Date is prior to January 1, 2014) the defined  
7 contribution rate will increase to 16%.

8 109. A January 7, 2013, side letter to MOU II provides for a \$40 million lump sum  
9 payment to be distributed to US Airways pilots after the Effective Date of the POR.

10 110. USAPA projects that the total economic impact of MOU II and the JCBA  
11 after the Effective Date of the POR will be approximately \$1.6 Billion for the US  
12 Airways pilots over the next six years.

13 111. After the Effective Date of the POR and implementation of MOU II, disputes  
14 regarding the interpretation or application of MOU II are subject to the dispute resolution  
15 procedure found in paragraph 20 therein (except for those paragraphs in MOU II that  
16 specifically provide for interest arbitration or another dispute resolution process).

17 112. MOU II further provides that the parties will commence negotiations for a  
18 JCBA and that those negotiations are to be completed no later than 30 days after the  
19 National Mediation Board determines that the combined operation constitutes a “single  
20 carrier” and certifies the bargaining representative for the pilots of the single carrier.  
21 Under the timeline appended to the MOU, this date is estimated to be 11-13 months after  
22 the Effective Date of the POR. If the parties are unable to finalize a negotiated agreement  
23 within the specified time frame, MOU II mandates the use of “final and binding interest  
24 arbitration . . . to resolve once and for all the terms of the JCBA.” The arbitration  
25 decision is to be issued within 60 days of the end of the negotiation period.

26 113. In the meantime, MOU II provides that the seniority integration process will  
27 proceed but that any arbitration hearing cannot begin until the JCBA is final.  
28

1 114. The parties present their characterization of other facts concerning the terms  
2 and negotiation of the MOU in their dispute facts sections.

3 **Ratification of the MOU**

4 115. On January 4, 2013, the BPR voted unanimously to approve MOU II and to  
5 send MOU II out for pilot ratification with a BPR recommendation to approve.

6 116. The parties present their characterization of the benefits of ratifying MOU II  
7 in their disputed fact sections.

8 117. MOU II had the unanimous support of the BPR members that represent all  
9 former US Airways East pilot domiciles (Charlotte, Washington DC, and Philadelphia),  
10 and from the domicile that includes all former America West pilots (Phoenix).

11 118. During the negotiation and ratification periods, USAPA took numerous  
12 actions to inform the pilots regarding the content and effect of MOU II.

13 119. Throughout the negotiation and ratification periods, all NAC updates included  
14 the names, cellular phone numbers, and e-mail addresses for the members of the NAC.

15 120. Pilots were encouraged to contact NAC members with any questions or  
16 concerns regarding MOU II.

17 121. On January 15, 2013, the NAC published an update to all pilots in good  
18 standing regarding MOU II, which included a summary of some of the significant terms  
19 therein, and a schedule of the upcoming roadshow presentations being held at each  
20 domicile.

21 122. The January 15, 2013 NAC Update also contained links to the actual text of  
22 MOU II and the 2012 CBA between American and APA.

23 123. On or about January 16, 2013, USAPA published and mailed an analysis and  
24 explanation of MOU II to all pilots in good standing in a document entitled "Flight Plan  
25 to a Merger: What the Memorandum of Understanding Means to You."

26 124. The NAC scheduled roadshow presentations regarding MOU II as follows:  
27  
28

<b>Base</b>	<b>Dates (Times)</b>	<b>Location</b>
DCA	Thurs, Jan 17th (9-2)	Conference Center, Terminal A, ground floor, next to the lobby of the old terminal
	Thurs, Jan 17th (2-5) Fri, Jan 18th (9-1)	Room 264 in terminal A
CLT	Mon, Jan 21st (4 PM)	USAPA Headquarters
	Tue, Jan 22nd (9-5) Wed, Jan 23rd (9-4)	Auditorium, above the Food Court
PHX	Thurs, Jan 24th (9-5) Fri, Jan 25th (9-1)	International Concourse, Meeting Room next to British Airways Club, above B23
	PHL	Mon, Jan 28th (9-5) Tue, Jan 29th (9-4)

125. Members of the NAC were present at each roadshow.

126. At each roadshow, pilots were told that seniority integration with American would be accomplished by a process consistent with McCaskill-Bond.

127. 75% of valid ballots cast in the referendum balloting voted to ratify MOU II.

128. Of the 1,041 West Pilots who voted, 1,017 voted to approve MOU II, and 24 voted to oppose it (a 97.69% approval rate).

129. Approximately 250 active West Pilots were not eligible to vote on ratification of MOU II because they have not joined USAPA.

130. Another 45 West Pilots were not eligible to vote on ratification of MOU II because they were on furlough.

131. In accordance with the USAPA Constitution, only ballots cast by pilots who were in good standing on the date balloting closed were counted.

132. Prior to the time MOU II ratification balloting closed, the West Pilots knew that USAPA opposed using the Nicolau Award as the basis for integrating the East and West Pilot seniority lists.

133. There is no data in the form of surveys or polls concerning the reasons West Pilots voted as they did in the MOU ratification balloting.

134. The parties present additional characterizations of the MOU ratification process and outcome in their disputed fact sections.

1           **Joint CBA for the American-US Airways Merger**

2           135. MOU II provides, at paragraph 27 thereof, “If and when the NMB makes a  
3 single-carrier finding, . . . the single carrier acknowledged by the NMB and the certified  
4 organization shall promptly engage or re-engage in negotiations to achieve a JCBA to be  
5 applicable to the carrier that will be the product of the Merger.”

6           136. MOU II (including Paragraphs 5 and 27) also does not state or imply that the  
7 relevant parties are precluded from changing the terms of the MTA through negotiation  
8 and voluntary agreement during the JCBA process.

9           137. Under MOU II, the McCaskill-Bond seniority-integration process will start  
10 soon after the merger is consummated. If no agreement is reached through negotiation  
11 within the specified time frame, the McCaskill-Bond arbitration process will commence  
12 but the arbitration hearing will only take place after the JCBA has been finalized through  
13 the negotiation and/or arbitration procedure set forth in MOU II.

14           138. Beginning in March 2013 and continuing to present, USAPA and the APA  
15 have been conducting planning sessions regarding the JCBA in Dallas-Fort Worth,  
16 Texas.

17           139. USAPA’s NAC, along with several other USAPA committees (including, but  
18 not limited to, Scope Monitoring, Training, and Retirement & Insurance Committees),  
19 have been present at several of these planning sessions.

20           140. The Change of Control provisions in the East CBA require, in the event US  
21 Airways enters into a merger or other corporate transaction with American or AMR that  
22 satisfies the requirements of Sections 1(D)(2) and 1(J)(1) of the East CBA, that hourly  
23 pay rates for East Pilots automatically increase to the “Book Rates.”

24           141. The “Book Rates” are the hourly pay rates in effect in the Restructuring  
25 Agreement between US Airways and ALPA as of June 30, 2002.

26           142. These rates are significantly higher than the current pay rates under the East  
27 CBA.

28

1 143. In or around May 2012, USAPA published an update regarding Change of  
2 Control that contained its views regarding the applicable “Book Rates” and relevant  
3 provisions from the East CBA.

4 144. The pay increases that would occur if the Change of Control provisions in the  
5 East CBA were triggered applied only to East Pilots and did not apply to pilots covered  
6 by the West CBA.

7 145. The West CBA did not contain any comparable protections in the event of a  
8 change of control.

9 146. The parties present additional characterizations of the terms of MOU II in  
10 their disputed facts sections.

11 **Seniority Integration with the American Pilots**

12 147. MOU II explicitly provides that a seniority integration process consistent with  
13 the McCaskill-Bond Amendment to the Federal Aviation Act, 49 U.S.C. § 42112, shall  
14 commence “as soon as possible after” the Effective Date.

15 148. The first step under the seniority integration process is for employees affected  
16 by an airline merger to attempt to settle the matter through direct negotiations, and if that  
17 is unsuccessful, the second step is binding arbitration resulting in the issuance of a “final  
18 and binding” decision (see, *e.g.*, MOU II, ¶10.c) that integrates seniority “in a fair and  
19 equitable manner.” *See* 49 U.S.C. § 42112. MOU II implements these provisions by  
20 requiring the pilot representatives to attempt to reach an agreement during the 90-day  
21 period following the Effective Date and, if no agreement is reached, to commence an  
22 arbitration process before a panel of three neutral arbitrators. (MOU II, ¶10.a.)

23 149. The APA is the exclusive representative under the Railway Labor Act for  
24 close to 10,000 pilots of American Airlines.

25 150. The APA has appointed a committee of seven pilots to their Seniority  
26 Integration Committee.

27 151. APA has approximately \$5,000,000 in reserve at present to protect the  
28 seniority of American pilots.

1 152. USAPA represents approximately 5,000 pilots.

2 153. In or about June 2013, USAPA President Gary Hummel appointed two West  
3 Pilots and four East Pilots to serve on the USAPA Merger Committee.

4 154. As a result of these appointments, the Merger Committee is comprised of  
5 representatives from all the major US Airways pilot domiciles and a representative mix  
6 of captains and first officers.

7 155. The Members of the Merger Committee are:

8 A. Chair, Jess Pauley. Jess Pauley is currently an A320 First Officer  
9 based in Philadelphia. He has been a member of the Merger Committee  
10 since 2010 and the Chairman of the Committee since April 2012. First  
11 Officer Pauley was Vice Chairman of the Boston Domicile from July  
12 2008 until it closed in March 2010.

13 B. Kevin Barry. Kevin Barry is an A320 First Officer based in Charlotte.  
14 First Officer Barry previously was a member of the USAir Shuttle  
15 Negotiation Committee from May 1993 through July 1996, was a  
16 member of the USAir Shuttle Merger Committee from 1996 through  
17 1999, and a member of the Joint Negotiating Committee from August  
18 1999 through February 2000, all with respect to the merger of the USAir  
19 Shuttle into US Airways. He was also a member of the USAPA Merger  
20 Committee from May 2008 through August 2008 and more recently has  
21 been supporting the work of the USAPA Merger Committee as a  
22 “Subject Matter Expert.”

23 C. James Calveri. James Calveri is an A320 First Officer based in  
24 Phoenix. First Officer Calveri has been a member of the NAC since  
25 May 2012.

26 D. Robert E. Davison. Bob Davison is an A320 Captain based in  
27 Philadelphia. Captain Davison was a member of the USAPA Merger  
28 Committee from June 2008 through April 2010, Chairman of the  
Committee from April 2010 through April 2011 and more recently has  
been supporting the work of the Committee as a “Subject Matter  
Expert.”

E. Tom Kubik. Tom Kubik is an A330 Captain based in Charlotte.  
Captain Kubik has served as Assistant Chief Pilot, a Senior Check  
Airman and as the Chairman of the USAPA Safety Committee.

F. Ken Stravers. Ken Stravers is an A320 Captain based in Phoenix.  
Captain Stravers was the Chairman of the America West Merger

1 Committee during the seniority integration proceeding that led to the  
2 Nicolau Award.

3 156. Since in or about 2009, dozens of West Pilots have served in various official  
4 capacities on behalf of USAPA and on various USAPA committees, including, but not  
5 limited to the USAPA BPR, the Appeal Board, the Grievance Committee, the Scheduling  
6 Committee, the Negotiating Advisory Committee, the Business Intelligence Committee,  
7 the Retirement and Insurance Committee, the Membership Services Committee, and the  
8 Communications Committee.

9 157. MOU II provides that within thirty days of the Effective Date, a Protocol  
10 Agreement will be agreed upon that will “set forth the process and protocol for  
11 conducting negotiations and arbitration, if applicable, and will include a methodology for  
12 allocating the reimbursement provided for in Paragraph 7.”

13 158. Since at least April 2012, US Airways has maintained that the West Pilots are  
14 entitled to participate in the seniority integration proceeding established by MOU II  
15 through a representative of their own choosing.

16 159. US Airways has stated that if the issue of separate representation for the West  
17 Pilots is not resolved by time of the Effective Date of the merger, then, as part of  
18 negotiating the “Seniority Integration Protocol Agreement” required by paragraph 10.f of  
19 MOU II, it will insist that the West Pilots be given separate representation in the seniority  
20 integration proceeding through a representative of their own choosing.

21 160. USAPA is opposed to allowing any subgroup separate representation in the  
22 seniority integration proceeding that is not the exclusive bargaining agent as recognized  
23 by the National Mediation Board.

24 161. The “reimbursement” referenced in paragraphs 7 and 10(f) of MOU II is in  
25 two separate amounts.

26 162. First, up to \$1.5 million is available from US Airways to reimburse USAPA  
27 for its expenses associated with negotiating and administering MOU II (with the  
28 exception of seniority integration expenses).

1 163. Second, a separate \$4 million is provided by US Airways and American to  
2 reimburse the merger representatives for expenses incurred as part of the seniority  
3 integration process pursuant to paragraph 10 of MOU II.

4 164. The allocation of this \$4 million will be determined by the merger  
5 representatives in the Protocol Agreement.

6 165. The parties present additional facts concerning seniority integration with the  
7 American pilots in their disputed facts sections.

8 **The DOJ Lawsuit**

9 166. In or around May 2013, the United States Trustee filed objections to the  
10 Merger Agreement.

11 167. On August 13, 2013 the United States Department of Justice and the  
12 Attorneys General of six states and the District of Columbia filed an action (“DOJ  
13 Action”) to enjoin the merger in the United States District Court for the District of  
14 District of Columbia, 1:13-cv-01236 (D.D.C.), alleging, *inter alia*, that the merger would  
15 violate antitrust statutes. (Texas has since withdrawn.)

16 168. Trial in the DOJ Action is scheduled to commence on November 25, 2013.

17 **Leonidas, LLC**

18 169. In or around August 2007, a group of West Pilots formed an Arizona limited  
19 liability company named Leonidas, LLC to fund their seniority dispute with USAPA.

20 170. The sole purpose of Leonidas, LLC, pursuant to its Operating Agreement, is  
21 as follows:

22 1.3. *Purpose.* The purpose and business of this Company shall consist  
23 solely of soliciting funds in the form of cash and using said funds to fund  
24 an independent legal campaign in the matter of the seniority integration  
25 of the America West Airlines pilots and US Airways pilots, for the  
26 benefit of the pilots of the former America West Airlines.

27 171. The stated “Objectives” of Leonidas, LLC provide, in part, that:

28 (5) We will not tolerate discrimination against the pilots of America  
West in any form, including the dilution of the Nicolau Award by any  
means, contractual or otherwise.

(6) We will not engage in fruitless debates over matters already settled.

1 172. Attorneys' fees and expenses incurred in connection with the legal  
2 representation of Plaintiffs in *Addington I*, including appeals therein, have been paid only  
3 by Leonidas, LLC.

4 173. Attorneys' fees and expenses incurred by the West Pilots in connection with  
5 the legal representation of Plaintiffs in the US Airways Declaratory Judgment action,  
6 including appeals therein, have been paid only by Leonidas, LLC.

7 174. Attorneys' fees and expenses incurred to date by Plaintiffs in connection with  
8 the legal representation of Plaintiffs in the instant matter have been paid only by  
9 Leonidas, LLC.

### 10 **Section 22.C Grievance**

11 175. In August 2013, numerous Phoenix-based pilots (but not any of the named  
12 Plaintiffs) filed protests under Section 22.C of the West CBA concerning the July 1, 2013  
13 seniority list posted by US Airways, contending that US Airways is required to  
14 implement the Nicolau Award as soon as MOU II becomes effective.

15 176. In August, 2013, in response to the Section 22.C protests filed by the Phoenix-  
16 based pilots, US Airways stated as follows:

17 This will acknowledge receipt of the letter of protest you filed pursuant  
18 to Section 22.C of the America West Pilots' Collective Bargaining  
19 Agreement concerning the July 1, 2013 seniority list posted by the  
20 Company. In that protest, you contend that the Company is obligated to  
21 implement the Nicolau Award as soon as the MTA/MOU becomes  
22 effective. That contention is meritless, and your protest must be denied.  
23 Section 22.C of the America West Pilots' Collective Bargaining  
24 Agreement only applies to disputes regarding a West Pilot's seniority  
25 relative to other West Pilots as set forth on the West Pilots seniority list.  
26 Challenges to the East/West integrated seniority list, which will be  
27 created after there has been a merger and the federally-required  
28 McCaskill-Bond seniority integration process has been completed, are  
beyond the scope of Section 22.C.

Moreover, even if the Section 22.C process applied to disputes regarding  
the future East/West integrated seniority list, your claim that the  
MTA/MOU amounts to a single labor agreement obligating the  
Company to apply the Nicolau Award immediately is contrary to the

1 express provision in the Transition Agreement (Section XII.B) that any  
2 of the Transition Agreement's provisions "[m]ay be modified by written  
agreement of the Association and the Airline Parties collectively."

3 By its terms, the MOU constitutes a written agreement between USAPA  
4 and the Company which modifies the provisions of the Transition  
5 Agreement relating to implementation of an integrated seniority list.  
6 Paragraph 10.h. of the MOU specifies that "US Airways agrees that  
7 neither this Memorandum nor the JCBA shall provide a basis for  
8 changing the seniority list currently in effect at US Airways other than  
9 through the process set forth in this Paragraph 10." The Paragraph 10  
10 process provides for seniority-list integration in accordance with the  
standards and procedures of the federal McCaskill-Bond law, and that  
11 process will not even begin until after the merger has been  
consummated. Modifying the seniority lists immediately, as you have  
12 requested, would violate the MTA/MOU.

### **Communications and Negotiations Between USAPA and West Pilots**

13 177. By letter dated October 12, 2012, USAPA President Gary Hummel wrote to  
14 Captain John Scherff, the Phoenix Domicile Chairman for the USAPA BPR.

15 178. By letter dated October 16, 2012, Captain Scherff responded to President  
16 Hummel.

17 179. By letter dated October 12, 2012, Marty Harper, counsel for plaintiffs, wrote  
18 to Patrick Szymanski, counsel for USAPA, regarding this Court's October 11, 2012  
19 decision in the declaratory judgment action filed by US Airways.

20 180. By letter dated October 15, 2012, Mr. Szymanski responded to Mr. Harper's  
21 October 12, 2012 letter.

22 181. By letter dated October 17, 2012, Mr. Harper replied to Mr. Szymanski's  
23 October 15, 2012 letter.

24 182. In May, 2013, the District Court directed the parties to this action to engage in  
25 settlement discussions.

26 183. On May 20, 2013, the USAPA BPR took the following actions in relation to  
27 effectuating the District Court's directive for the parties to engage in settlement  
28 discussions: agreed to reimburse plaintiffs' representatives for lost flight pay for flights

1 dropped in order to attend the settlement discussions directed by the Court; approved the  
2 formation of a committee to meet with plaintiffs to explore settlement; approved the  
3 selection of members of that committee; gave the committee authority to enter into  
4 settlement discussions subject to final approval of the BPR and membership ratification,  
5 if appropriate; and allocated an emergency budget for the committee.

6 184. The parties will present further characterization of the actions taken in  
7 response to that order in their disputed facts sections.

8 **G. WEST PILOTS' CONTENTIONS OF DISPUTED FACTS**

9 Facts that are asserted by the West Pilots and disputed by USAPA (and,  
10 additionally, are specifically disputed by US Airways where indicated) are as follows:

11 **Merger of America West and US Airways**

12 1. The Nicolau Award is the single seniority list envisioned by the TA. [Disputed  
13 by US Airways]

14 2. In the five years prior to the 2005 merger with America West, the East Pilots  
15 received several publications written by their merger committee that explained ALPA  
16 Merger Policy.

17 **Nicolau Award**

18 3. The treatment of furlougees in the Nicolau Award is consistent with such  
19 treatment in the 1972 Allegheny-Mohawk merger seniority arbitration, which placed all  
20 pilots on furlough at the time of that merger below all active pilots.

21 4. Although in 2007 the Air Line Pilots Association East MEC stated that East  
22 Pilots would never vote to ratify a collective bargaining agreement ("CBA") that allowed  
23 implementation of the Nicolau Award, it never did a secret ballot or survey to determine  
24 that issue.

25 5. Likewise, USAPA has never polled the East Pilots to determine how they  
26 would vote if the only way they could get a new CBA was to agree to implement the  
27 Nicolau Award.

28

1           6. Initially, the TA seniority integration procedures were “seniority neutral”  
2 because they did not give either side control over the outcome of seniority integration.  
3 [US Airways disputes this proposed fact because it believes the reference to “seniority  
4 neutral” is argument and not a statement of fact.]

5           7. However, once the Nicolau arbitration was completed, the 2005 Transition  
6 Agreement seniority procedures were no longer “seniority neutral” because they required  
7 implementation of the Nicolau Award absent legitimate amendment of the TA pursuant  
8 to the provisions thereof. [US Airways disputes this proposed fact because it believes the  
9 reference to “seniority neutral” is argument and not a statement of fact.]

10           **Formation and Election of USAPA**

11           8. The committee formed by Mr. Bradford and other East Pilots wanted to create  
12 a new union to be a single-airline union that the East Pilots, as the majority, could control  
13 so as to prevent implementation of the Nicolau Award both in the 2005 Merger and in  
14 any future or “next” merger with another airline.

15           9. This committee sought legal advice on forming a new union and recounted the  
16 legal advice they received in non-confidential forums such as internet postings.

17           10. On June 9, 2007, this committee was advised by a lawyer to take care with  
18 “the language you use in setting up your new union” and not to “give the other side a  
19 large body of evidence that the sole reason for the new union is to abrogate an arbitration,  
20 the Nicolau award, that in the opinions of most judges, should be allowed to stand due to  
21 no gross negligence or fraud.”

22           11. On June 14, 2007, this group met with another law firm to inquire whether  
23 “formation of a new bargaining agent” could prevent implementation of the Nicolau  
24 Award.

25           12. From its start until today, USAPA has been committed to integrating seniority  
26 according to a date-of-hire approach that is inconsistent with the Nicolau Award.

27           13. During the election contest between ALPA and USAPA, USAPA committed  
28 itself to prevent implementation of the Nicolau Award.

1 14. Mr. Bradford regards this commitment to be USAPA's "centerpiece."

2 15. In a letter to East Pilots, addressed to "Fellow US Airways Pilots" and dated  
3 February 2, 2008, Mr. Bradford (by then the President of USAPA) wrote, "the question  
4 of East West will be decided by a vote for ALPA or USAPA. If USAPA becomes the  
5 bargaining agent, there is no West and a simple majority can re-negotiate the Nicolau  
6 award."

7 **Subsequent Events at US Airways**

8 16. In making separate 10-K filings for America West and US Airways for the 18-  
9 month period from January 1, 2006, through June 30, 2007, the US Airways holding  
10 company assigned all the costs of the merger to America West. [Disputed by US  
11 Airways]

12 17. The current status of pilot seniority at US Airways (*i.e.*, without regard to  
13 MOU II) is separate operations using the East and West seniority lists and a contractual  
14 commitment to use the Nicolau Award seniority list when such operations are integrated  
15 within 12 months of negotiating a Single Agreement. [Disputed by US Airways]

16 18. Just as West Pilots are presently flying routes that were flown by East Pilots  
17 before the 2005 Merger, East Pilots are flying routes that were flown by West Pilots  
18 before the 2005 Merger.

19 19. The forgoing results because a block of flights flown by an East Pilot crew can  
20 originate from an East Pilot domicile, fly to destinations in the west part of the country,  
21 and return to the East Pilot domicile; likewise, a block of flights flown by a West Pilot  
22 crew can originate from the Phoenix Pilot domicile, fly to a destination on the East coast  
23 and return to Phoenix.

24 20. At present, the number of active pilots is 2628 East and 1395 West, compared  
25 to 2872 East and 1748 West on May 25, 2005, the day of the US Airways/America West  
26 merger announcement. Hence, there has been a decrease in the number of active pilots  
27 on both sides.  
28

1           **USAPA's Position on Seniority**

2           21. The seniority order on the seniority list proposed by USAPA in September  
3 2008 is strictly by the dates of hire assigned to the pilots on their separate seniority lists.

4           22. For West Pilots, these dates represent the dates they were hired by America  
5 West.

6           23. For East Pilots, in some cases these dates represent dates that pilots were hired  
7 by US Airways or one of its predecessors in a prior merger; in other cases, these dates  
8 represent later, artificial dates of hire that were assigned to pilots in the course of a prior  
9 merger.

10          24. The seniority list proposed by USAPA in September 2008 places a majority of  
11 West Pilots at or close to the bottom of the list (lower seniority).

12          25. If implemented as proposed by USAPA, this list would put a majority of West  
13 Pilots in line for furloughs ahead of the East Pilots who were on furlough at the time of  
14 the 2005 Merger.

15          26. The furlough protections in MOU II would not apply in the event of a force  
16 majeure event as described in Paragraph 21 of MOU II.

17          27. Although the seniority list proposed by USAPA in September 2008 would  
18 allow West Pilots to bid into East positions, the very low seniority provided to West  
19 Pilots would make that all but impossible for a substantial majority of West Pilots.

20          28. In effect, the list proposed by USAPA would functionally perpetuate the  
21 separate pilot operations of US Airways, something that was not contemplated in the TA.  
22 [US Airways disputes this fact because it believes it is argumentation and not a statement  
23 of fact.]

24          29. USAPA's Constitution does not permit implementation of the Nicolau Award.

25          30. The USAPA BPR rejected efforts in 2012 to amend USAPA's Constitution to  
26 remove the date-of-hire provision.

27          31. USAPA has never offered or conducted a neutral binding process to resolve  
28 the East/West seniority-integration dispute.

1           **The Declaratory Judgment Action**

2           32. In the 2010 declaratory judgment action filed by US Airways, the District  
3 Court ruled that “decertification of ALPA and the certification of USAPA did not change  
4 the binding nature of the Transition Agreement,” and that “the Transition Agreement can  
5 be modified at any time ‘by written agreement of [USAPA] and the [US Airways].’”

6           33. In the 2010 declaratory judgment action, the District Court stated: “Discarding  
7 the Nicolau Award places USAPA on dangerous ground.”

8           34. In the 2010 declaratory judgment action, the District Court stated: “[T]he best  
9 ‘declaratory judgment’ the Court can offer is that USAPA’s seniority proposal does not  
10 automatically breach its duty of fair representation.”

11           35. In the 2010 declaratory judgment action, the District Court stated: “When the  
12 collective bargaining agreement is finalized, individuals will be able to determine  
13 whether USAPA’s abandonment of the Nicolau Award was permissible, *i.e.*, supported  
14 by a legitimate union purpose.”

15           36. In the 2010 declaratory judgment action, the District Court ruled that  
16 USAPA’s date-of-hire “seniority proposal does not breach its duty of fair representation  
17 provided it is supported by a legitimate union purpose.”

18           37. USAPA’s leaders and attorneys have consistently stated and maintain to this  
19 date that the foregoing decision by the District Court (made in October 2012) established  
20 that USAPA is free to disregard any and all commitments and obligations to implement  
21 the Nicolau Award.

22           **Single Agreement Negotiations**

23           38. US Airways has consistently indicated that the Kirby Proposal has remained  
24 open to acceptance by USAPA.

25           39. The Kirby Proposal, if it had been accepted by ALPA, would have been the  
26 “Single Agreement” envisioned by the TA.

27  
28

1           **MOU Negotiations**

2           40. Paragraph 9 of MOU I stated that seniority between US Airways and  
3 American pilots would be integrated according to the McCaskill-Bond Amendment to the  
4 Federal Aviation Act, 49 U.S.C. § 42112, note, § 117(a).

5           41. MOU I stated in Paragraph 9 that “pilot representatives”—not the “unions” or  
6 the “parties” to MOU I—would participate in the McCaskill-Bond process of integrating  
7 pilot seniority.

8           42. MOU I did not have any version of the Paragraph 10(h) language in MOU II  
9 and did not otherwise address East/West seniority integration.

10          43. The BPR did not identify any seniority deficiencies in MOU I.

11          44. MOU II has the Paragraph 10(h) language.

12          45. USAPA did not receive any benefit or concession for its pilots from US  
13 Airways in exchange for US Airways’ agreement to Paragraph 10(h).

14          46. Only USAPA’s merger counsel Pat Szymanski (who had not agreed to submit  
15 to a deposition prior to the discovery cut-off date) knows why USAPA proposed to insert  
16 Paragraph 10(h) into MOU II less than a day after proposing the Single Agreement  
17 language to US Airways.

18          47. Only USAPA’s merger counsel Pat Szymanski (who had not agreed to submit  
19 to a deposition prior to the discovery cut-off date) knows why USAPA proposed inserting  
20 the “Single Agreement” language into MOU II.

21          48. USAPA officers and committee chairmen expect that Paragraph 10(h) will  
22 ensure that, in the process of integrating seniority with the American pilots, East/West  
23 seniority will be ordered by date-of-hire and not according to the Nicolau Award.

24          49. The East Pilot majority within USAPA will control USAPA’s involvement in  
25 the Paragraph 10(h) seniority integration procedures.

26          50. The East Pilot majority that controls USAPA reads Paragraph 10(h) as  
27 providing a “clean slate” to determine East/West seniority integration, as if the Nicolau  
28 arbitration never occurred.

1           51. USAPA reads Paragraph 10(h) as allowing it to use the East Pilot majority  
2 position on the USAPA Merger Committee and BPR to deny the West Pilots the  
3 opportunity to: (a) object to a negotiated seniority integration that does not use the  
4 Nicolau Award; and (b) then present their position on the Nicolau Award to the  
5 McCaskill-Bond arbitration panel.

6           52. All of USAPA's officers and committee chairmen oppose any independent  
7 West Pilot participation in the MOU II seniority integration procedures.

8           53. None of USAPA's officers and committee chairmen expect that USAPA will  
9 voluntarily use the Nicolau Award to order US Airways pilot seniority in the MOU II  
10 seniority integration procedures.

11           54. A majority of the members of the USAPA BPR oppose any independent West  
12 Pilot participation in the MOU seniority integration procedures.

13           55. None of the members of the USAPA BPR expect that USAPA will voluntarily  
14 use the Nicolau Award to order US Airways pilot seniority in the MOU II seniority  
15 integration procedures.

16           56. MOU II, through its incorporation of the 2012 CBA between the APA and  
17 American addresses the following terms and conditions of pilot employment, among  
18 others: Recognition and Scope; Pay; Minimum Guarantees; Pay and Credit Pilot  
19 Relieved of Flying Duties; Training and Miscellaneous Flying; Expenses Away from  
20 Base; Moving Expenses; Vacations; Sick Leave; Leaves of Absence; Supervisory Pilots,  
21 Check Airmen & Flight Test; Seniority; Probation Period; Hours of Service and Work  
22 Rules; Certificates and Ratings; Filling Vacancies, Displacements, Reinstatements,  
23 Furloughs, and Recalls; Home Bases; Physical Examinations; Discipline, Grievances,  
24 Hearings, and Appeals; Pre-Arbitration Conference; System Board of Adjustment;  
25 Agency Shop and Dues Checkoff; Amendments to Agreement, Effect on Prior  
26 Agreements, and Duration; Industry Comparable Pay Rates; Pilot Retirement Benefit  
27 Plans; Commuter Policy; Civil Reserve Air Fleet (CRAF); Brake Release; Retiree  
28 Medical Coverage; Drug and Alcohol Testing; CPA Pay-out Provisions; Temporary

1 Check Airman; International Crew Bases; Crew Rest Seats; Eagle Flow-Thru; Profit  
2 Sharing Plan; and Reserve Rest.

3 57. USAPA has estimated that the wages and other benefits provided by MOU II  
4 are approximately equal in value to what would have been provided to US Airways pilots  
5 in 2014 if the Kirby Proposal had been accepted and put into effect in 2007.

6 58. USAPA has estimated that the wages and other benefits provided to East  
7 Pilots by MOU II are approximately equal in value to what the East Pilots would have  
8 attained if MOU II had not been ratified, there was a merger that potentially triggered the  
9 Change of Control provision in the East CBA, and USAPA successfully enforced the  
10 Change of Control provision in the East CBA.

11 **Ratification of the MOU**

12 59. If USAPA had not agreed to or its membership had not ratified MOU II and a  
13 merger with American were to go forward, the US Airways pilots would still have  
14 received about \$1.3 billion of the \$1.6 billion provided by MOU II if and when they  
15 began to work under the terms of the APA CBA.

16 60. On February 7, 2013, USAPA's Merger Committee stated in a written  
17 message to USAPA members as follows:

18 West pilots should not vote in favor of the MOU because they believe it  
19 will revive the Nicolau Award, and the East pilots should not vote  
20 against it because they are concerned it will cause the Nicolau Award to  
21 be implemented. Merger Counsel reminds us that no agreement can  
22 prevent any person from filing a lawsuit or grievance, but these and other  
provisions of the MOU clearly negate any claim that ratifying the MOU  
would provide a basis for implementing the Nicolau Award.

23 61. USAPA conducted the MOU II ratification vote in the same manner that it has  
24 conducted the election of national officers. USAPA has not reported results of national  
25 officer elections by domicile.

26 62. In the past, USAPA reported votes by domicile in only one of several  
27 referendum votes.

28

1 63. Neither the Chairman of the USAPA Ballot Certification Committee, the  
2 USAPA Secretary-Treasurer, nor any other USAPA officer or committee chairman  
3 knows who decided to report the results of the MOU II ratification vote by domicile or  
4 why they decided to do so.

5 64. USAPA officers and committee chairmen deny that they understood, prior to  
6 completion of the MOU II ratification vote, that USAPA would attempt to use the results  
7 of the ratification vote to resolve the East/West seniority dispute.

8 65. The USAPA Merger Committee did not advise West Pilots who supported the  
9 Nicolau Award how to vote on MOU II to protect that interest.

10 **Joint CBA for the American-US Airways Merger**

11 66. If the parties cannot reach agreement on a JCBA, or the pilots do not ratify a  
12 negotiated JCBA, the MOU provides that the terms of the JCBA will be imposed through  
13 “final and binding” arbitration and that the arbitrator’s award must be “consistent with  
14 the terms of the MTA” and “specifically shall adhere to the economic terms of the MTA  
15 and shall not change the MTA’s Scope terms (Paragraph 25 of [MOU II]) or the  
16 modifications generated through the process set forth in Paragraph 24 of [MOU II].  
17 Accordingly, the material terms and conditions of employment for both the East and  
18 West pilots following the merger are now known and fixed by the MOU.

19 67. The MOU sets new compensation levels, new working conditions, new  
20 benefits and everything that a collective bargaining agreement provides.

21 **Seniority Integration with the American Airlines Pilots**

22 68. On February 21, 2013, the President of USAPA, Gary Hummel, stated in a  
23 written message to the USAPA membership as follows:

24 Our union, our lawyers and our merger counsel have been advised that  
25 USAPA will begin the seniority integration process with APA by  
26 pursuing what Article I, Section 8 D of our Constitution requires, “To  
27 maintain uniform principles of seniority based on date of hire and the  
28 perpetuation thereof, with reasonable conditions and restrictions to  
preserve each pilot’s un-merged career expectations.”

This merger provides substantial and life changing benefits to all  
USAPA pilots, including those based in Phoenix. USAPA will

1 aggressively oppose any efforts to slow down or stop the merger process  
2 and will be equally vigilant in adhering to our constitutionally mandated  
3 principles that reject the Nicolau Award in its entirety.

4 **Communications and Negotiations Between USAPA and West Pilots**

5 69. Whenever USAPA has approached West Pilots seeking a compromise to the  
6 East/West seniority dispute, it always did so under the condition that such compromise  
7 agreement must: (1) comply with the USAPA Constitution date-of-hire commitment; (2)  
8 be approved by the USAPA BPR (which has a substantial majority of East Pilots  
9 representatives, all of whom are committed to not implement the Nicolau Award); and (3)  
10 pass rank-and-file ratification.

11 70. Likewise, any so-called compromise reached within the USAPA Merger  
12 Committee must: (1) be approved by that committee (which has 2/3 East Pilot members,  
13 all of whom are committed to not implement the Nicolau Award); (2) be approved by the  
14 BPR; (3) comply with the union Constitution; and (4) pass rank-and-file ratification.

15 **H. USAPA'S CONTENTIONS OF DISPUTED FACTS**

16 Facts that are asserted by USAPA and disputed by the West Pilots and/or by  
17 US Airways are as follows:

18 1. At the time of the merger between America West and US Airways in 2005,  
19 America West was about to file for bankruptcy.

20 2. In 2008, US Airways announced a restructuring of its flight operations  
21 including the closure of the Las Vegas Domicile, citing low yield and high fuel prices.

22 3. The separate 10-K filings for America West and US Airways for the 18-  
23 month period from January 1, 2006, through June 30, 2007 show a net operating loss of  
24 \$13 million for America West.

25 4. The separate 10-K filings for America West and US Airways for the 18-  
26 month period from January 1, 2006, through June 30, 2007 show a net income of \$556  
27 million for US Airways.

28 5. US Airways is the result of a series of mergers and acquisitions.

1           6.     In 1968, Lake Central merged into Allegheny. The two pilot groups,  
2 including furloughed pilots, were merged by date of hire with conditions and restrictions.

3           7.     In 1972, Mohawk merged into Allegheny. The two pilot groups were  
4 merged by date of hire with conditions and restrictions, however, a number of Mohawk  
5 pilots who were on furlough at the time of the merger had their integrated positions  
6 reduced to their length of service (DOH less time on furlough). Some of the furloughed  
7 pilots were placed above active pilots due to post integration arbitration and their greater  
8 credited length of service.

9           8.     In 1986 Empire merged into Piedmont. 156 Empire pilots were end-tailed  
10 (added) below the 1683 Piedmont pilots active at the time of the merger, with some  
11 conditions and restrictions in regard to equipment and furlough recall. USAir was not  
12 affiliated with either carrier at the time of this merger.

13           9.     In 1988 Pacific Southwest Airlines (PSA) merged into USAir. The two pilot  
14 groups were merged by date of hire with conditions and restrictions.

15           10.    In 1988, Piedmont merged into USAir. The two pilot groups were merged by  
16 date of hire with conditions and restrictions.

17           11.    In 1997, the Trump Shuttle was merged into USAir. The pilots were merged  
18 into a single list as the result of a seniority integration proceeding. The integrated list  
19 consisted of seven segments that each blended the relevant groups of pilots in a slightly  
20 different ratio of USAir to Shuttle pilots. The integrated list also included certain  
21 conditions and restrictions. Neither party to the integration advocated for date of hire as  
22 their final position before the arbitrator.

23           12.    Fewer than 200 former Empire and Trump Shuttle pilots are still on the East  
24 seniority list.

25           13.    The USAPA seniority proposal made to US Airways in September 2008  
26 placed West Pilots on a merged seniority list according to their original dates of hire with  
27 America West and included extensive conditions and restrictions that prevented East  
28

1 pilots from displacing West Pilots from their customary West assignments while allowing  
2 them to bid their DOH seniority system-wide.

3 14. The 2008 USAPA seniority proposal allowed West pilots to bid into East  
4 flying, including wide-body aircraft and international routes, as vacancies were created as  
5 the result of growth, retirements, and other normal attrition among East pilots.

6 15. At the time it was made in September 2008, USAPA's seniority proposal, if  
7 immediately implemented, would have made 63 senior West pilots eligible to bid and  
8 hold wide body Captain positions.

9 16. At the current time, approximately 89 active West pilots would be eligible to  
10 bid and hold wide body Captain positions if USAPA's seniority proposal were in effect.

11 17. Twenty-four percent of block hours currently flown by West pilots consist of  
12 routes flown by East pilots before the merger.

13 18. This means that work equivalent to approximately 180 East Captain positions  
14 and 175 First Officer positions (or a total of 355 East pilot positions) is currently being  
15 performed by West pilots.

16 19. It also means that if the East and West operations were operated separately,  
17 without any ability to share routes, the number of positions available to West pilots  
18 would be substantially fewer, resulting in furloughs in the West and additional new hires  
19 in the East.

20 20. As of the second quarter of 2011, there were 3,394 pilots on the East  
21 seniority list and 1,658 on the West seniority list.

22 21. On or about April 18, 2012, USAPA learned of US Airways' intention to  
23 pursue a merger with American Airlines, Inc. ("American").

24 22. This announcement included the fact that US Airways had negotiated various  
25 conditional labor agreements with the unions representing employees at American  
26 Airlines including the Allied Pilots Association ("APA"), which represents the pilots  
27 employed by American Airlines.  
28

1           23. Negotiations leading to the MOU began in December 2012 and continued  
2 over the holidays and through the beginning of 2013.

3           24. At each roadshow, the pilots were told that the MOU was neutral with  
4 respect to seniority and, in particular, that voting for the MOU would not result in  
5 implementing the Nicolau Award.

6           25. MOU II does not make any changes to the current two-list seniority regime at  
7 US Airways, one for the former America West pilots and one for the former US Airways  
8 pilots.

9           26. To ensure that discussions on the economic issues of a future agreement  
10 could occur without being hindered by an ongoing seniority dispute, MOU II does not  
11 make any changes to the existing two-list seniority system.

12           27. The purpose of paragraph 10.h of MOU II was to ensure that MOU II was  
13 neutral with respect to seniority and that MOU II did not reorder the existing seniority  
14 lists except through the process provided in the rest of paragraph 10.

15           28. The MOU provides that in the event a Plan of Reorganization (“POR”)  
16 (including a merger) is approved by the bankruptcy court, upon the Effective Date of the  
17 POR, neither the MOU nor the future Joint Collective Bargaining Agreement (“JCBA”)  
18 would provide any basis for changing the existing two-list seniority system at US  
19 Airways except through the agreed upon process that is consistent with the McCaskill-  
20 Bond amendments.

21           29. Prior to the time the ratification ballots went out on MOU II, the Plaintiffs,  
22 Leonidas and the West Pilots knew that the MOU did not provide for the Nicolau Award  
23 to be used in the seniority integration process.

24           30. Prior to the time the ratification ballots went out on MOU II, the Plaintiffs,  
25 Leonidas and the West Pilots knew that the MOU was neutral with respect to seniority,  
26 that is, it did not provide for any seniority integration procedure to be adopted or used in  
27 the seniority integration process.  
28

1           31. Prior to the time the ratification ballots went out on MOU II, the Plaintiffs,  
2 and Leonidas carefully considered whether they should take action, including seeking an  
3 injunction, to stop the ratification process and prevent the MOU from being approved by  
4 the USAPA membership entitled to vote.

5           32. The West members of the NAC, including Ken Holmes, signed all of the  
6 materials presented concerning the MOU, approved the statements in those materials  
7 concerning the economic advantages of the MOU and approved the statement that the  
8 MOU was neutral with respect to seniority.

9           33. Section XII.B of the TA states that the TA “[m]ay be modified by written  
10 agreement of the Association and the Airline Parties collectively.

11           34. The MOU in fact is a modification of the TA.

12           35. The “Single Agreement” referred to in the Transition Agreement is explicitly  
13 described as “a single collective bargaining agreement applicable to the merged  
14 operations of America West and US Airways” that would be negotiated between “The  
15 Association and the Airline Parties.”

16           36. MOU II is not the Single Agreement referred to in the Transition Agreement.

17           37. With the exception of those terms and conditions found in paragraphs 3 and  
18 25 of the MOU, every term and condition of employment for the US Airways pilots will  
19 need to be negotiated and/or implemented by the relevant parties before a final JCBA can  
20 be entered into.

21           38. In particular, in order to finalize the JCBA, the parties must consolidate three  
22 different currently existing CBAs—the 2004 America West CBA, the 1998 US Airways  
23 CBA and the 2012 APA CBA.

24           39. Although the CBAs referred to in the preceding paragraph contain many  
25 sections that address the same areas (such as Scope, Scheduling, Vacations,  
26 Deadheading, Grievances, Insurance and so forth), the particular provisions and practices  
27 regarding each are generally different and the parties must agree what terms will apply to  
28

1 the consolidated pilots group and how the transition will be made from the three existing  
2 agreement to the JCBA.

3 40. USAPA's agreement to waive change of control provisions contained in the  
4 East CBA was a substantial inducement that led to the MOU.

5 41. In negotiations leading to the MOU and in the MOU itself, USAPA agreed to  
6 waive the Change of Control provisions in the East CBA (which applied only to East  
7 pilots) in exchange for the economic terms in the MOU (which equally applied to all US  
8 Airways pilots, both East and West).

9 42. USAPA's decision to waive the Change of Control provisions was made after  
10 deliberation and analysis of relevant information and projections of the effects of each  
11 scenario over an 18-24 month period.

12 43. The JCBA negotiation process is not a simple formality whereupon the  
13 parties will merely memorialize the terms of MOU II and the Merger Transition  
14 Agreement ("MTA") into an integrated collective bargaining agreement.

15 44. If USAPA did not agree to waive the Change of Control provisions in the  
16 East CBA, the announced merger with American would trigger those provisions and  
17 result in substantial pay increases for the pilots flying under the East CBA, but not for  
18 any pilots covered under the West CBA.

19 45. The pay increases negotiated into MOU II are substantial, but less than the  
20 increases the pilots flying under the East CBA would have been entitled to in the event of  
21 a triggering of the Change of Control provisions.

22 46. Civil Aeronautics Board and other decisions show that several separate  
23 groups of employees have submitted requests to arbitrators and panels of arbitrators  
24 requesting separate participation in seniority integration proceedings.

25 47. No subgroup of an exclusive bargaining agent as recognized by the National  
26 Mediation Board has ever been awarded party status in a seniority integration proceeding  
27 without the consent of the bargaining agent.

28

1 48. MOU II provides for expedited arbitration if the parties are unable to agree  
2 upon a “Seniority Integration Protocol Agreement” within 30 days of the Effective Date.

3 49. The Plaintiffs, Leonidas and the representatives of the West Pilot Class have  
4 consistently stated and maintain to date, that they will not voluntarily agree to anything  
5 other than a unmodified Nicolau Award.

6 50. APA pilots recently voted to increase contributions to their “Seniority  
7 Defense Fund.”

8 **I. ISSUES OF LAW IN CONTROVERSY**

9 **West Pilots**

10 CLAIM ONE

11 1. A union breaches its DFR if, without an objectively legitimate purpose, it  
12 resolves a seniority dispute without either the consent of those affected or the use of a  
13 neutral process such as binding arbitration.

14 2. A union has an objectively legitimate union purpose to include a provision in  
15 a CBA only if it can reasonably be anticipated that doing so can result in a net benefit for  
16 the workers represented by the union.

17 3. The fact that other CBA provisions provide a net benefit for workers  
18 represented by a union is not an objectively legitimate reason for a union to include other  
19 provisions that merely shift benefits from some represented workers to others.

20 4. No matter how firmly made, the demand of a union majority for a contract  
21 provision that is unfavorable to the union minority cannot be an objectively legitimate  
22 reason for the union to put such provision in the contract.

23 5. The fact that a union’s constitution requires it to breach its DFR does not  
24 provide an objectively legitimate reason for doing so.

25 6. The TA seniority integration procedures, unless legitimately amended or  
26 abrogated, require that US Airways implement the Nicolau Award list in good faith.

27  
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1           7. The TA seniority integration procedures, unless legitimately amended or  
2 abrogated, require that US Airways implement integrated pilot operations using the  
3 Nicolau Award within 12 months of “negotiation” of the MOU.

4           8. Paragraph 10(h) in the MOU purports to establish seniority integration  
5 procedures that amend or abrogate the TA seniority integration provisions.

6           9. Unless USAPA had an objectively legitimate union purpose for either  
7 proposing or permitting Paragraph 10(h), that provision must be construed so as to not  
8 amend or abrogate the TA seniority integration provisions.

9           10. USAPA is precluded from offering evidence of its actual subjective reasons  
10 for either proposing or permitting Paragraph 10(h) because the person with the best  
11 knowledge of those reasons, Mr. Szymanski, refused to be deposed on that subject.

12           CLAIM FOUR

13           1. The appropriate remedy for a breach of a union’s duty of fair representation  
14 may vary with the circumstances of the particular breach.

15           2. The Court can take affirmative action to remedy a union’s DFR breach to the  
16 extent needed to make the wronged employees whole.

17           3. The policy concerns that underlie McCaskill-Bond and the Railway Labor Act  
18 would be offended if employees who are materially affected by an airline merger did not  
19 have unconflicted representation in all stages of the McCaskill-Bond seniority integration  
20 process.

21           4. Because USAPA is loyal to East Pilot majority seniority interests, it has a  
22 conflict of interest with the West Pilots and, consequently, cannot provide them  
23 unconflicted representation in any stage of the McCaskill-Bond process.

24           **USAPA**

25           The case is not ripe. *Addington v. USAPA*, 606 F.3d 1174 (2010) (“*Addington I*”).

26           There is no case or controversy because an existing injury-in-fact is required, which  
27 cannot be satisfied based upon future speculative contingent events. *Clapper v. Amnesty*  
28 *Int’l USA*, 133 S.Ct. 1138, 1147 (2013); *Addington I*, 606 F.3d at 1180-81. The outcome

1 of the DOJ Antitrust action to enjoin the merger is a future speculative and contingent  
2 event.

3 This is a minor dispute as to which the Court lacks jurisdiction. The essence of  
4 plaintiffs' DFR claim is that the MOU is a collective bargaining agreement necessitating  
5 implementation of the Nicolau Award, which is a "minor dispute." It is well established  
6 that under the RLA disputes growing out of the interpretation or application of  
7 agreements concerning rates of pay, rules, or working conditions are subject to  
8 mandatory arbitration before the System Board of Adjustment. 45 U.S.C. §§ 184;  
9 *Consol. Rail. Corp. v. Ry. Labor Executives' Ass'n*, 491 U.S. 299, 303, 109 S.Ct. 2477,  
10 2480 (1989) ("*Conrail*"); *International Ass'n of Machinists and Aerospace Workers*,  
11 *AFL-CIO v. Aloha Airlines*, 776 F.2d 812, 815 (9th Cir. 1985). As such, the Court lacks  
12 subject matter jurisdiction.

13 The plaintiffs cannot sustain their burden of proving that USAPA acted in a manner  
14 that was arbitrary, discriminatory or in bad faith by entering into the MOU that does not  
15 include the Nicolau Award. The Court cannot disregard USAPA's status as the exclusive  
16 bargaining representative of US Airways pilots and allow the Plaintiffs to be represented  
17 in their own right with counsel of their own choosing. Federal courts lack the authority  
18 to resolve the question of who will represent employees under the RLA since Congress  
19 vested that exclusive authority in the NMB. "The National Mediation Board ("NMB")  
20 has exclusive jurisdiction to determine union representation disputes under the RLA; an  
21 NMB representation determination is essentially unreviewable in federal court."  
22 *McNamara-Blad v. APFA*, 275 F.3d at 1170, (citing *Switchmen's Union v. NMB*, 320  
23 U.S. 297, 303-07, 64 S. Ct. 95 (1943); see also *America West Airlines v. National*  
24 *Mediation Board*, 119 F.3d 772, 775 (9<sup>th</sup> Cir 1997).

25 Plaintiffs cannot prevail on their claim for attorneys' fees in that Plaintiffs were not  
26 "prevailing" parties in either *Addington I* or the Declaratory Judgment Action. See *Park*,  
27 *ex rel. Park v. Anaheim Union High School Dist.*, 464 F.3d 1025, 1034 (9th Cir. 2006)  
28 ("For the purposes of attorney's fees awards, a prevailing party is defined as 'a party

1 which ‘succeed[s] on any significant issue in litigation which achieves some of the  
2 benefit the parties sought in bringing the suit.’”) (internal citations omitted) (emphasis  
3 included); *Kollsman v. Cohen*, 996 F.2d 702, 706 (4th Cir. 1993) (“A dismissal of an  
4 action, whether on the merits or not, generally means the defendant is the prevailing  
5 party.”). As the losing party to both cases, plaintiffs achieved no benefit to the West  
6 Pilots whose interests they represented. Moreover, all attorneys’ fees in *Addington I*, the  
7 Declaratory Judgment Action, and this action to date, have been paid by a third party,  
8 Leonidas. Leonidas is not a party to this action and has no legal right to seek an award of  
9 fees against defendant.

### 10 **US Airways**

11 This case is ripe. (July 19 Order, Doc. No. 122).

12 The designation of a separate subgroup consisting of all West pilots (the class of  
13 Plaintiffs certified in this action) for purposes of the McCaskill-Bond process cannot  
14 undermine or interfere with USAPA’s current status under the RLA because, in this  
15 merger, the McCaskill-Bond process will not involve negotiations or arbitration between  
16 US Airways and USAPA regarding formulation of the integrated seniority list or any  
17 other terms and conditions of employment. Rather, in this merger, US Airways role is  
18 limited as reflected in Paragraph 10(d) of the MOU: “During the McCaskill-Bond  
19 process, including any arbitration proceeding, US Airways, American or New American  
20 Airlines, or their successors (if any), shall remain neutral regarding the order in which  
21 pilots are placed on the integrated seniority list.” USAPA’s status as exclusive collective  
22 bargaining representative under the RLA will therefore be unaffected by the West Pilots’  
23 separate representation in the McCaskill-Bond seniority-integration process.

24 Fairness and equity in merger-related seniority integration is now defined by federal  
25 statute, and it is well within the jurisdiction of this Court to determine whether that  
26 requirement can be met in a seniority integration process that excludes separate West  
27 Pilot representatives. Given that USAPA is constitutionally committed to date-of-hire  
28 seniority and to oppose the Nicolau Award, a position which the West Pilots believe is

1 diametrically opposed to their interests, separate representation for the West Pilots is  
2 essential to a “fair and equitable” seniority integration process. Absent such  
3 representation, one employee group could “dictate the seniority rights of [the other  
4 group].” *Braniff-Mid Continent Merger Case*, 17 C.A.B. 19, 21 (1953).

5 **J. SEPARATE TRIAL OF ISSUES**

6 **West Pilots**

7 The claim for an award of reasonable fees and other litigation expenses pursuant to  
8 common benefit doctrine should be tried separately after entering final judgment on the  
9 other claims if the West Pilots prevail on either Claim One or Claim Four.

10 **USAPA**

11 Defendant USAPA does not believe that separate trial of any issue in this case is  
12 either advisable or appropriate.

13 **US Airways**

14 US Airways takes no position on Plaintiffs’ entitlement to fees and expenses and on  
15 whether a separate trial on that issue is appropriate except that it supports any procedure  
16 that will facilitate the completion of the trial on the merits of Claim One and Claim Four  
17 by October 23, 2013.

18 **K. WITNESSES**

19 **West Pilots**

20 The West Pilots shall call the following witnesses:

- 21 1. BRIAN STOCKDELL

22 Mr. Stockdell is a West Pilot. He made graphics that illustrate the East/West  
23 distribution of seniority by date-of-hire and by the Nicolau Award, as it was in 2007 and  
24 as it is today, and how seniority position impacts a pilot’s ability to have a more  
25 desirable, higher paying position. He will testify to such matters.

- 26 2. A.C. IRANPOUR

27 Mr. Iranpour is a West Pilot. He was an East Pilot prior to the 2005 Merger.  
28 Relying on the commitment to implement the Nicolau Award, he elected to use his West

1 Pilot seniority position when he had to elect between that and his East Pilot Position. He  
2 was furloughed as a West Pilot in 2008 and was recalled in 2010. He will testify as to  
3 those events and as to the personal sacrifices that he and other West Pilots have made to  
4 defend the Nicolau Award and their right to fair representation.

5 3. JEFF KOONTZ

6 Mr. Koontz is a West Pilot. He has been an active member of the USAPA  
7 Grievance Committee and a frequent attendee of BPR meetings, both as an observer and  
8 as a designated representative. In that capacity he has direct knowledge as to how  
9 USAPA treats West Pilots in contexts related to and not directly related to the East/West  
10 seniority dispute. He will testify to such matters.

11 4. KEN HOLMES

12 Mr. Holmes is a West Pilot. He is an active member of the USAPA Negotiation  
13 Advisory Committee, since July 2012. In that capacity he has direct knowledge of actions  
14 and discussions by that committee and by the USAPA BPR on the subject of the MOU.  
15 He participated in negotiations with US Airways over the terms of the MOU. He  
16 observed what was said by and to pilots at the various "road shows" that explained the  
17 MOU prior to the vote on ratification. He will testify to such matters.

18 5. JOHN SCHERFF

19 Mr. Scherff is a West Pilot. He is one of the Phoenix domicial representatives to the  
20 USAPA BPR. In that capacity he has direct knowledge of actions and discussions by the  
21 USAPA BPR on the subject of the MOU. He observed what was said by and to pilots at  
22 the various "road shows" that explained the MOU prior to the vote on ratification. He  
23 will testify to such matters.

24 6. JOHAN DEVICQ

25 Mr. DeVicq is a West Pilot. He has been an active member of the USAPA Business  
26 Intelligence Committee. In that capacity he has participated in the valuation of various  
27 pilot compensation schemes. He will testify to such matters.

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1           7.     STEVEN H. BRADFORD

2           Mr. Bradford is an East Pilot. He is the founder of USAPA, its first President, and  
3 its current Vice-president. He has taken an active role in East Pilot efforts to prevent  
4 implementation of the Nicolau award. He has made numerous communications that have  
5 encouraged East Pilots to believe that such efforts are legally valid and will be successful.  
6 He will testify to such matters. Testimony may be presented by designated deposition  
7 excerpts.

8           The West Pilots may call the following witnesses:

9           1.     DEAN COLELLO

10          Mr. Colello is an East Pilot. He chairs the USAPA Negotiation Advisory  
11 Committee. In that capacity he has direct knowledge of actions and discussions by that  
12 committee and by the USAPA BPR on the subject of the MOU. He participated in  
13 negotiations with US Airways over the terms of the MOU. He may testify to such  
14 matters. Testimony may be presented by designated deposition excerpts.

15          1.     JESS PAULEY

16          Mr. Pauley is an East Pilot. He chairs the USAPA Merger Committee. He has  
17 played an uncertain role in negotiating language in the MOU that impacts East/West  
18 seniority integration and has limited understanding why USAPA put such language into  
19 the MOU. He may testify to such matters. Testimony may be presented by designated  
20 deposition excerpts.

21          2.     PAUL J. DIORIO

22          Mr. DiOrio is an East Pilot. He chaired the USAPA Negotiation Advisory  
23 Committee until July 2012. In that capacity he participated in negotiations with US  
24 Airways over the terms of the MOU and in and contract negotiations that preceded the  
25 MOU negotiations. In that capacity and by serving as a member of the USAPA BPR he  
26 has direct knowledge of actions and discussions by the BPR on the subject of the MOU.  
27 He may testify to such matters. Testimony may be presented by designated deposition  
28 excerpts.

1                   3.     ROB STREBLE

2             Mr. Streble is an East Pilot. He serves as USAPA's Secretary-Treasurer. In that  
3 capacity, he submits reports to the Department of Labor that disclose USAPA's finances  
4 and state the number of pilots represented by USAPA who decline to join the union. He  
5 may be asked to testify to such matters. Testimony may be presented by designated  
6 deposition excerpts.

7             The West Pilots are unlikely to call the following witnesses:

8                   1.     JAY MORGAN

9             Mr. Morgan is an East Pilot. He chairs the USAPA Ballot Certification Committee.  
10 He knows how the MOU ratification vote was conducted and reported. He may be asked  
11 to testify to such matters. Testimony may be presented by designated deposition excerpts.

12                   2.     GARY HUMMEL

13             Mr. Hummel is an East Pilot. He is serving as the President of USAPA. He knows  
14 how he and other USAPA leaders have encouraged East Pilots to believe that they can  
15 legally prevent implementation of the Nicolau Award. He may be asked to testify to such  
16 matters. Testimony may be presented by designated deposition excerpts.

17                   3.     DAVE CIABATONI

18             Mr. Ciabatonni is an East Pilot. He chairs the USAPA Grievance Committee. In that  
19 capacity he evaluated the benefits to the East Pilots of ratifying the MOU. He may be  
20 asked to testify to such matters. Testimony may be presented by designated deposition  
21 excerpts.

22                   4.     STEVE CRIMI

23             Mr. Crimi is an East Pilot. He serves as a member of the USAPA BPR. In that  
24 capacity he has taken a very active role in encouraging lower-seniority East Pilots to  
25 refuse to accept the eventual implementation of the Nicolau Award. He knows that  
26 USAPA plans to use East Pilot majority power to prevent implementation of the Nicolau  
27 Award. He may be asked to testify to such matters. Testimony may be presented by  
28 designated deposition excerpts.

1                   5.     JOHN P. OWENS

2                   Mr. Owens is an East Pilot. He is a member of the USAPA Negotiation Advisory  
3                   Committee and chairs the USAPA Business Intelligence Committee. He knows how the  
4                   MOU was negotiated, why the BPR was critical of MOU I in August 2012, and can  
5                   compare MOU II to MOU I. He may be asked to testify to such matters. Testimony may  
6                   be presented by designated deposition excerpts.

7                   USAPA

8                   Will be called at trial:

9                   Gary Hummel - subjects include, but are not limited to, negotiation and ratification  
10                  of the MOU, reasons why the MOU is neutral with respect to seniority, and the economic  
11                  benefits to US Airways pilots under the MOU.

12                  John Owens - subjects include, but are not limited to, ratification, and  
13                  implementation of the MOU and the Joint Collective Bargaining Agreement (“JCBA”),  
14                  informational presentations and roadshows regarding the MOU, the economic benefits to  
15                  US Airways pilots under the MOU, and benefits under the East CBA.

16                  Dean Colello - subjects include, but are not limited to, negotiation and ratification  
17                  of the MOU, informational presentations and roadshows regarding the MOU, the JCBA,  
18                  and the effect of the Nicolau Award on his career and career expectations.

19                  Jess Pauley - subjects include, but are not limited to, negotiation of the MOU, the  
20                  economic benefits to US Airways pilots under the MOU, the merger of US Airways and  
21                  American Airlines, seniority integration in the event of a merger between US Airways  
22                  and American Airlines, USAPA’s 2008 Conditions and Restrictions proposal, and the  
23                  effect of the Nicolau Award.

24                  Robert Davison - subjects include, but are not limited to, the economic benefits to  
25                  US Airways pilots under the MOU, the effect of the Nicolau Award on his career and  
26                  career expectations, and USAPA’s 2008 Conditions and Restrictions proposal and its  
27                  effect on pilot career expectations.

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1        May be called:

2        Steve Crimi - subjects include presentations made at the Charlotte roadshow, the  
3 consideration of the MOU by the Board of Pilot Representatives and their decision to  
4 unanimously recommend the MOU, and the position of USAPA concerning the Nicolau  
5 Award.

6        Brian Stockdell – subjects include, but are not limited to, Leonidas objectives,  
7 operations, fund-raising, and finances and payments of attorneys fees and expenses with  
8 respect to various litigation, including *Addington I*, the Declaratory Judgment Action, and  
9 this instant action.

10        Plaintiff Michael Soha – subjects include, but are not limited to, the benefits of the  
11 MOU, communications he received regarding the MOU before he voted on the MOU,  
12 and his career and career expectations.

13        Plaintiff Afshin Iranpour (by deposition) - subjects include, but are not limited to,  
14 the benefits of the MOU, communications he received regarding the MOU before he  
15 voted on the MOU, his understanding of the MOU before the vote on ratification of the  
16 MOU, his communications concerning West Pilots and communications concerning  
17 representation of West Pilots in a seniority integration process with APA, and his career  
18 and career expectations.

19        John Scherff (by deposition) - subjects include presentations made at the Charlotte  
20 roadshow, the consideration of the MOU by the Board of Pilot Representatives and their  
21 decision to unanimously recommend the MOU, and the position of USAPA concerning  
22 the Nicolau Award.

23        Ken Holmes (by deposition) - subjects include materials published by the  
24 Negotiating Advisory Committee concerning the MOU, presentations made at the  
25 roadshows, the consideration of the MOU by the Board of Pilot Representatives and their  
26 decision to unanimously recommend the MOU, and the position of USAPA concerning  
27 the Nicolau Award.

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Unlikely to be called:

Jay Morgan - subjects include, but are not limited to, ratification results.

Rebuttal - USAPA reserves the right to call rebuttal witnesses as may be appropriate.

**US Airways**

US Airways does not anticipate calling any witnesses.

**L. EXPERTS**

**West Pilots**

The West Pilots may call Rick Pitt to provide foundation for a summary exhibit that demonstrates the relative positions of the current US Airways pilots in the Nicolau Award seniority order.

**USAPA**

USAPA may call Robert Davison to testify concerning the East and West seniority lists as of 2007 at the time the Nicolau Award was issued; the Nicolau list as issued with the Award and the Nicolau list updated to August 2013; the East and West seniority lists as of August, 2013; the effect of the Nicolau list on the career expectations of both East and West pilots through a comparison of the expectations of the pilots on a stand-alone list versus the Nicolau list.

**US Airways**

US Airways will not call an expert witnesses.

**M. EXHIBITS**

**West Pilots' Exhibits:**

Trial Ex. #	Description	Date	Bates	USAPA's Objection <sup>3</sup>
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<sup>3</sup> Any objection by USAPA contained herein is without waiver of USAPA's right to use any exhibit or portion thereof.

1	1	USAPA Resp to Rogs	8/20/2013		Completeness (106) (Does not include supplemental responses to interrogatories)
2	2	Gary Hummel on Seniority	1/30/2012		Relevance (401, 402)
3	3	Gary Hummel Campaign Material	3/16/2012	WP020094	Relevance (401, 402), Confusing the issues and cumulative (403)
4	4	EVP Runoff Election Results	6/25/2010	WP019137	Relevance (401, 402)
5	5	Ltr from Delta MEC Chair	8/29/2013	WP018906	Relevance (401), Hearsay (801, 802), prejudicial, confusion of the issues, waste of time (403)
6	6	President's Message	6/11/2012	USAPA022 1794	Document designated as Confidential by USAPA. Plaintiffs must follow protective order procedure. USAPA does not object to substitute exhibit that removes confidential information.
7	7	MOU I Draft	8/20/2012	MOU I	Not identified by Bates WP 20495-WP020501, but not an MOU, it's a Tentative Agreement Memorandum of Understanding regarding Contingent Collective Bargaining Agreement. Relevance (401, 402)
8	8	USAPA Legal Update	5/5/2012	WP020388	
9	9	P4P Conference Call	5/8/2012	WP019209	Document designated as Confidential by USAPA. Plaintiffs must follow protective order procedure. Relevance (401), Hearsay (801, 802),
10	10	Salamat Report		USAPA 3825	Foundation, Relevance (401, 402), Hearsay (801, 802)

1	11	Jenkins/Marks Report	12/20/2012	USAPA003 826	Foundation, Relevance (401, 402), Hearsay (801, 802)
2					
3	12	Email from Thomas	7/30/2012	USAPA 252214	Foundation, Relevance (401, 402), prejudicial, confusion of the issues, waste of time (403), Hearsay (801, 802)
4					
5					
6	13	LF P. Jones to NMB	11/28/2012	Ex. 1 Doc. 7-2	
7	14	LF Hummel to NMB	10/12/2012	WP019229	
8	15	NAC Update	11/16/2011		Relevance (401, 402)
9	16	USAPA Comp Proposal Summary	Nov. 2012		Relevance (401, 402)
10	17	Emails re Dec Judgment Decision	10/3/2012	USAPA 238826	Relevance (401, 402)
11	18	Emails re Dec Judgment Decision	10/16/2012	USAPA 238885	Relevance (401, 402)
12					
13	19	P4P Conference Call Recap	10/8/2012	WP 019218	Foundation, Relevance (401, 402), prejudicial, confusion of the issues, waste of time (403), Hearsay (801, 802)
14					
15	20	Comm Ctee Email re Phx Dec Judgment Action	10/12/2012	WP 20740	Relevance (401, 402)
16					
17	21	National Officer Runoff Election Results	3/22/2012		Relevance (401, 402), confusion of the issues, waste of time (403)
18					
19	22	BPR Minutes		USAPA 227002	Relevance (401, 402)
20	23	Roster	12/11/2012	WP021276	Relevance (401, 402)
21	24	Signed MOU		USAPA 001763	
22	25	MOU Draft	12/14/2012	USAPA 308738	Relevance (401, 402)
23					
24	26	Colello Email to Ciabattoni	8/1/2012	USAPA 221216	Relevance (401, 402), confusion of the issues, waste of time (403)
25					
26	27	Shryack email to Menear	7/30/2012	USAPA 216075	Relevance (401, 402), Hearsay (801, 802), prejudicial, confusion of the issues, waste of time (403)
27					
28					

1					
2	28	Bradford email to Hummel	9/18/2012	USAPA 226779	Relevance (401, 402), confusion of the issues, waste of time (403)
3	29	Email Ciabattoni to Pauley	12/31/2012		Relevance (401, 402)
4	30	Ciabattoni email to Widener	1/9/2013	USAPA 232101	Relevance (401, 402)
5	31	Ciabattoni email to Stein	1/9/2013	USAPA 252096	Relevance (401, 402)
6	32	Ciabattoni email to Rose	1/12/2013	USAPA 310193	Relevance (401, 402)
7					
8					Foundation (re legal opinions), Relevance (401, 402), Hearsay (801, 802), prejudicial, confusion of the issues, waste of time (403)
9					
10	33	Ciabattoni email to Rowe	1/12/2013	USAPA 297703	Foundation (re legal opinions), Relevance (401, 402), Hearsay (801, 802), prejudicial, confusion of the issues, waste of time (403)
11					
12	34	Internal Grievance Analysis re MOU II		USAPA003 888	Relevance (401, 402)
13	35	Ciabattoni email to Rowe	1/10/2013		Relevance (401, 402)
14					Relevance (401, 402), prejudicial, confusion of the issues, waste of time (403)
15	36	Bradford email to R Webber	5/16/2007	ADD 00004945	Relevance (401, 402), prejudicial, confusion of the issues, waste of time (403)
16					
17	37	Continental MEC Chairman Ltr	9/6/2013		Foundation, Relevance (401, 402)
18					Relevance (401, 402), prejudicial, confusion of the issues, waste of time (403)
19	38	Owens email to Bradford	10/5/2012	USAPA250 671	Relevance (401, 402), prejudicial, confusion of the issues, waste of time (403)
20					Relevance (401, 402), prejudicial, confusion of the issues, waste of time (403)
21					
22	39	History behind USAPA	9/1/2010	WP019138	Relevance (401, 402), prejudicial, confusion of the issues, waste of time (403)
23					Relevance (401, 402), prejudicial, confusion of the issues, waste of time (403)
24	40	Conversation with an Attorney		ADD 00000910	Relevance (401, 402), prejudicial, confusion of the issues, waste of time (403)
25					Relevance (401, 402), prejudicial, confusion of the issues, waste of time (403)
26					
27	41	Lawyer Meeting		ADD00009 16	Relevance (401, 402), prejudicial, confusion of the issues, waste of time (403)
28					

1				Relevance (401, 402), prejudicial, confusion of the issues, waste of time (403)
2	42	Bradford for VP	1/31/2012	WP019194
3				Relevance (401, 402), prejudicial, confusion of the issues, waste of time (403)
4	43	Bradford email to King	6/13/2012	USAPA201 229
5				Relevance (401, 402), prejudicial, confusion of the issues, waste of time (403)
6	44	Message from Bradford on Seniority		WP019204
7				Relevance (401, 402), Hearsay (801, 802), prejudicial, confusion of the issues, waste of time (403)
8	45	Bradford email to Officers re PHX Domicile	10/30/2012	USAPA205 513
9				Privileged and work product. Subject to and without waiving privilege objections, relevance (401, 402), prejudicial, confusion of the issues, waste of time (403)
10	46	Bradford email to Pauley	5/6/2013	USAPA310 017
11				USAPA310 040
12	47	Bradford/Pauley Emails	5/11/2013	Relevance (401, 402)
13				Relevance (401, 402), Hearsay (801, 802), prejudicial, confusion of the issues, waste of time (403), Needs to be redacted to remove privileged information
14	48	Bradford Emails re Court Ruling	7/20/2013	USAPA334 114
15				Relevance (401, 402), prejudicial, confusion of the issues, waste of time (403)
16	49	Bradford Emails re Court Ruling	10/3/2012	USAPA205 558
17				Relevance (401, 402), Hearsay (801, 802), prejudicial, confusion of the issues, waste of time (403), Needs to be redacted to remove privileged information
18	50	Bradford Emails re Order	10/11/2012	USAPA224 016
19				Relevance (401, 402), Hearsay (801, 802), prejudicial, confusion of the issues, waste of time (403), Needs to be redacted to remove privileged information

1	51	Bradford/Rooney Emails	8/23/2012	USAPA201 437	Relevance (401, 402)
2	52	Bradford musings	8/25/2012	USAPA204 207	Relevance (401, 402)
3					Relevance (401, 402), Hearsay (801, 802), prejudicial, confusion of the issues, waste of time (403)
4	53	Volodzko Email re Polling	10/31/2012	USAPA251 686	
5					Relevance (401, 402), prejudicial, confusion of the issues, waste of time (403)
6	54	Emails re MOU	9/17/2012	USAPA222 926	
7					Relevance (401, 402), prejudicial, confusion of the issues, waste of time (403)
8	55	Email from Wayne Siemer re Merger Agmt	6/13/2012	USAPA201 051	Relevance (401, 402)
9					Privileged and work product. Subject to and without waiving privilege objections, relevance (401, 402), Hearsay (801, 802), prejudicial, confusion of the issues, waste of time (403)
10	56	Emails re MOU referendum results	5/6/2013	USAPA330 211	
11					Relevance (401, 402), Hearsay (801, 802), prejudicial, confusion of the issues, waste of time (403)
12	57	Bradford email to Chrisos	1/29/2013	USAPA329 446	
13					Relevance (401, 402), prejudicial, confusion of the issues, waste of time (403)
14	58	Email to Bradford re MOU	12/14/2012	USAPA231 340	Relevance (401, 402)
15					Privileged and work product. Subject to and without waiving privilege objections, relevance (401, 402), prejudicial, confusion of the issues, waste of time (403)
16	59	Bradford email to Pauley	4/25/2013		
17					Relevance (401, 402), prejudicial, confusion of the issues, waste of time (403)
18	60	USAPA's Presidents Message	3/20/2007		Relevance (401, 402)
19					Relevance (401, 402), prejudicial, confusion of the issues, waste of time (403)
20	61	US Airwaves: Merger Update	2005	WP018858	
21					Relevance (401, 402), prejudicial, confusion of the issues, waste of time (403)
22					
23					
24					
25					
26					
27					
28					

1				Relevance (401, 402),	
2	62	US Airwaves: Seniority Integration Rights of Fuloughees	2002	WP018868	prejudicial, confusion of the issues, waste of time (403)
3					
4	63	US Airwaves: Seniority Integrations ... US Airways Pilot Group	2000		Relevance (401, 402), prejudicial, confusion of the issues, waste of time (403)
5					
6	64	Email from Owens to Colello re Seniority	12/25/2012		Foundation, Relevance (401, 402)
7					
8					Ok with actual email from merger committee - Rest of document should be redacted on basis of Relevance (401, 402), Hearsay (801, 802), prejudicial, confusion of the issues, waste of time (403)
9					
10					
11	65	Emails re Merger Ctee Request for Input	11/5/2012	USAPA222 875	Relevance (401, 402), prejudicial, confusion of the issues, waste of time (403)
12					
13					Privileged and work product. Subject to and without waiving privilege objections, relevance (401, 402), prejudicial, confusion of the issues, waste of time (403)
14					
15					
16	66	Email from Pat to Roland Wilder	12/13/2012		Relevance (401, 402), prejudicial, confusion of the issues, waste of time (403)
17					
18					Foundation, Relevance (401, 402), Hearsay (801, 802), prejudicial, confusion of the issues, waste of time (403). Marked confidential in accordance with Protective Order
19					
20					
21	67	Email from Pauley to Denny	10/22/2012	USAPA004 210	Relevance (401, 402), Hearsay (801, 802), prejudicial, confusion of the issues, waste of time (403)
22					
23					
24	68	Emails re Diorio being taken off Nac	7/30/2012	USAPA252 214	Relevance (401, 402), prejudicial, confusion of the issues, waste of time (403)
25					
26					
27	69	Charlotte Domicile Update	7/27/2012	USAPA000 118	Relevance (401, 402), prejudicial, confusion of the issues, waste of time (403)
28					

1				Relevance (401, 402), prejudicial, confusion of the issues, waste of time (403)
2	70	Charlotte Domicile Update	8/10/2012	USAPA000 088
3				Relevance (401, 402), prejudicial, confusion of the issues, waste of time (403)
4	71	Ciabattoni emails re Hummel and cohorts	7/30/2012	USAPA201 501
5				Relevance (401, 402), prejudicial, confusion of the issues, waste of time (403)
6	72	Charlotte Domicile update	10/29/2010	USAPA237 728
7				Relevance (401, 402), prejudicial, confusion of the issues, waste of time (403)
8	73	Emails re Kirby proposal	11/15/2012	USAPA223 046
9				Relevance (401, 402)
10	74	BPR Special Meeting Recap	11/15/2012	USAPA227 002
11				Relevance (401, 402)
12	75	Communication Ctte Update Dec. BPR Day 2		WP020806
13				Relevance (401, 402), prejudicial, confusion of the issues, waste of time (403)
14	76	Emails btw Crimi, Ciabattoni	1/10/2013	USAPA233 775
15				Relevance (401, 402), prejudicial, confusion of the issues, waste of time (403)
16	77	Emails btw Crimi, Ciabattoni	1/10/2013	USAPA233 781
17				Relevance (401, 402), prejudicial, confusion of the issues, waste of time (403)
18	78	NAC Update	1/25/2013	USAPA330 360
19				Relevance (401, 402), prejudicial, confusion of the issues, waste of time (403)
20	79	Emails from Ciabattnoi re MOU	1/2/2013	USAPA297 678
21				Relevance (401, 402), prejudicial, confusion of the issues, waste of time (403)
22	80	Emails btw King and Owens re CLT Update	2/8/2013	USAPA336 214
23				Relevance (401, 402), prejudicial, confusion of the issues, waste of time (403)
24	81	Emails btw Crimi and Morgan re ballot certification	1/23/2013	USAPA330 341
25				Relevance (401, 402), prejudicial, confusion of the issues, waste of time (403)
26	82	Joint CLT/PHL Domicile Update	9/1/2013	WP019134
27				Relevance (401, 402)
28				

1	83	BPR Meeting August 2011	8/25/2011		Relevance (401, 402)
2	84	1st Owens Declaration	4/26/2013		
3	85	USAPA BI Report	5/29/2012		
4	86	APA Term Sheet Comparison		USAPA237 849	Relevance (401, 402)
5	87	Legal Update -Change of Control	5/5/2012	WP020388	
6	88	Email from Owns to Officers re MB Amendment	6/18/2012	USAPA226 899	Relevance (401, 402), Hearsay (801, 802)
8	89	Emails btw Owens/Bradford re MOU	8/16/2012	USAPA211 141	Relevance (401, 402), Hearsay (801, 802), prejudicial, confusion of the issues, waste of time (403)
11	90	MOU -USAPA Proposal	7/13/2012	USAPA205 034	
12	91	MOU -USAPA Proposal		USAPA222 128	
14	92	Owens email to Hummel re Paragraph 12	12/14/2012	USAPA284 128	Relevance (401, 402), Document designated as Confidential by USAPA. Plaintiffs must follow protective order procedure.
17	93	Emails btw Pat, Roland re DRAft of MOU	12/15/2012		
19	94	Email Crimi to Morgan	1/23/2013	USAPA330 341	
20	95	LM-2 Schedule 3			Relevance (401, 402)
21	96	NAC Update	1/27/2012	USAPA290 346	Relevance (401, 402) to the extent it includes anything other than NAC update.
23	97	What the MOU means to you		USAPA001 785	
24	98	Email from Owns to Hummel re APA Comparison	1/13/2013	USAPA329 805	Relevance (401, 402)
26	99	Flight Plan to Merger		USAPA001 835	
27	100	John Owens DOH List		USAPA285 080	Foundation, Relevance (401, 402)

1	101	BPR Meeting PowerPoint	6/7/2012	USAPA205 406	Relevance (401, 402)
2					Relevance (401, 402), Hearsay (801, 802), prejudicial, confusion of the issues, waste of time (403)
3					
4	102	Emails re MOU Resolutions	9/5/2012	USAPA220 930	
5	103	Negotiating Ctee Update	7/1/2012	WP020415	Relevance (401, 402)
6	104	Negotiating Ctee Update	8/21/2012	WP020504	Relevance (401, 402)
7					
8	105	USAPA Communications Ctee Update	9/1/2012	WP020604	Relevance (401, 402)
9					
10	106	Term Sheet & MOU	9/30/2012	USAPA238 103	Relevance (401, 402)
11	107	Emails btw Roland, Pat, Ed James	12/14/2012	WP020811	
12	108	Email from Colello to APA re MOU Draft	12/13/2012	USAPA278 560	Relevance (401, 402)
13					Relevance (401, 402), prejudicial, confusion of the issues, waste of time (403)
14	109	NAC Update: Negotiations in the NMB	2/3/2012	WP023757	
15					Relevance (401, 402), prejudicial, confusion of the issues, waste of time (403)
16	110	NAC Update	5/4/2012	WPO23765	
17					Relevance (401, 402), prejudicial, confusion of the issues, waste of time (403)
18	111	NAC Update	6/5/2012	WP023774	
19					Relevance (401, 402), prejudicial, confusion of the issues, waste of time (403)
20	112	NAC Questin Bank on MOU		WP024183	
21					
22	113	Transition Agreement		USAPA001 406	
23					
24	114	Nicolau Award		USAPA001 449	
25	115	Order (Doc. 193 in 2:10-cv-01579)	10/11/2012		
26	116	ALPA Merger Policy	8/10/2005	USAPA001 433	
27					
28	117	USAPA Constitution		USAPA001 362	

1		Graphic Nicolau East-West seniority distribution in 2007			Foundation, Relevance (401, 402)
2	118				
3		Graphic date-of-hire seniority distribution in 2007			Foundation, Relevance (401, 402)
4	119				
5		Graphic of Nicolau and date-of-hire seniority distribution and impact on bidding options			Foundation, Relevance (401, 402)
6	120				
7		Updated Nicolau List (Rick Pitt)			Foundation, Relevance (401, 402)
8	121				
9		Graphic illustrating updated Nicolau List			Foundation, Relevance (401, 402)
10	122				
11		Email from Jamie Juvurek	1/23/2013	USAPA329295	
12	123				
13		USAPA , Merger Committee Update	2/7/2013	USAPA000264	
14	124				
15		USAPA, Iron Compass	1/23/2013	USAPA000215	
16	125				
17		USAPA, President's Message	2/21/2013	USAPA000752	
18	126				
19		Notice of Deposition of Patrick Szymanski	9/12/2013		Relevance (401, 402), prejudicial, confusion of the issues, waste of time (403)
20	127				
21		Ltr from Silverman re Szymanski Deposition	9/17/2013		Relevance (401, 402), prejudicial, confusion of the issues, waste of time (403)
22	128				
23		E-mail re Szymanski Deposition	9/27/2013		Relevance (401, 402), prejudicial, confusion of the issues, waste of time (403)
24	129				
25		E-mail re Szymanski Deposition	10/2/2013		Relevance (401, 402), prejudicial, confusion of the issues, waste of time (403), completeness (106) (does not include additional emails)
26	130				
27		Notes from Phoenix Road Show		WP024200	Foundation, Relevance (401, 402), not disclosed and/or not disclosed timely, hearsay
28	131				

1	132	USAPA Term Sheet Comparison		USAPA204981	Foundation, Relevance (401, 402)
2	133	APA/Airways Term Sheet	4/13/2012	USAP204962	Foundation, Relevance (401, 402)
3	134	Bradford Emails re Seniority	8/23/2012	USAPA201437	Foundation, Relevance (401, 402)
4	135	Colello Emails re Nic	8/4/2012	USAPA221148	Foundation, Relevance (401, 402)
5	136	Bradford/Hummel Emails re Poll	11/1/2012	USAPA226439	Foundation, Relevance (401, 402)
6	137	Bradford Emails re Nic	11/5/2012	USAPA226440	Foundation, Relevance (401, 402)
7	138	Bradford Emails re BPR Immunity	12/4/2012	USAPA227490	Foundation, Relevance (401, 402)
8	139	Owens/Bradford Emails re Meeting	12/5/2012	USAPA250671	Foundation, Relevance (401, 402)
9	140	Bradford Emails re Update	10/16/2012	USAPA224019	Foundation, Relevance (401, 402)
10	141	Hummel/Bradford Emails re CLT Update	10/30/2012	USAPA205594	Foundation, Relevance (401, 402)
11	142	O'Dwyer/Scherff Emails re Update	12/1/2012	USAPA329702	Foundation, Relevance (401, 402)
12	143	Emails re NAC Update	1/27/2012	USAPA290267	Foundation, Relevance (401, 402)
13	144	Colello Emails re MOU and Ripeness	2/2/2013	USAPA315791	Foundation, Relevance (401, 402)
14	145	Hummel Emails re Legitimate Union Purpose	2/25/2013	USAPA309734	Foundation, Relevance (401, 402)
15	146	Emails with APA re Nicolau Award Documents	7/26/2013	USAPA331333	Foundation, Relevance (401, 402)
16	147	APA/AMR CBA (Preamble)	1/1/2013	USAPA003006-3014	Relevance (401, 402), completeness (106)
17	148	West Pilot MOU Pay by DOH			Foundation, Relevance (401, 402)
18	149	West Pilot Pay Distribution by Nicolau			Foundation, Relevance (401, 402)
19	150	Combined West Pilot MOU Pay Distribution			Foundation, Relevance (401, 402)

**USAPA's Exhibits:**

<b>Exhibit Number</b>	<b>Description</b>	<b>Plaintiffs' Objections</b>
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1	100	NMB Certification, April 18, 2008 (001360-001361)	
	101	USAPA Constitution and Bylaws (001362-001405)	
2	102	Transition Agreement between US Airways and the Airline Pilots Association (“ALPA”), Letter of Agreement (“LOA”) #96, September 23, 2005 (001406-001432)	
3			
4			
5	103	ALPA Merger Policy, August 10, 2005 (001433-001448)	
6	104	N. Nicolau Award, May 1, 2007 (001449-001524)	
7			
8	105	US Airways Master Executive Council (“MEC”) Presentation to ALPA Executive Council, May 21, 2007 (001525-001545)	Relevance
9			
10	106	US Airways MEC letter to ALPA, June 26, 2007 (001546-001547)	Relevance
11	107	Complaint by US Airways MEC against America West MEC, June 26, 2007 (001548-001584)	Relevance
12	108	Opposition by America West MEC to motion to remand, September 20, 2007 (001585-001612)	Relevance
13			
14	109	Joint Stipulation to Dismiss by US Airways and America West MECs, May 7, 2008 (001613)	Relevance
15	110	ALPA Merger Policy, April 30, 2009 (001614-001639)	Relevance
16	111	Letter from National Mediation Board (“NMB”), noting request for mediation services, November 16, 2009 (001640-001641)	Relevance
17			
18	112	USAPA Conditions and Restrictions Seniority Proposal, October 2010 (001642-001663)	
19	113	Conditions and Restrictions, Q&A, October 2010 (001664-001672)	
20			
21	114	Conditions and Restrictions, proposed contract provision, October 2010 (001673-001676)	
22	115	Letter from Kelly J Flood, counsel for Addington plaintiffs, December 2, 2008 (001677-001680)	Relevance
23	116	Letter from Bob Siegel, counsel for US Airways, December 9, 2008 (001681-001682)	Relevance
24			
25	117	Decision of Arbitrator Richard Bloch, TA-9 Grievance, May 8, 2009 (001683-001697)	Relevance
26	118	Letter from Kelly J Flood, withdrawing TA-9 Grievance, June 19, 2009 (001698-001701)	Relevance
27	119	Letter from NMB, docketing mediation proceedings between US Airways and USAPA, January 27, 2010 (001702-001722)	Relevance
28			

1	120	Letter from USAPA President Capt Michael Cleary to Pilots, November 17, 2011 (001723-001724)	
2	121	Wage Comparison, US Airways vs Industry Standard, August 1, 2011 (001725)	Relevance
3	122	Arbitration Opinion and Award by Arbitrator Richard Bloch in the matter of Transport Workers Union ("TWU") Local 545 and TWU Local 542, April 26, 2007 (001726-001736)	Relevance
4			
5			
6	123	Letter from Capt John H Prater to Doug Parker, dated December 14, 2007 (001737)	
7			
8	124	NMB Findings Upon Investigation, Case No R-7147, 35 NMB No 20, In the Matter of USAPA, January 23, 2008 (001738-001752)	Relevance
9			
10	125	Letter from USAPA President Capt Gary Hummel to Capt John Scherff, dated October 12, 2012 (001753)	
11	126	Letter from Capt John Scherff to Capt Gary Hummel, dated October 16, 2012 (001754)	
12	127	Letter from Marty Harper, counsel for the Addington plaintiffs, to Patrick Szymanski, counsel for USAPA, dated October 12, 2012 (001755-001757)	
13			
14	128	Letter from Patrick Szymanski to Marty Harper, dated October 15, 2012 (001758-001760)	
15			
16	129	Letter from Marty Harper to Patrick Szymanski, dated October 17, 2012 (001761-001762)	
17	130	Memorandum of Understanding regarding Contingent Collective Bargaining Agreement ("MOU") between USAPA, US Airways, the Allied Pilots Association ("APA"), and American Airlines ("American") (001763-001781)	
18			
19			
20	131	First Side Letter to MOU, dated January 7, 2013 (001782-001783)	
21			
22	132	Second Side Letter to MOU, dated April 2, 2013 (001784)	
23	133	USAPA Negotiating Advisory Committee ("NAC") Publication, "What the Memorandum of Understanding Means to You," January 2013 (001785-001834)	
24			
25	134	USAPA NAC Publication, "Flight Plan to a Merger: What the Memorandum of Understanding Means to You," January 2013 (001835-001852)	
26			
27	135	USAPA NAC Update, January 15, 2013 (001853-001855)	
28			

1	136	USAPA Iron Compass Publication, Volume 4, Issue 4 – January 23, 2013 (001856-001866)	
2	137	MOU Ratification Results, February 8, 2013 (001867-001869)	
3	138	Transformation Plan between US Airways and ALPA, LOA #93, October 21, 2004 (001870-001902)	
4	139	USAPA Legal Update on Change of Control, May 2012 (001903-001909)	
5	140	US Airways Group 10-K filing for year ending December 31, 2006 (001910-001942)	Relevance
6	141	US Airways Group 10-Q filing for quarter ending June 30, 2007 (001943-002005)	Relevance
7	142	1998 US Airways Collective Bargaining Agreement (“CBA”) (002006-002606)	
8	143	2004 America West CBA	
9	144	American Airlines CBA, March 8, 2013 (003006-003443)	
10	145	West Pilots’ Response to Motion by Appellant US Airways to Hold the Appeal in Abeyance, ECF No. 15 in US Airways Inc. v. Addington et. al., No. 13-15000 (9th Cir.), filed May 1, 2013 (003627-003636)	Relevance
11	146	ALPA Constitution and Bylaws, October 18, 2012 (003444-003544)	Relevance
12	147	Leonidas LLC Operating Agreement (003545-003556)	Relevance
13	148	Leonidas LLC Objectives (003557)	Relevance
14	149	Letter from Marty Harper to Robert Siegel and Ed James, dated February 18, 2013 (003558-003559)	
15	150	Letter from Marty Harper to Patrick Szymanski, dated February 19, 2013 (003560-003561)	
16	151	Letters from US Airways to individual pilots regarding Section 22 C protest, dated August 16, 2013 (003562-003580)	
17	152	David Braid grievance documents (003581-003603)	
18	153	Letter from Paul Jones to NMB, dated November 28, 2012 (003604-003607)	
19	154	Seniority Grievance Letters, dated August 16, 2013 (003608-003626)	
20	155	Email string 2/7/2013 & 2/8/2013	
21	156	Order in 13-cv-471-PHX-ROS (July 19, 2013)	
22	157	Amended Complaint filed by Plaintiffs in 13-cv-471-PHX-ROS (Aug. 2, 2013)	
23	158	WP017915 WP017917 Leonidas Update 2/7/13	

1	159	WP017893 Leonidas Update 2/1/13	
	160	WP017903 Leonidas update 2/14/13	
2	162	USAPA003639-USAPA003658 Leonidas Contributors	Relevance
3	163	WP0001827 About Us (Leonidas)	Relevance
4	164	USAPA003637 -USAPA003638 AZ Corporation Commission filing for Leonidas, Articles of Amendment 2/9/2011	Relevance
5	165	WP000081-WP000084 Email string 8/2/2012-8/3/2012	
6	166	WP000113-WP000117 Email string 8/6/2012-8/7/2012	
7	167	USAPA003660 - USAPA003678 Leonidas contributors	Relevance
8	170	Complaint filed by Plaintiffs in 13-cv-471-PHX-ROS (Mar. 6, 2013)	
9	175	Transcript of deposition testimony of Brian Stockdell, Apr. 20, 2009, in CV08-1728-PHX-NVW	
10	176	Transcript of trial testimony of Brian Stockdell, Apr. 30, 2009, in CV08-1728-PHX-NVW	
11	177	WP000238-WP000239 Email string 10/5/2012- 10/6/2012	
12	178	WP001112-1117 Email string 8/7/2012	
13	179	WP00005-WP000006 Email string 7/28/2012- 7/29/2012	
14	180	WP000955-WP000956 Email string 2/7/2013	
15	181	WP00057-WP00058 Email string 8/2/2012	
16	182	WP000977-WP000978 Email string 2/8/2013	
17	183	WP000931 Email string 1/19/2013	
18	184	WP000995 Email string 8/7/2012	
19	185	WP001269 Email string 3/7/2012	
20	186	USAPA00693-USAPA000694 NAC Update 1/19/2013	
21	187	WP015009-WP00011 NAC Update 1/15/2013	
22	188	WP00098-WP00101 Email string 8/3/2012-8/6/2012	
23	189	USAPA003681-USAPA003682 Leonidas Update October 2010	
24	190	USAPA003679-USAPA003680 Leonidas Update August 2010	
25	191	USAPA003683-USAPA003697 Leonidas Update July/July 2010	
26	192	USAPA003698-USAPA003709 Leonidas Update May 2011	
27	193	WP001615 Email July 22, 2013	
28	194	West Pilots Initial Disclosure Statement Aug. 6, 2013	

1	195	West Pilots' First Supplemental Disclosure Statement with exhibits	
2	196	Plaintiffs' Response to Defendant USAPA's First Set of Interrogatories	
3	197	USAPA' Initial Request for the Production of Documents to Plaintiffs	
4	198	Scherff Affidavit Doc. 114-3 (pages 49-83 of 149)	
5	199	Scherff letter to Hummell Oct. 16, 2012	
6	200	Transcript of deposition testimony of Afshin Iranpour-Mashak Jan. 28, 2009, in CV08-1728-PHX-NVW	
7	201	WP000495-WP000497 Email string 10/17/2012	
8	202	WP000240-WP000241 Email string 10/5/2012-10/6/2012	
9	203	WP000804-WP000806 Email string 10/31/2012	
10	204	WP001336-WP001337 Email string 3/11/2013	
11	205	Afshin Iranpour Appeal Board Election Campaign Letter 7/12/12	
12	206	WP000113-WP000117 Email string 8/6/2012-8/7/2012	
13	207	Mark Burman CV	
14	208	WP023465 Email string 1/22/13	
15	209	WP023459 Email string 1/22/13	
16	210	WP023505 Email string 1/22/13-1/23/113	
17	211	WP000678-WP000679 Email string 10/29/12-10/30/12	
18	212	WP000528-WP000530 Email string 10/22/12-10/23/12	
19	213	WP000501-WP000503 Email string 10/22/12-10/23/12	
20	214	WP001069-WP001070 Email string 2/22/13	
21	215	WP001330-WP001334 Email string 3/8/13-3/9/13	
22	216	Active Pilot Data (USAPA006235)	
23	217	Spreadsheet re: E_W_Nic (USAPA006236-USAPA006631)	Foundation
24	218	Spreadsheet re: List Differences (USAPA006632-USAPA006633)	Foundation
25	219	AWA MEC Notice of Removal (USAPA006634-USAPA006640)	Relevance
26	220	USAPA Analysis (USAPA006641-USAPA006652)	Foundation, hearsay
27	221	Side-by-Side Pilot Comparisons (USAPA006193-USAPA006234)	Foundation, relevance
28	222	Merged Seniority Lists (USAPA004213-USAPA006192)	Foundation

223	E-mail dated October 18, 2012 (USAPA004210-USAPA004212)	
224	UAL/Continental Seniority Integration Arbitration Award and List (USAPA003941-USAPA004209)	Relevance
225	SourceData Spreadsheet	Foundation, Relevance
226	WP019170-WP019175 - USAPA Brochure dated April 7, 2011	
227	WP023460-WP023461 E-mail string 1/22/13	
228	WP023540-WP023543 E-mail string 2/6/13-2/7/13	
229	WP023370-WP023377 E-mail string 1/15/13-1/16/13	
230	E-mail string 9/26/13-10/2/13 (USAPA006653-USAPA006655 re: Deposition of Szymanski	
231	Letter from Captain John Prater to Doug Parker dated 12/14/07 (USAPA006656)	
232	Letter from Captain John Prater to Fellow Pilots dated 12/14/07 (USAPA006657-USAPA006659)	

**O. MOTIONS IN LIMINE AND REQUESTED EVIDENTIARY RULINGS**

No motions in limine are pending at this time. Any such motions shall be filed on or before October 11, 2013. No requests for evidentiary rulings are pending at this time.

**P. PROBABLE LENGTH OF TRIAL**

**West Pilots:** No more than two days.

**USAPA:** Two to three days.

**US Airways:** No more than two days.

**Q. TRIAL DATE**

A bench trial is currently set for October 22 and 23, 2013.

**R. PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Proposed findings of fact and conclusions of law are to be separately filed by each party on or before October 14, 2013.

**S. MISCELLANEOUS**

The West Pilots and US Airways have nothing further to add.

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USAPA reserves all rights with respect to its previously raised but undecided discovery disputes.

**T. MODIFICATION OF ORDER**

The court may, in order to prevent manifest injustice or for good cause shown, at the trial of the action or prior thereto upon application of counsel for either party, made in good faith, or upon the motion of the court, modify the **Final Pretrial Order** upon such conditions as the court may deem just and proper.

DATED this 9th of October, 2013.

APPROVED AS TO FORM AND CONTENT:

<i>s/ Andrew S. Jacob</i>	<i>s/ with permission</i>	<i>s/ with permission</i>
_____	_____	_____
Andrew S. Jacob	Patrick Szymanski	Robert Siegel
<i>Attorney for West Pilots</i>	<i>Attorney for USAPA</i>	<i>Attorney for US Airways</i>

**THIS JOINT PRETRIAL ORDER IS HEREBY APPROVED ON THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2013.**

\_\_\_\_\_  
**Roslyn O. Silver**  
**United States District Judge**

Copies to all counsel of record