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17 Attorneys for Defendant  
18 US Airways, Inc.

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

21 Don Addington; John Bostic; Mark  
22 Burman; Afshin Iranpour; Roger Velez;  
23 Steve Wargocki; Michael J. Soha;  
24 Rodney Albert Brackin; and George  
25 Maliga, on behalf of themselves and all  
26 similarly situated former America West  
27 Pilots,

28 Plaintiffs,

vs.

US Airline Pilots Ass'n, an  
unincorporated association,

Defendant.

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US Airways, Inc.

Intervenor.

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

**SEPARATE STATEMENT OF  
UNDISPUTED FACTS FOR PURPOSES  
OF INTERVENOR US AIRWAYS,  
INC.'S MOTION FOR SUMMARY  
JUDGMENT - CLAIM REGARDING  
MCCASKILL-BOND STATUTE**

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<b>UNDISPUTED FACTS</b>	<b>SUPPORTING EVIDENCE</b>
<p><b>1.</b> Pursuant to ALPA’s Merger Policy, if two pilot groups were unable to agree on an integrated seniority list through direct negotiations or mediation, the next step was to integrate the pre-merger seniority lists on a “fair and equitable” basis through an arbitration award that “shall be final and binding on all parties to the arbitration.”</p>	<p>ALPA Merger Policy (Ex. A),<sup>1</sup> Part 1.G.5 at pp. 5-6.</p>
<p><b>2.</b> In the US Airways/America West seniority integration proceeding, “The US Airways [merger representatives’] initial proposal was “grounded on a pilot’s Date of Hire adjusted for Length of Service. That proposal placed the most senior America West pilots below some 900 US Airways pilots and integrated a number of furloughed US Airways pilots with active America West pilots.”</p>	<p>Nicolau Award (Ex. B) at p. 8.</p>
<p><b>3.</b> The Nicolau Award did not integrate pilots based strictly on each pilot’s “date-of-hire” with their pre-merger airline but instead fashioned what Arbitrator Nicolau concluded was a “fair and equitable” seniority integration – attributing “considerable importance” to “career expectations” at each pre-merger airline, while also giving “consideration” to the “Date of Hire” factor.</p>	<p>Nicolau Award (Ex. B) at pp. 24-28.</p>

<sup>1</sup> References to “Ex. \_” are to Exhibits attached to the Declaration of Chris A. Hollinger In Support Of Intervenor US Airways Inc.’s Motion For Summary Judgment - Claim Regarding McCaskill-Bond Statute (“Hollinger Dec.”), filed concurrently herewith.

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<b>UNDISPUTED FACTS</b>	<b>SUPPORTING EVIDENCE</b>
<p><b>4.</b> The Transition Agreement mandated that “[t]he seniority lists of America West pilots and US Airways pilots will be integrated in accordance with ALPA Merger Policy and submitted to the Airline Parties for acceptance,” and further required that “[t]he Airline Parties will accept such integrated seniority list, including conditions and restrictions, if such list and the conditions and restrictions comply with” certain criteria specified in the Transition Agreement.</p>	<p>Transition Agreement (Ex. C), § IV.A. at p. 6</p>
<p><b>5.</b> The Nicolau Award integrated seniority list has never been implemented because the Transition Agreement prohibits post-merger US Airways from using an integrated seniority list prior to “Operational Pilot Integration,” and because “Operational Pilot Integration” cannot occur under the Transition Agreement until after the negotiation of a single collective bargaining agreement applicable to the integrated pilot groups.</p>	<p>Transition Agreement (Ex. C) §§ IV.C at p. 6 &amp; VI.A at p. 8.</p>
<p><b>6.</b> The East Pilots perceived the Nicolau Award to be far less favorable to them as a group than the “date-of-hire” integrated seniority list they had sought from Arbitrator Nicolau.</p>	<p><i>Addington v. US Airline Pilots Ass’n</i>, 606 F.3d 1174, 1176-78 (9th Cir. 2010) (Ex. D).</p>

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<b>UNDISPUTED FACTS</b>	<b>SUPPORTING EVIDENCE</b>
<p><b>7.</b> USAPA was formed in 2007, in part to advocate for seniority integration based upon date of hire in any future merger between US Airways and another carrier.</p>	<p>Bradford Deposition (Ex. E), 41:18-42:21; 68:14-72:6, 75:22, Bradford Campaign Communication (Ex. F); A Conversation with an Attorney (Ex. G); Lawyer meeting (Ex. H).</p>
<p><b>8.</b> The Memorandum of Understanding regarding Contingent Collective Bargaining Agreement (“MOU”) is silent as to what seniority list or lists will be used to determine the relative ordering of US Airways pilots in the McCaskill-Bond seniority-integration process with the American Airlines (“American”) pilots.</p>	<p>MOU, ¶ 10 (Ex. I); Ferguson Deposition (Ex. J), 52:5-18.</p>
<p><b>9.</b> The MOU is silent as to who will represent the US Airways pilots in the McCaskill-Bond seniority integration process.</p>	<p>MOU, ¶ 10 (Ex. I); Crimi Deposition (Ex. K), 100:5-13.</p>
<p><b>10.</b> The MOU mandates that the integrated seniority list meet certain criteria that are related to limiting operational and financial hardships on the post-merger airline as a result of seniority integration.</p>	<p>MOU, ¶ 10(b) (Ex. I).</p>
<p><b>11.</b> The MOU expressly requires that both US Airways and American remain neutral throughout the McCaskill-Bond process with respect to “the order in which pilots are placed on the integrated seniority list.”</p>	<p>MOU, ¶ 10(d) (Ex. I).</p>

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<b>UNDISPUTED FACTS</b>	<b>SUPPORTING EVIDENCE</b>
<p><b>12.</b> The USAPA Board of Pilot Representatives (“BPR”) will determine USAPA’s negotiating position regarding seniority integration with the American pilots and this negotiating position will be advanced by USAPA’s Merger Committee during the McCaskill-Bond seniority-integration process.</p>	<p>Bradford Deposition (Ex. E), 52:12-53:6; 125:20-126:8; Hummel Deposition (Ex. L), 12:19-13:7; Pauley Deposition (Ex. M), 19:2-14; DiOrio Deposition (Ex. N), 45:3-22.</p>
<p><b>13.</b> The USAPA BPR is made up of a majority of East Pilots, and this majority will support a seniority list based upon date of hire (with some conditions and restrictions), and will oppose presentation of the Nicolau Award during the seniority-integration process.</p>	<p>Bradford Deposition (Ex. E), 40:9-11; 52:12-15; 54:3-18; 86:9-16; 126:22-127:20; Holmes Deposition (Ex. O), 83:16-87:3; 92:6-25; Hummel Deposition (Ex. L), 39:18-40:21, Ex. 1002; Pauley Deposition (Ex. M), 91:6-92:10, Ciabattoni Deposition (Ex. P), 50:8-15; DiOrio Deposition (Ex N), 47:20-23; Crimi Deposition (Ex. K), 50:19-25.</p>
<p><b>14.</b> Following this Court’s decision in <i>Addington II</i>, both Captain Hummel and Mr. Bradford stated that USAPA was under no legal obligation to consider implementing the Nicolau Award.</p>	<p>Hummel Deposition (Ex. L), 99:24-102:3; Pilot-For-Pilot Conference Call Recap - 10/08/2012 (Ex. Q); Bradford Deposition (Ex. E), 107:19-108:25.</p>

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<b>UNDISPUTED FACTS</b>	<b>SUPPORTING EVIDENCE</b>
<p><b>15.</b> The USAPA Merger Committee, including the two West Pilot members, cannot deviate from the negotiating position approved by the USAPA BPR or negotiate contrary to USAPA’s Constitution.</p>	<p>Hummel Deposition (Ex. L), 11:25-13:7; Ferguson Deposition (Ex. J), 83:3-11.</p>
<p><b>16.</b> The USAPA Constitution requires seniority integration based upon date of hire (with conditions and restrictions) and, therefore, prohibits the USAPA Merger Committee from advocating for the Nicolau Award as the proposed US Airways pilot seniority list during the McCaskill-Bond process because the Nicolau Award is not a date-of-hire seniority list.</p>	<p>Hummel Deposition (Ex. L), 25:4-25:25; Ciabattoni Deposition (Ex. T), 50:8-15; Pauley Deposition (Ex. M), 49:14-22; Ex. 1008; DiOrio Deposition (Ex. Q), 45:3-47:19; Crimi Deposition (Ex. K), 84:2-7.</p>

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<b>UNDISPUTED FACTS</b>	<b>SUPPORTING EVIDENCE</b>
<p><b>17.</b> If the West Pilots are able to participate through separate representation of their own choosing in the McCaskill-Bond seniority-integration process, they will argue that the Nicolau Award — unmodified — should be the sole basis to determine the relative seniority of US Airways pilots.</p>	<p>Ferguson Deposition (Ex. S), 26:1-27:23; Addington Deposition (Ex. R), 45:16-46:25; Bostic Deposition (Ex. S), 52:5-22, 79:9-25; Brackin Deposition (Ex. T), 33:15-34:8; 45:12-46:17; Baird Deposition (Ex. U), 45:8-46:25; Burman Deposition (Ex. V), 62:19-66:5; Holmes Deposition (Ex. O), 30:5-11, Koontz Deposition (Ex. W), 46:10-12, Maliga Deposition (Ex. X), 95:12-17; Soha Deposition (Ex. Y), 43:9-44:1; Scherff (Ex. Z), 45:12-21.</p>
<p><b>18.</b> USAPA believes that participation by the West Pilots in the McCaskill-Bond seniority-integration process, through counsel of their own choosing, will undermine USAPA’s status as the collective bargaining agent for US Airways pilots, and USAPA opposes separate participation by the West Pilots on this basis.</p>	<p>Bradford Deposition (Ex. E), 38:7-38:22.</p>

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<b>UNDISPUTED FACTS</b>	<b>SUPPORTING EVIDENCE</b>
<p><b>19.</b> Shortly after the merger between US Airways and American is completed, a new collective bargaining agent will be certified by the National Mediation Board for all pilots of the merged carrier and it is expected that APA — not USAPA — will be certified through this process given the greater number of pilots currently represented by APA at American.</p>	<p>Bradford Deposition (Ex. E), 24:16 - 25:8.</p>

Dated: October 11, 2013.

For O’Melveny & Myers LLP

By:       /s/ Robert A. Siegel        
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**CERTIFICATE OF SERVICE**

I hereby certify that on October 11, 2013, I caused to be electronically transmitted the attached Separate Statement Of Undisputed Facts For Purposes Of Intervenor US Airways, Inc.'s Motion for Summary Judgment - Claim Regarding McCaskill-Bond Statute.

/s/ Robert A. Siegel

Robert A. Siegel

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