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US Airways, Inc.

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

13 Don Addington; John Bostic; Mark  
14 Burman; Afshin Iranpour; Roger Velez;  
Steve Wargoeki; Michael J. Soha;  
15 Rodney Albert Brackin; and George  
Maliga, on behalf of themselves and all  
16 similarly situated former America West  
Pilots,

17 Plaintiffs,

18 vs.

19 US Airline Pilots Ass'n, an  
unincorporated association,

20 Defendant.

21 -----

22 US Airways, Inc.

23 Intervenor.

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

**INTERVENOR US AIRWAYS, INC.'S  
[PROPOSED] FINDINGS OF FACT  
AND CONCLUSIONS OF LAW**

24  
25 This case having come before the Court on October 22 and 23, 2013, and the Court  
26 having heard the evidence and considered the arguments of counsel, the Court does  
27 hereby make, pursuant to Fed. R. Civ. P. 52, the following Findings of Fact and  
28 Conclusions of Law with respect to the claim in Intervenor US Airways, Inc.'s

1 Intervention Pleading “that the West Pilots have the right under the federal McCaskill-  
2 Bond statute to full and separate representation in the upcoming seniority-integration  
3 proceedings between the pilots employed by US Airways and American Airlines, Inc.  
4 (“American”).” (ECF No. 197 at 1:19-23 (internal, not ECF, pagination for all citations to  
5 documents in the Court’s docket); *see also id.* at 6:7-7:24).

6 **I. Findings of Fact**

7 (1) This lawsuit arises from a protracted seniority dispute between the East  
8 Pilots and the West Pilots following the 2005 merger (“2005 merger”) between US  
9 Airways and America West Airlines, Inc. (“America West”).

10 (2) Intervenor US Airways, Inc. (“US Airways”) is the air carrier formed by the  
11 2005 merger.

12 (3) Plaintiff Don Addington is a resident of the State of Arizona, who at all  
13 times relevant to this action has been a West Pilot.

14 (4) Plaintiff John Bostic is a resident of the State of Arizona, who at all times  
15 relevant to this action has been a West Pilot.

16 (5) Plaintiff Mark Burman is a resident of the State of Arizona, who at all times  
17 relevant to this action has been a West Pilot.

18 (6) Plaintiff Afshin Iranpour is a resident of the State of Arizona, who at all  
19 times relevant to this action has been a West Pilot.

20 (7) Plaintiff Roger Velez is a resident of the State of Arizona, who at all times  
21 relevant to this action has been a West Pilot.

22 (8) Plaintiff Steve Wargocki is a resident of the State of Arizona, who at all  
23 times relevant to this action has been a West Pilot.

24 (9) Plaintiff Michael J. Soha is a resident of Washington State, who at all times  
25 relevant to this action has been a West Pilot.

26 (10) Plaintiff Rodney Albert Brackin is a resident of Arizona, who at all times  
27 relevant to this action has been a West Pilot.

28

1 (11) Plaintiff George Maliga is a resident of Arizona, who at all times relevant to  
2 this action has been a West Pilot.

3 (12) Intervenor US Airways is a Delaware corporation having its principal place  
4 of business in Tempe, Arizona.

5 (13) Defendant US Airline Pilots Association (“USAPA”) is an unincorporated  
6 association with a principal place of business in Charlotte, North Carolina.

7 (14) The Allied Pilots Association (“APA”) is an unincorporated association  
8 with a principal place of business in Fort Worth, Texas, and is not a named party in this  
9 action.

10 (15) AMR Corporation (“AMR”), a Delaware corporation with a principal place  
11 of business in Fort Worth, Texas, is the parent company of American and is currently a  
12 Chapter 11 debtor. Although AMR is not a named party in this action, AMR and  
13 American sought leave to participate as *amicus curiae*.

14 **A. 2005 Merger of US Airways and America West**

15 (16) At the time of the 2005 merger, the Air Line Pilots Association,  
16 International (“ALPA”) represented the US Airways pilots (“East Pilots”) and the  
17 America West pilots (“West Pilots”) in two separate units.

18 (17) US Airways employed approximately 5,100 East Pilots, approximately  
19 1,700 of whom were on furlough at the time of the merger, and America West employed  
20 approximately 1,900 West Pilots, none of whom were then on furlough.

21 (18) Following the merger, US Airways, America West, their respective  
22 corporate parents, ALPA, the US Airways Master Executive Council, and the America  
23 West Master Executive Council entered into a Transition Agreement which governed,  
24 among other things, the integration of the East Pilots and West Pilots seniority lists.

25 (19) The Transition Agreement mandated that “[t]he seniority lists of America  
26 West pilots and US Airways pilots will be integrated in accordance with ALPA Merger  
27 Policy and submitted to the Airline Parties for acceptance,” and further required that  
28 “[t]he Airline Parties will accept such integrated seniority list, including conditions and

1 restrictions, if such list and the conditions and restrictions comply with” certain criteria  
2 specified in the Transition Agreement. Those criteria were related to limiting the  
3 operational and financial consequences on US Airways as a result of the seniority  
4 integration, and were wholly unrelated to the ultimate ordering of pilots on the integrated  
5 seniority list.

6 (20) Pursuant to ALPA’s Merger Policy, if two pilot groups were unable to agree  
7 on an integrated seniority list through direct negotiations or mediation, the next step was  
8 to integrate the pre-merger seniority lists on a “fair and equitable” basis through an  
9 arbitration award that “shall be final and binding on all parties to the arbitration.”

10 (21) The East Pilots and West Pilots were unable to agree on an integrated  
11 seniority list, and thus they participated in a seniority-integration arbitration pursuant to  
12 ALPA’s Merger Policy (as incorporated by the Transition Agreement).

13 (22) This process resulted in an arbitration award issued on May 1, 2007 known  
14 as the “Nicolau Award.”

15 (23) The Nicolau Award did not integrate pilots based strictly on each pilot’s  
16 “date of hire” with their pre-merger airline, as the East Pilots had sought, but instead  
17 fashioned what Arbitrator Nicolau concluded was a “fair and equitable” seniority  
18 integration – attributing “considerable importance” to the pilots’ “career expectations” at  
19 each pre-merger airline, while also giving “consideration” to the “Date of Hire” factor.

20 (24) The Nicolau Award placed approximately 500 East Pilots at the top of the  
21 seniority list, 1700 furloughed East Pilots at the bottom of the list, and blended the  
22 remainder of East Pilots with West Pilots generally according to their relative positions on  
23 their pre-merger seniority lists.

24 (25) On December 20, 2007, US Airways accepted the integrated seniority list  
25 generated through the Nicolau Award, as it was required to do by the terms of the  
26 Transition Agreement.

27 (26) The integrated seniority list has never taken effect because the Transition  
28 Agreement prohibits post-merger US Airways from using an integrated seniority list prior

1 to “Operational Pilot Integration,” and because “Operational Pilot Integration” cannot  
2 occur under the Transition Agreement until after the negotiation of a single collective  
3 bargaining agreement (“CBA”) applicable to the integrated pilot groups – which, largely  
4 because of the unresolved seniority dispute, has not happened to this day.

5 (27) Accordingly, US Airways continues to operate with two separate seniority  
6 lists – one for the West Pilots and one for the East Pilots.

7 **A. USAPA’s Formation and Constitutionally-Mandated Position**  
8 **Regarding Seniority Integration**

9 (28) The East Pilots believed that the Nicolau Award was less favorable to them  
10 as a group than the “date-of- hire” integrated seniority list they had sought from Arbitrator  
11 Nicolau.

12 (29) The East Pilots formed a new union, USAPA, whose constitutional  
13 “objectives” include “maintain[ing] uniform principles of seniority based on date of hire  
14 and the perpetuation thereof, with reasonable conditions and restrictions to preserve each  
15 pilot’s un-merged career expectations.”

16 (30) Following a representation election between USAPA and ALPA, the  
17 National Mediation Board (“NMB”) certified USAPA, pursuant to the Railway Labor Act  
18 (“RLA”), 45 U.S.C. §§ 151 *et seq.*, as the new collective bargaining representative for  
19 both the East Pilots and the West Pilots on April 18, 2008.

20 (31) Thereafter, USAPA and US Airways engaged in collective bargaining  
21 negotiations for a single labor contract.

22 (32) In September 2008, USAPA made its first and only seniority list proposal,  
23 which consisted of a non-Nicolau seniority list that combined the existing East Pilots and  
24 West Pilots seniority lists by date-of-hire, without regard to whether a pilot was on  
25 furlough at the time of the merger.

1           **B. Pilot Seniority Integration Process in the Proposed US**  
2           **Airways/American Merger**

3           (33) In February 2013, US Airways Group, Inc. (US Airways' corporate parent)  
4 and AMR (the corporate parent of American) entered into a merger agreement that  
5 contemplates the combination of US Airways and American.

6           (34) In connection with the merger, US Airways, American, USAPA, and the  
7 APA, the union representing American's pilots, entered into a Memorandum Of  
8 Understanding Regarding Contingent Collective Bargaining Agreement (the "MOU").

9           (35) The MOU was ratified by 75% of the valid votes cast in referendum  
10 balloting among USAPA's membership.

11           (36) The MOU, which will become effective if and when the merger closes,  
12 provides generally that the seniority of the American pilots and the US Airways (East and  
13 West) pilots shall be integrated on a "final and binding" basis in a manner consistent with  
14 the McCaskill-Bond Amendment to the Federal Aviation Act.

15           (37) Under the MOU, the separate East Pilot and West Pilot seniority lists will  
16 remain in effect until the McCaskill-Bond seniority-integration process between the  
17 US Airways pilots and the American pilots is completed.

18           (38) The MOU does not specifically address the Nicolau Award or the relative  
19 ordering of East Pilots and West Pilots as part of the overall US Airways/American  
20 seniority-integration process. It does, however, mandate that the seniority-integration  
21 process begin "as soon as possible" after the close of the US Airways/American merger.

22           (39) The MOU mandates that the integrated seniority list generated through the  
23 McCaskill-Bond process among the pilot representatives must satisfy certain criteria that  
24 are related to limiting the operational and financial consequences on the post-merger  
25 airline as a result of pilot seniority integration.

26           (40) The MOU expressly requires that both US Airways and American remain  
27 neutral throughout the McCaskill-Bond process with respect to "the order in which pilots  
28 are placed on the integrated seniority list."

1 (41) The MOU further provides that the parties will commence negotiations for a  
2 Joint Collective Bargaining Agreement (“JCBA”) and that those negotiations are to be  
3 completed no later than 30 days after the NMB determines that the combined operation  
4 constitutes a “single carrier” and certifies the bargaining representative for all of the pilots  
5 of the single carrier. Under the timeline appended to the MOU, this date is estimated to  
6 be 11-13 months after the Effective Date of AMR’s Plan of Reorganization in bankruptcy.

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

15 (43) The JCBA arbitration decision, if needed, is to be issued within 60 days of  
16 the end of the negotiation period.

17 (44) In the meantime, the MOU provides that the seniority-integration process  
18 will proceed but that any McCaskill-Bond seniority-integration arbitration hearing cannot  
19 begin until the JCBA is final. Accordingly, the seniority-integration arbitration among the  
20 pilot groups will not even occur until after the NMB single-carrier process is completed.

21 (45) The USAPA Board of Pilot Representatives (“BPR”) will determine  
22 USAPA’s negotiating position vis-à-vis the APA regarding seniority integration with  
23 American’s pilots, and the BPR’s negotiating position will be advanced by USAPA’s  
24 Merger Committee during the seniority-integration process.

25 (46) The USAPA Merger Committee, which is made up of a majority of East  
26 Pilots, cannot deviate from the position approved by the USAPA BPR or negotiate with  
27 the APA in a manner that is contrary to USAPA’s Constitution.  
28

1 (47) Because the USAPA Constitution requires seniority integration based upon  
2 date-of-hire principles (with conditions and restrictions), the Merger Committee is  
3 prohibited from advocating for the Nicolau Award (which is not a date-of hire seniority  
4 list) as the proposed US Airways pilot seniority list during the McCaskill-Bond process.

5 (48) If the West Pilots are able to participate through separate representation of  
6 their own choosing in the McCaskill-Bond seniority integration process, they will argue  
7 that an unmodified Nicolau Award should be the sole basis to determine the relative  
8 seniority of US Airways (East and West) pilots.

9 (49) If the West Pilots are not able to participate through separate representation,  
10 the West Pilots' argument regarding the Nicolau Award will be not be presented to the  
11 McCaskill-Bond arbitration panel.

12 (50) USAPA opposes separate participation by the West Pilots, contending that  
13 such separate participation would undermine USAPA's status as the collective bargaining  
14 agent for US Airways' pilots.

## 15 **II. Conclusions of Law**

16 (51) As an initial matter, contrary to USAPA's repeated assertions and for the  
17 reasons set forth in US Airways' Response to Plaintiffs' Motion For A Preliminary  
18 Injunction (ECF No. 49 at 3:15 - 10:15), which led, in part, to this Court's July 19, 2013  
19 Order ("July 19 Order") (ECF No. 122 at 4:24-5:21), as well as for the reasons set forth in  
20 the Statement of US Airways, Inc. Regarding Lawsuit Filed By United States (ECF  
21 No. 152), the claims asserted by Plaintiffs and US Airways in this lawsuit are ripe. As set  
22 forth in the July 19 Order, "allowing the dispute between the West Pilots and USAPA to  
23 continue to fester would introduce substantial uncertainty into the merger process. That  
24 uncertainty would frustrate a primary purpose of the merger: the immediate orderly  
25 integration of the two airlines' operations." (ECF No. 122, at 5:16-19.) In the interest of  
26 avoiding such uncertainty, the Court rules as follows:  
27  
28



1           **A.    McCaskill-Bond Requires A Fair And Equitable Seniority Integration**

2           (52)   Subsequent to the US Airways/America West merger, Congress enacted the  
3 McCaskill-Bond statute addressing airline industry mergers. Pub. L. No. 110-161, § 117,  
4 121 Stat. 1844, 2382 (2007).

5           (53)   McCaskill-Bond was enacted in response to the experience of Trans World  
6 Airlines, Inc. (“TWA”) employees after TWA’s assets were acquired by American, and  
7 half of the TWA pilots and all of the flight attendants were placed at the bottom of the  
8 post-acquisition integrated seniority list. *See, generally, Comm. of Concerned Midwest*  
9 *Flight Attendants for Fair and Equitable Seniority Integration v. Int’l Bhd. of Teamsters*,  
10 662 F.3d 954, 957 (7th Cir. 2011) (“[McCaskill-Bond] grew out of American Airlines’  
11 acquisition of Trans World Airlines” and the “contentious” seniority integration of  
12 TWA’s former employees that followed).

13           (54)   McCaskill-Bond requires that where, as here, employees of the pre-merger  
14 carriers are represented by different unions, “sections 3 and 13 of the labor protective  
15 provisions [“LPPs”] imposed by the Civil Aeronautics Board in the Allegheny-Mohawk  
16 merger (as published at 59 C.A.B. 45) shall apply to the integration of covered employees  
17 of the covered air carriers.” Pub. L. No. 110-161, § 117, 121 Stat. 1844, 2382 (2007).  
18 Those two sections of the *Allegheny-Mohawk* LPPs governed the process for negotiation  
19 and, if necessary, arbitration of seniority-integration disputes. Section 3 provided:

20                           Insofar as the merger affects the seniority rights of the  
21 carriers’ employees, provisions shall be made for the  
22 ***integration of seniority lists in a fair and equitable manner***,  
23 including, where applicable, agreement through collective  
24 bargaining between the carriers and ***the representatives of the***  
***employees affected***. In the event of failure to agree, the  
dispute may be submitted by either party for adjustment in  
accordance with section 13.

25 *Allegheny-Mohawk*, 59 C.A.B. 45, 45 (1972) (emphasis added).

26           (55)   Section 13, in turn, provided for arbitration, which “shall be final and  
27 binding on the parties,” if negotiations under Section 3 failed to result in an agreement.  
28 *Id.* at 49.

1 (56) Therefore, pursuant to McCaskill-Bond, as it incorporates Sections 3 and 13  
2 of the *Allegheny-Mohawk* LPPs, there must be an “integration of seniority lists in a fair  
3 and equitable manner” through participation by “representatives of the employees  
4 affected.” *Id.* at 45.

5 (57) The McCaskill-Bond statute applies to all non-temporary employees who  
6 are members of a craft or class that is subject to the RLA, regardless of whether those  
7 employees are represented by a union. Pub. L. No. 110-161, § 117(b)(3), 121 Stat. 1844,  
8 2382 (2007). The McCaskill-Bond statute does not purport to limit participation to a  
9 group of employees’ certified bargaining agent, where one exists; nor does it in any way  
10 specify how employee representatives are to be selected.

11 **B. Integration of the American and US Airways East and West Pilot**  
12 **Seniority Lists Cannot Be Fair And Equitable if the West Pilots are**  
13 **Denied Separate Participation and Representation**

14 (58) Based on the facts set forth above, a seniority-integration process in which  
15 all of the US Airways pilots (East and West) are represented only by USAPA will not be  
16 “fair and equitable,” and would therefore fail to comply with the requirements of  
17 McCaskill-Bond.

18 (59) USAPA was created as a new union following the East Pilots’ disagreement  
19 with the seniority list generated by what was to be the “final and binding” Nicolau Award  
20 under ALPA Merger Policy. USAPA’s Constitution prohibits USAPA from  
21 implementing or advocating for the Nicolau Award. USAPA will thus be prohibited from  
22 presenting the West Pilots’ position in the McCaskill-Bond process.

23 (60) There is no merit to USAPA’s contention that because two West Pilots are  
24 members of the USAPA Merger Committee, separate representation for the West Pilots as  
25 a group would “prejudice USAPA’s efforts to represent all US Airways pilots by putting  
26 great pressure on the West pilots who have joined the USAPA Merger Committee to  
27 abandon that effort.” (ECF No. 212, at 14:21-27.) As courts have long recognized in  
28 analogous situations, where there are significant and demonstrable conflicts within a class,  
the separate interests must be given the right to have separate representation. Here,

1 USAPA has a conflict of interest with the West Pilots, and, without separate West Pilots  
2 participation, the seniority-integration process cannot be fair and equitable as required by  
3 the McCaskill-Bond statute. *Cf. Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 625-27  
4 (1997) (where “the interests of those within the single class are not aligned,” class could  
5 not be fairly and adequately represented by named parties without any “structural  
6 assurance of fair and adequate representation for the diverse groups and individuals  
7 affected”); *Gen. Tel. Co. of Nw., Inc. v. EEOC*, 446 U.S. 318, 331 (1980) (class cannot be  
8 adequately represented by same plaintiff where “conflicts might arise, for example,  
9 between employees and applicants who were denied employment and who will, if granted  
10 relief, compete with employees for fringe benefits or seniority”).

11 (61) Pilot seniority integration here is unique in that the pilots of the two merging  
12 carriers are faced with integrating three separate seniority lists as a result of a five-year  
13 dispute among the pilots of one of the two merging carriers. The West Pilots have been  
14 deemed a single unified group, as demonstrated by this Court’s decision to again certify  
15 the class of approximately 1,600 West Pilots in this litigation, all of whom “are on the  
16 America West seniority list currently incorporated into the West Pilot’s collective  
17 bargaining agreement.” (ECF. No. 194, at 1:16-3:19.)

18 (62) In certifying the class, the Court recognized the continuing nature of the  
19 seniority dispute between USAPA and the West Pilots, and also determined that “the  
20 representative parties [of the West Pilots] will fairly and adequately protect the interests of  
21 the class” in this litigation. (*Id.*, at 2:28-3:2.) The West Pilots representatives, by  
22 analogy, should also be deemed to be the appropriate representatives of the West Pilots’  
23 seniority interests in the McCaskill-Bond seniority-integration process. *Cf. Ortiz v.*  
24 *Fibreboard Corp.*, 527 U.S. 815, 856 (1999) (“[I]t is obvious after *Amchem* that a class  
25 divided . . . requires division into homogeneous subclasses under Rule 23(c)(4)(B), with  
26 separate representation to eliminate conflicting interests of counsel”).

27 (63) Only if the West Pilots are permitted a separate seat at the seniority-  
28 integration table to present and advocate for the Nicolau Award can the

1 US Airways/American pilot seniority integration process be fair and equitable – whatever  
2 the substantive outcome of that process may be.

3 **C. There is No Statutory Limitation on the Designation of Employee**  
4 **Representatives When Needed to Ensure Fairness and Equity Under**  
5 **McCaskill Bond**

6 (64) USAPA has argued that McCaskill-Bond “assumes the nature of the  
7 Section 3 and 13 process as one of collective bargaining . . . within the sole province of  
8 the exclusive bargaining representative, here, USAPA on behalf of US Airways pilots,  
9 whether in negotiating a collective bargaining agreement or in the Section 3 and 13  
10 process.” (ECF No. 212, at 14:4-16.) USAPA is incorrect. As set forth above,  
11 McCaskill-Bond applies to all covered employees, regardless of whether or not they are  
12 unionized, and in no way purports to limit participation to a certified bargaining agent  
13 where one exists. Although the certified bargaining representative will in most instances  
14 be an appropriate representative for all of the employees it represents, here the distinct  
15 seniority interests of the West Pilots – based on advocacy for an unmodified Nicolau  
16 Award seniority list – warrant separate representation because USAPA has opposed those  
17 particular interests for more than five years. Additionally, because the determination of  
18 the relative order of US Airways East and West pilots will only involve negotiations  
19 among and between groups of employees, and will not (indeed, under the MOU, cannot)  
20 involve any negotiations between the employees and either of the pre-merger carriers or  
21 the post-merger carrier, permitting the West Pilots to participate separately in no way  
22 undermines USAPA’s status as the current collective bargaining agent for US Airways  
23 pilots.

23 **1. The Railway Labor Act Does Not Limit Employee**  
24 **Representation in the McCaskill-Bond Seniority-Integration**  
25 **Proceedings between Groups of Affected Employees**

26 (65) Section 2, Ninth of the RLA requires that US Airways bargain exclusively  
27 with USAPA, as the certified representative of the US Airways pilots, regarding the  
28 pilots’ terms and conditions of employment. *See Gvozdenovic v. United Air Lines, Inc.*,  
933 F.2d 1100, 1105 (2nd Cir. 1991) (“Under the RLA, terms and conditions of

1 employment for unionized employees are established through collective bargaining  
2 between the employer and the union representative for the bargaining unit.”); *cf. Air Line*  
3 *Stewards & Stewardesses Ass’n. v. Am. Airlines, Inc.*, 490 F.2d 636, 642 (7th Cir. 1973)  
4 (“[E]xcept for the area of collective bargaining and its necessary incidents, the union has  
5 no unique authority to compromise the rights of its members.”).

6 (66) US Airways has complied with the above bargaining requirement by  
7 negotiating the terms of the MOU with USAPA – a ratified collective bargaining  
8 agreement that sets the post-merger terms and conditions of employment for the USAPA-  
9 represented pilots, including pay, benefits, and work rules, and a requirement that the  
10 post-merger integrated seniority list will be formulated pursuant to the McCaskill-Bond  
11 statute. The designation of a separate subgroup of US Airways pilots, consisting of all  
12 West pilots (the class of Plaintiffs certified in this action), for purposes of the McCaskill-  
13 Bond process cannot undermine or interfere with USAPA’s current status under the RLA  
14 because, in this merger, the McCaskill-Bond process will not involve negotiations or  
15 arbitration between US Airways and USAPA regarding formulation of the integrated  
16 seniority list or any other terms and conditions of employment. Rather, the MOU  
17 expressly indicates that “US Airways, American or New American Airlines . . . shall  
18 remain neutral regarding the order in which pilots are placed on the integrated seniority  
19 list,” thereby leaving the formulation of the integrated seniority list to the merger  
20 representatives of the pilot groups. Thus, USAPA’s argument that granting the West  
21 Pilots the right to serve as “single issue” representatives would give them “the power of a  
22 bargaining representative with none of the responsibilities” (ECF. No. [211], 12: 11-14),  
23 is incorrect, because granting a right to be heard on the relative ordering of the East Pilots  
24 and West Pilots will not involve any collective bargaining.

25 (67) USAPA also contends that the US Airways/American pilot seniority  
26 integration “proceeding is not a pure McCaskill-Bond proceeding but arises under the  
27 terms negotiated by the four parties to the MOU and a dispute concerning that process is a  
28 minor dispute that must be resolved through the minor dispute process and not in Court.”

1 (ECF No. 211, at 13:6-10. USAPA is incorrect, for the reasons stated above. What  
2 actually remains under the circumstances of this case is a negotiation and arbitration  
3 process under the McCaskill-Bond statute, not the RLA, to formulate the integrated pilot  
4 seniority list.

5 (68) In light of the foregoing, permitting separate representation of the West  
6 Pilots in the McCaskill-Bond process does not in any manner interfere with USAPA's  
7 status as the certified collective bargaining agent under the RLA, and any dispute  
8 regarding representation during that process is a dispute arising under McCaskill-Bond,  
9 not the RLA. USAPA's status under the RLA will remain intact, while the West Pilots'  
10 rights under McCaskill-Bond to a fair and equitable seniority integration will be enforced.

11 (69) There is no language in McCaskill-Bond that would preclude the West  
12 Pilots from having independent representation in the seniority integration proceedings.  
13 Although McCaskill-Bond defines "covered employee" as "a member of a craft or class  
14 that is subject to the Railway Labor Act," which certainly includes the West Pilots, it  
15 merely provides that seniority integration must occur according to the *Allegheny-Mohawk*  
16 LPPs and the LPPs are similarly silent on the issue of who may serve as an employee  
17 representative for purposes of the McCaskill-Bond process. *See* Pub. L. 110-161,  
18 § 117(b)(2), 121 Stat. 1844, 2382 (2007).

19 (70) Because *McCaskill-Bond* expressly incorporates Sections 3 and 13 of the  
20 *Allegheny-Mohawk* LPPs and specifically cites the Civil Aeronautics Board (the "CAB")  
21 decision, it is appropriate to infer that Congress intended for the courts to look for  
22 guidance to CAB decisions interpreting and applying Sections 3 and 13. *Cf. Huffman v.*  
23 *Comm'r*, 978 F.2d 1139, 1145 (9th Cir. 1992) ("Words with a fixed legal or judicially  
24 settled meaning, where the context so requires, must be presumed to have been used in  
25 that sense"); *United States v. Consol. Prods., Inc.*, 326 F. Supp. 603, 605 (C.D. Cal. 1971)  
26 ("[W]here Congress uses a term of art in a statute there is a presumption that it retains its  
27 traditional meaning absent some contrary expression of congressional intent, either  
28

1 explicit or implied from the history and purposes of the statute.”) (*citing Morissette v.*  
2 *United States*, 342 U.S. 246, 250 (1952)).

3 (71) CAB decisions applying Sections 3 and 13 of the *Allegheny-Mohawk* and  
4 similar LPPs demonstrate that there was a practice of separate participation for employee  
5 subgroups that had separate seniority interests. *See, e.g., Am.-Trans Caribbean Merger*,  
6 57 C.A.B. 581, 586 n.10 (1971) (concluding that “there may be a certain divergence of  
7 interest between the active and furloughed pilots of both [pre-merger carriers, who were  
8 both unionized], and accordingly we would expect that all such groups of pilots or flight  
9 engineers would be entitled to have separate or additional representation in the event they  
10 so desire”); *United-Capital Merger Case*, 40 C.A.B. 903, 907 (1964) (concluding that,  
11 where subgroup of flight crew employees had “been offered to participate as a full party  
12 in the [seniority-integration] arbitration” and where they did in fact participate, the  
13 seniority-integration procedures had been fair); *Nat’l Airlines Acquisition, Arbitration*,  
14 95 C.A.B. 584, 594-595 (1982) (concluding that procedures were “fair and equitable”  
15 where subgroup of union members on furlough had been accorded separate participation  
16 in seniority arbitration, even though they were also represented in that arbitration by their  
17 union’s Master Executive Council).

18 (72) The existence of this practice, as recognized by the CAB, whether or not  
19 such separate representation was acquiesced in by the certified labor unions, rebuts  
20 USAPA’s argument that such separate representation would undermine the exclusive  
21 representation rights of a certified collective bargaining agent under the RLA. In this  
22 regard, it is noted that the CAB itself expressly stated on at least one occasion that it did  
23 not equate “representative” for the purposes of seniority integration under the LPPs with a  
24 certified bargaining representative under the RLA. *See Braniff-Mid-Continent Merger*  
25 *Case*, 17 C.A.B. at 21-22 (“we are unable to interpret the word ‘representative’ . . . to  
26 import the meaning of that term under the [RLA]”).

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1 **III. Conclusion**

2 (73) In order to ensure that seniority-integration proceedings between the pilots  
3 employed by US Airways and American are fair and equitable, as required by the federal  
4 McCaskill-Bond statute, the West Pilots shall have the right to full and separate  
5 representation in these proceedings.

6 (74) If any of the foregoing conclusions of law are deemed to be findings of fact,  
7 they shall be incorporated herein as factual findings by this Court as though fully set forth  
8 as such.

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10 DATED this \_\_ day of \_\_\_\_\_, 2013.

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Honorable Roslyn O. Silver  
United States District Judge



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**CERTIFICATE OF SERVICE**

I hereby certify that on October 14, 2013, I caused to be electronically transmitted the attached Intervenor US Airways, Inc.'s [Proposed] Findings of Fact and Conclusions of Law, to the Clerk's office using the CM/ECF System for filing.

/s/ Robert A. Siegel

Robert A. Siegel

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