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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.

US Airways, Inc.

Intervenor.

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

**INTERVENOR US AIRWAYS, INC.'S
OPPOSITION TO USAPA'S MOTION
TO CONTINUE TRIAL DATE (DOC.
NO. 221)**

1 This is the sixth time in the course of this lawsuit that defendant US Airline Pilots
 2 Association (“USAPA”) has attempted to avoid or delay resolution of the Plaintiffs’
 3 claims on the merits.¹ As was the case for its five prior attempts, and for the following
 4 reasons, USAPA’s pending Motion To Continue Trial Date (Doc. No. 221) should be
 5 denied.

6 **First**, as this Court recognized in granting US Airways’ motion for intervention,
 7 “US Airways has a ‘significant protectable interest’ in the timely resolution of the
 8 seniority dispute [and] the failure to resolve the seniority dispute in a timely manner may
 9 ‘impair or impede’ US Airways’ interest by frustrating the expected realization of ‘the
 10 operational and financial benefits from the combined pilot workforce.’” (September 18,
 11 2013 Order (Doc. No. 194) at 4:3-6.) USAPA’s motion, if granted, would create a strong
 12 possibility that the long-running seniority dispute between the West Pilots and USAPA
 13 will **not** be resolved in a sufficiently timely manner, because USAPA cannot guarantee
 14 when President Hummel will be cleared by his doctor to travel to Phoenix and to
 15 participate in a trial – USAPA can only say that it will be no sooner than December 2,
 16 2013. (*See* Doc. No. 221, at 4:28-5:1 (all citations herein are to internal, not ECF,
 17 pagination).) Thus, USAPA’s assertion that, even with its requested continuance, “the
 18

19 ¹ USAPA has sought to avoid or delay adjudication of the merits of Plaintiffs’ claims on
 20 five prior occasions:

- 21 1. USAPA’s Motion to Dismiss, based in part on ripeness grounds (4/22/2013, Doc. No. 44);
 22 motion denied on July 19, 2013 (Doc. No. 122);
- 23 2. USAPA’s Statement in Response to the Court’s August 13, 2013 Order, in which USAPA
 24 argued that the Plaintiffs’ complaint should be dismissed without prejudice in light of the
 25 Department of Justice antitrust lawsuit (“DOJ Action”) (8/15/2013, Doc. No. 153);
 26 request denied on August 16, 2013 (Doc. No. 160);
- 27 3. USAPA’s Motion For Reconsideration of the Court’s July 19, 2013 Order denying
 28 USAPA’s Motion to Dismiss (9/05/2013, Doc. No. 183); motion denied on September 18,
 2013 (Doc. No. 194);
4. USAPA’s Petition for Writ of Mandate to the 9th Circuit, seeking an order from the Ninth
 Circuit compelling this Court to dismiss Plaintiffs’ lawsuit on ripeness grounds
 (9/12/2013; Court of Appeals Docket No. 13-73215 (Doc. No. 1); petition denied on
 September 25, 2013 (Court of Appeals Doc. No. 8); and
5. USAPA’s Motion For Stay Pending Petition For Writ of Mandamus (9/13/2013, Court of
 Appeals Docket No. 13-73215 (Doc. No. 3); motion denied on September 25, 2013 (Court
 of Appeals Doc. No. 8).

1 trial herein can still occur prior to the time that judgment in the DOJ Antitrust Action
2 enters” (*id.* at 5:1-2) is sheer speculation. And if USAPA’s prediction turns out wrong
3 and President Hummel is not able to participate at trial in December, then USAPA’s
4 continuance request could result in delaying resolution of the seniority dispute until after
5 the DOJ Action is completed and this, in turn, would impair US Airways’ significant
6 protectable interest in expeditiously realizing the operational and financial benefits from a
7 combined pilot workforce.

8 **Second**, USAPA’s request for a delay in order to ensure the availability of a “key”
9 trial witness (Doc. No. 221, at 1:3) is inconsistent with its motion for summary judgment
10 wherein USAPA stated that “the record demonstrates no genuine dispute as to any
11 material fact.” (Doc. No. 211, at 1:8-9.) Given this assertion, it is not credible for
12 USAPA now to claim that President Hummel’s testimony “is necessary for the Court to
13 have a complete understanding of the facts regarding . . . whether USAPA breached its
14 DFR by entering into an MOU that does not require USAPA use the Nicolau Award in the
15 McCaskill-Bond process.” (Doc. No. 221, at 4:9-12.)

16 **Third**, regardless of the necessity and/or the permissibility of President Hummel’s
17 testimony, the trial can and should proceed as scheduled on October 22 and 23, 2013. The
18 parties can use the two days that are already on-calendar to address the issues that would
19 otherwise have been addressed in a final pre-trial conference, to present opening
20 statements, and to take the testimony of all other witnesses and enter exhibits. This work
21 needs to be done – and there is no good reason not to do this work now. If the Court
22 determines, based on USAPA’s and the Plaintiffs’ briefing on the pending motion for
23 continuance and/or the testimony presented at trial, that President Hummel’s testimony is
24 both permissible and necessary, then the lawyers could travel to where he lives and
25 additional testimony could be taken from President Hummel via deposition and submitted
26 to the Court after the October 22-23 trial. If, on the other hand, the Court were to agree
27 with Plaintiffs that President Hummel’s testimony is neither necessary nor permissible,
28 then the record could be closed on October 23, none of the parties would have suffered

1 any prejudice, and resolution of the seniority dispute will no longer present an obstacle to
2 the airlines' prompt realization of the benefits of the merger.

3 US Airways wishes President Hummel a speedy and successful recovery, but his
4 current situation provides no basis for abandoning the October 22-23, 2013 trial dates that
5 are already on-calendar.

6 **CONCLUSION**

7 For the foregoing reasons, USAPA's Motion To Continue Trial Date should be
8 denied.

9 Dated: October 16, 2013.

10 For O'Melveny & Myers LLP

11 By: /s/ Robert A. Siegel

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CERTIFICATE OF SERVICE

I hereby certify that on October 16, 2013, I caused to be electronically transmitted the attached Intervenor US Airways, Inc.'s Opposition To USAPA's Motion To Continue Trial Date.

/s/ Robert A. Siegel

Robert A. Siegel

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