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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,

Plaintiff,

vs.

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

Defendants.

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

Judge Roslyn O. Silver

AMR CORPORATION AND AMERICAN AIRLINES, INC.'S REPLY IN SUPPORT OF THEIR MOTION FOR LEAVE TO FILE BRIEF AS *AMICUS CURIAE*

The Opposition filed by US Airline Pilots Association ("USAPA") to American's Motion for leave to appear as *amicus curiae* in this case comes as something of a surprise because the Court has already said that "AMR may elect to . . . appear as amicus" in this case.[1] Indeed, in USAPA's previous statements on the record, it indicated that "USAPA d[id] not oppose AMR Corporation and American Airlines, Inc.'s . . . application to intervene in this matter."[2] USAPA actually told the Court that it was "the one party who ha[dn't] filed anything on" American's Motion to Intervene and that it was "not going to object to it." Why USAPA welcomed American's party-intervenor status but opposes its participation as *amicus* is a mystery, and its Opposition brief does nothing to clarify that question. In any event, USAPA's rather curious about-face has no substance, and the Court should grant American's Motion.

USAPA concedes that *amicus* participation is warranted whenever "a decision in the present case may affect the interest of the amicus in another case in which he has an interest." Opp. at 1 (quoting *Greater Yellowstone Coal, Inc. v. Timchak*, No. CV-08-388-E-MHW, 2008 WL 4911410, at *6 (D. Idaho Nov. 13, 2008)).[3] As American explained in its *Amicus* Motion (and in its Motion to Intervene), one of its principal concerns is that the form of order resulting from this litigation, should Plaintiffs win, could interfere with or needlessly complicate American's ability to hold the other parties to their contractual commitments under the Memorandum of Understanding ("MOU") negotiated between American, US Airways, and their respective pilots' unions, which has been approved already by the Bankruptcy Court. USAPA now baldly insists, without further explanation or substantiation, that "[t]here is no likelihood that

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[1] Order [Doc. 122] at 8.

[2] Prelim. Injunction Hr'g Tr. 79, May 14, 2013; *see also* US Airline Pilots Association's Combined Response to AMR Corporation and American Airlines, Inc.'s Application to Intervene (Doc. 56) and Plaintiffs' Motion to Join Allied Pilots Association Pursuant to Rule 20(a)(2) (Doc. 58) [Doc. 107] at 1.

[3] Strangely, USAPA also urges the Court to reject American's motion precisely because American seeks "to advocate a partisan point of view." *Id.* at 2. In fact, participation by *amici* with an interest in the case is common. *See Funbus Sys., Inc. v. Cal. Public Utils. Comm'n*, 801 F.2d 1120, 1124-25 (9th Cir. 1986) ("[W]e have stated that there is no rule that amici must be totally disinterested"); *NGV Gaming, Ltd. v. Upstream Point Molate, LLC*, 355 F. Supp. 2d 1061, 1068 (N.D. Cal. 2005) ("[A]micus with partisan interests are now quite common.").

the Court would enter such an injunction." Opp. at 1. But that is a promise that USAPA cannot make. Should Plaintiffs prevail, the Court will devise an order that *it* believes is warranted — it is not bound by the formulation offered by Plaintiffs — and USAPA's promises on the Court's behalf about the shape that order might take is no comfort at all.[4]

USAPA also confidently predicts that any positions American might take in this litigation would be indistinguishable from that of US Airways. But USAPA is in no position to make that promise either. It is true that American and US Airways both have an interest in furthering their merger and avoiding delay,[5] but that does not guarantee that the merging parties will be in perpetual lockstep. American has an interest in the way this litigation may impact *other* aspects of its Chapter 11 proceeding, a proceeding to which US Airways is not a party, and its interests in the details of the contractual commitments made in the MOU — while *aligned* with those of US Airways — need not be *identical*. Moreover, even if the two entities had perfectly aligned interests, American is likely to possess information about a prospective injunction's impact on its Chapter 11 proceedings that US Airways would not know.

American also has a separate interest in these proceedings because it has an independent statutory obligation pursuant to the McCaskill-Bond Amendment to provide for the integration of the American and US Airways pilot seniority lists "in a fair and equitable manner."[6] The dispute between the parties in this case goes to the heart of that obligation: the Court is being asked to determine which entities will be permitted to participate in the McCaskill-Bond process.[7] Indeed, the foundation of the West Pilots' case is that they have been treated unfairly by their union, and

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[4] American reiterates, however, that the form of relief Plaintiffs have most recently requested would likely avoid unnecessary interference with American's interests.

[5] While American has repeatedly said that it expresses no view on the merits of the internal US Airways seniority dispute, American has a distinct interest in ensuring that *some* outcome is reached, expeditiously, so that its merger with US Airways may be consummated, it can emerge from bankruptcy, and the functional integration of the two carriers can be accomplished according to the schedule American, USAPA and the other parties bargained for when they entered into the MOU regarding the potential merger.

[6] *Allegheny-Mohawk Merger Case*, 59 C.A.B. 19, Appendix B, section 3.

[7] American, however, has been and will "remain neutral regarding the order in which pilots are placed on the integrated seniority list." MOU ¶10.d. [Doc 57-1].

that any seniority integration process between American and US Airways pilots that does not include them as a separately-represented group would by definition be unfair — a contention that goes to the heart of American's role in the McCaskill-Bond process. American has a strong interest in making its views known in a proceeding that bears directly on its own statutory rights and responsibilities.[8]

Finally, USAPA urges the Court to deny the Motion for fear that American will add unnecessarily to the volume of pleadings or lengthening the proceedings. *See* Opp. at 2 (citing *Ctr. For Biological Diversity v. U.S. Bureau of Land Mgmt.*, No. 09-CV-8011-PCT-PGR, 2010 WL 1452863 (D. Ariz. Apr. 12, 2010) and *Silver v. Babbitt*, 166 F.R.D. 418, 434-35 (D. Ariz. 1994)). American has no desire to file unnecessary or duplicative pleadings or to add to any delay; as detailed elsewhere, American's motivation is to ensure precisely the opposite. If, as USAPA suggests, American's interests on a given issue are adequately represented by another party in this lawsuit, American simply will not argue that issue. Given the importance of these matters to American's long-term future, however, and the very real prospect that American will find itself constrained by what the Court does here, the Court should permit American to make its views known as the need arises during the course of this litigation and grant its motion to participate *amicus curiae*.

[8] USAPA has also made clear its position that the Court will be obliged to consider the origins of the MOU in order to resolve this case. *See, e.g.*, Proposed Final Pretrial Order for Bench Trial [Doc. 206] at 46-49 (claiming, among other things, that "[t]he purpose of paragraph 10.h of [the MOU] was to ensure that [it] was neutral with respect to seniority and that [it] did not reorder the existing seniority lists except through the process provided in the rest of paragraph 10," and "USAPA's agreement to waive change of control provisions contained in the East CBA was a substantial inducement that led to the MOU."). American disagrees, and believes that this case may be resolved without reaching those questions, but to the extent the Court concludes that these issues are unavoidably implicated here, American should be permitted to address them as a party to the MOU.

DATED: October 16, 2013

Respectfully submitted,

/s/ Todd C. Duffield

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CERTIFICATE OF SERVICE

I hereby certify that on this 16th day of October, 2013, I electronically transmitted the foregoing document to the U.S. District Court Clerk's Office by using the ECF System for filing and transmittal.

/s/ Todd C. Duffield
Todd C. Duffield