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17 Attorneys for US Airline Pilots Association

18 **IN THE UNITED STATES DISTRICT COURT**  
19 **DISTRICT OF ARIZONA**

20 Don Addington, *et. al.*, )  
21 *Plaintiffs,* )  
22 v. )  
23 US Airline Pilots Association, *et. al.*, )  
24 *Defendants.* )  
25 )  
26 )

Case No.: CV-13-00471-PHX-ROS  
**US Airline Pilots Association's  
Summary of Evidence**

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1           The issue before this Court is straightforward. Did USAPA breach its DFR when it  
2 entered into the MOU that does not require USAPA to use the Nicolau Award in the  
3 seniority integration process. That was the issue defined by Plaintiffs in their amended  
4 complaint, and which this Court articulated in its Order. Doc. 122, at p. 4.

5           At trial, Plaintiffs attempted to redefine their claims and argued, for the first time,  
6 that USAPAsomehow hoodwinked Plaintiffs by entering into the MOU that “establishes  
7 a seniority integration process that fully replaces the process in the 2005 TA, a process . .  
8 . that does not require implementation of the Nicolau Award.” Transcript of Oct. 22,  
9 2013, at 21:1-5. That USAPA does not believe it is required to implement the Nicolau  
10 Award could not have been news to Plaintiffs. Indeed, that argument has been the  
11 centerpiece of every DFR claim filed by Plaintiffs against USAPA. Regardless, the  
12 evidence at trial, along with the testimony, clearly shows that Plaintiffs cannot meet their  
13 burden of proving that USAPA’s decision to enter into the MOU which does not include  
14 the Nicolau Award was, in light of the factual and legal landscape, “so far outside a  
15 ‘wide range of reasonableness,’ ... that it is wholly ‘irrational’ or ‘arbitrary.’” *Air Line  
16 Pilots Ass’n Intern. v. O’Neill*, 499 U.S. 65,78 (1991).

17  
18           Plaintiffs conceded in their opening statement that their DFR claim rests upon the  
19 discredited premise that the MOU does not amend the TA. Transcript, 10/22/13, at 25:6-  
20 9. However, this Court has already ruled that “the TA can be modified at any time ‘by  
21 written agreement of [USAPA] and the [US Airways]...and there is no obvious  
22 impediment to USAPA and US Airways negotiating and agreeing upon any seniority  
23 regime they wish.” 2:10-cv-01570-ROS, Doc. 193, at 7. Plaintiffs concede that the TA  
24 can be modified, and that the MOU does in fact modify the TA. Ex. 296 (Plaintiffs’ Resp.  
25 to Interrogatory #11. Moreover, under the explicit contractual language of the TA, its  
26 terms can be modified by written agreement between US Airways and USAPA. Ex. 102,  
27 Section XII; Hummel Tr., Ex. 154. Consistent with that explicit contractual term,  
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1 USAPA and US Airways entered into the MOU, modifying the TA provisions relating to  
2 implementation of an integrated seniority list. Bradford Dep. US Airways agrees that the  
3 MOU constitutes “a written agreement between USAPA and the Company which  
4 modifies the provisions of the TA relating to implementation of an integrated seniority  
5 list.” Ex. 154.

6 Plaintiffs failed to produce any evidence at trial refuting either the explicit  
7 language of the TA allowing for amendment, or the correctness of the positions of  
8 USAPA and US Airways – the parties to the TA -- that the MOU amends the TA. Indeed,  
9 emails from Plaintiffs show that there was discussion amongst Plaintiffs in advance of the  
10 MOU ratification vote regarding whether the MOU, and ¶10.(h) in particular, amends the  
11 TA. Ex. 308. Moreover, there was discussion that Leonidas should recommend against  
12 voting for the MOU. Despite knowing the precise language of ¶10.(h), the implications it  
13 had on the TA, and USAPA’s long standing position that it is not required to implement  
14 the Nicolau Award, Leonidas encouraged West Pilots to vote for the MOU.

15 Plaintiffs claim the TA requires USAPA to implement the pilot seniority list  
16 created according to the ALPA Merger Policy when there is a “single agreement.” Doc.  
17 134, at ¶¶42, 103-108; Burman Dep. But the MOU is clearly not the “single agreement”  
18 referenced in the TA. USAPA’s Response to Plaintiffs’ Interrogatories, Response #1. The  
19 TA provides that the pilot workforces of the pre-merger America West and US Airways  
20 will remain separate and covered by their respective collective bargaining agreements  
21 until the later of completion of the integrated pilot seniority list and negotiation of the  
22 “single agreement.” Ex. 102. The MOU is a conditional agreement entered into by US  
23 Airways, USAPA, APA and American Airlines, that provides for a process for reaching a  
24 joint collective bargaining agreement (“JCBA”) that will apply to the merged workforces  
25 of American Airlines and US Airways in the event the merger is consummated. Ex. 130.  
26 The “single agreement” referenced in the TA applied to a joint collective bargaining  
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1 agreement as between the former America West pilot and the pre-merger US Airways  
2 pilots, that was to apply to the terms and conditions of employment with US Airways, not  
3 the four party agreement that is the MOU that establishes some of the terms that will  
4 apply for all pilots with the new employing entity to be created by the merger..

5 Plaintiffs presented no evidence at trial supporting their claim that the MOU is the  
6 “single agreement” referenced in the TA, and Plaintiffs’ position is neither shared by  
7 USAPA nor US Airways, both signatories to the MOU. Bradford Dep.; USAPA Resp. to  
8 Interrogatories, Responses #1 and #4; Ex. 152, USAPA003588; Exs. 154, 152. US  
9 Airways, in denying a grievance filed by a West Pilot, stated that there is no “combined  
10 contract” as referenced in the TA. Ex. 152.

11 While Plaintiffs claim USAPA modified the TA “for an illegitimate reason,” the  
12 trial record is devoid of any evidence of an “illegitimate reason.” Ex. 296 (Response to #  
13 11). On the contrary, witness after witness testified as to the multiple economic and non-  
14 economic reasons as to why USAPA acceded to the condition laid down by the airlines  
15 and the UCC not to include the Nicolau Award in the MOU, and as to why Plaintiffs, on  
16 clear notice that the MOU did not include the Nicolau list, voted overwhelmingly for the  
17 MOU, including that the MOU conferred unprecedented and previously unattainable  
18 economic benefits. Plaintiffs failed to carry their burden.

19 The evidence may be summarized as follows:

20  
21 1. Unbeknownst to USAPA, US Airways had conducted negotiations with the  
22 Allied Pilots Association (“APA”), the Union that represents the pilots at American  
23 Airlines (“AMR”). Hummel Dep. ;<sup>1</sup> Owens Tr. On April 23, 2012, APA and US Airways  
24 executed an agreement that has been referred to as the “Conditional Labor Agreement”  
25 (“CLA”) or “APA Term Sheet.” that would go into effect if and when there was a merger  
26

27 <sup>1</sup> References to deposition testimony are referred to herein as “Dep.” See Docs. 247, 248  
28 References to live testimony during the trial on October 22 and 23, 2013 are referred to  
herein as “Tr.” References to the parties’ Stipulated Facts in the Joint Proposed Pretrial  
Order, Doc. 206-1, are referred to herein as “SF”.

1 in bankruptcy involving US Airways and AMR. SF ¶75.

2           2. When USAPA learned about US Airways' intention to merge with AMR and  
3 about the fact that it had negotiated an agreement with APA, USAPA determined that it  
4 was in the interest of US Airways pilots to negotiate an agreement that would allow US  
5 Airways pilots to arrive on the date of the merger with equal pay, benefits and working  
6 conditions and that the best opportunity to arrive as equals was to negotiate an agreement  
7 prior to the merger. Hummel Dep.; Colello Tr.

8           3. In discussions between APA and USAPA, APA indicated it was very concerned  
9 about USAPA's desire to negotiate a separate agreement. Hummel Dep. Initially, US  
10 Airways indicated it had no interest or need to negotiate with USAPA concerning any  
11 protections for US Airways in the event of a merger with AMR. SF ¶¶40, 41,76; Colello  
12 Tr.; Owens Tr.; Hummel Dep. USAPA persuaded US Airways that it was in its best  
13 interest to negotiate such protections largely as a way to avoid the problems that would  
14 be posed by the code sharing prohibition and the change of control provisions of the  
15 existing, pre-merger US Airways collective bargaining agreement. US Airways (and later  
16 AMR and the Unsecured Creditors Committee ("UCC")) made clear that an agreement  
17 that might be negotiated to govern the terms and conditions of pilots employed by the  
18 merged carrier would not address seniority in any way and, in particular, would not  
19 address the seniority dispute between the former America West Pilots and the former US  
20 Airways Pilots. The employer parties were firm on this point throughout negotiations and  
21 were unwilling to include any specific resolution of the seniority dispute in the MOU. SF  
22 ¶77; Hummel Dep.; Colello Tr.; Colello Dep.; Owens Dep.

23           4. The Negotiating Advisory Committee ("NAC"), the Committee that negotiated  
24 the MOU on behalf of USAPA, was made up of four pilots, two of whom were West  
25 Pilots (Mr. Holmes and Mr. Calveri) and two of whom were East Pilots (Mr. Colello and  
26 Mr. Owens). Mr. Holmes and Mr. Calveri was appointed to the NAC by USAPA  
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1 President Gary Hummel. Holmes Tr. Mr. Hummel also appointed Mr. Holmes to the  
2 Retirement Committee. Holmes Tr.

3 5. In the course of negotiating the MOU, the NAC worked together collectively  
4 for the good of all of the pilots. Colello Tr.

5 6. Plaintiffs' witness testified the NAC represented the pilots of all four domiciles  
6 fairly including the Washington, D.C. domicile that did not have any representatives on  
7 the NAC. Holmes Tr.; Colello Tr. Mr. Colello confirmed that the NAC was able to  
8 represent all US Airways pilots fairly and he explained that the bargaining process did  
9 not involve a *quid pro quo* for each particular section but was aimed at reaching an  
10 overall agreement on all terms of the MOU. Colello Tr. Mr. Holmes testified that  
11 collective bargaining involves "give and take." Holmes Tr. Holmes testified that  
12 collective bargaining involves "give and take" and agreed that there are tensions among  
13 different groups of pilots who want different things and that those interests are  
14 represented and reconciled by USAPA and other unions. Holmes Tr.

15 7. Both the NAC and the USAPA Board of Pilots Representatives ("BPR") were  
16 concerned that the APA term sheet did not contain sufficient protections for the interests  
17 of US Airways pilots and the NAC was tasked with the duty to get protections for US  
18 Airways pilots in a separate agreement and seeing that it could get the best possible deal  
19 for US Airways pilots. Holmes Tr.; Colello Tr. It was clear to the NAC that if there was  
20 going to be a merger, USAPA would be involved in seniority integration with the APA.  
21 Holmes Tr. The APA is almost twice the size of USAPA. Holmes Tr.; SF ¶149, 152.  
22 The focus of the NAC was to ensure that US Airways pilots stood in the best position  
23 with respect to APA. Holmes Tr.; Hummel Dep.

24 8. MOU I, a tentative agreement between US Airways, APA and USAPA that was  
25 never signed or executed, did not contain any details regarding the seniority integration  
26 process other than that it had to be completed within 24 months. (Compare Ex. 7 (MOU  
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1 D) ¶9 and Ex. 24 (MOU) ¶ 10).

2 9. The MOU is a conditional agreement that will govern the combined operations  
3 of US Airways and AMR if the merger is approved. Ex. 24 (MOU). Unlike the “Single  
4 Agreement” referred to in the 2005 TA, which was to apply to the combined operations  
5 of America West and US Airways, the MOU will apply to the combined operations of  
6 AMR and US Airways and govern the new entity to be created by the merger of the two  
7 carriers. Ex. 24 (MOU), Ex. 113 (TA). Unlike the TA that was between US Airways and  
8 ALPA, the MOU is between AMR, US Airways, APA and USAPA and will apply to the  
9 new entity determined to be the single carrier by the NMB. At the time the MOU  
10 becomes effective (the “Effective Date”), US Airways will cease to exist. US Airways  
11 agrees with USAPA that the MOU is not the “Single Agreement referred to in the 2005  
12 TA. SF ¶176; Ex. 113 (TA); Ex. 251; Ex. 252.

14 10. Paragraph 10.h of the MOU expressly provides that the status quo with respect  
15 to seniority and bidding for US Airways pilots will continue until the completion of the  
16 seniority integration process as provided in paragraph 10. Paragraph 10 has nothing to do  
17 with terminating the 2005 TA. Paragraph 10.h was proposed to make clear that the status  
18 quo with respect to the current two-list seniority system at US Airways would continue  
19 until replaced by the results of the seniority integration procedure otherwise set forth in  
20 paragraph 10. Ex. 24 (MOU).

21 11. Paragraph 4 of the MOU provides for the termination of the 2005 TA. Ex. 24  
22 (MOU). Paragraph 4 was proposed by US Airways and AMR and the UCC, not by  
23 USAPA. Colello Tr.; *see also* Hummel Decl. (Doc. 256-2). Paragraph 4 provides that the  
24 Merger TA (“MTA”) (which is a combination of the AMR collective bargaining  
25 agreement and the MOU final agreement) will replace any and all prior collective  
26 bargaining agreements. The MOU clarified that the provisions of the East and West  
27 CBA and the TA continue until the Effective Date of the MOU. Ex. 7 (MOU I) ¶2;  
28

1 Exhibit 24 (MOU) ¶4. The MOU amends any inconsistent provisions of the 2005 TA.  
2 Ex. 24 (MOU, ¶ 4; Ex. 252 (Section 22 seniority challenge response). *See also* Colello  
3 Tr.; Hummel Decl.

4 12. The West Pilots objected to the first draft of the first sentence of paragraph  
5 10.h of the MOU. After the West Pilots objected, the sentence was replaced with a  
6 completely new sentence. Holmes Tr.; Colello Tr. Although Mr. Holmes had concerns  
7 about 10.h and the effect on the TA, as a member of the NAC, he recommended the  
8 MOU for approval to the BPR. Holmes Tr.; *see also* Colello Tr. Mr. Holmes testified that  
9 he agreed to move forward because “it’s a give and take thing.” Holmes Tr.

10 13. The members of the NAC unanimously agreed to recommend approval of the  
11 MOU to the BPR. Owens Tr. The BPR including the three West Pilot members of the  
12 BPR voted unanimously to recommend ratification of the MOU. Holmes Tr.; Owens Tr.  
13 At the time Mr. Holmes recommended approval of the MOU to the BPR and at the time  
14 he voted to approve the MOU, he was aware that USAPA was opposed to an unmodified  
15 Nicolau award and committed to date of hire principles of integration and did not think  
16 that by entering into the MOU that was going to change. Holmes Tr.

17 14. There was no secret agenda or secret purpose for paragraph 10.h. All  
18 members of the NAC agreed to the wording of paragraph 10 and, in particular, to the  
19 wording of paragraph 10.h. Owens Tr. As USAPA Merger Committee Chairman Jess  
20 Pauley stated in the deposition taken by Plaintiffs, paragraph 10.h was “belt and  
21 suspenders to make certain that people understood what the intent of the MOU was.  
22 And, again, the intent is to be neutral so that the end result we can represent all the pilots  
23 by getting fair and equitable seniority integration.” Pauley Dep.; Ex. 24 (MOU ¶10.h)  
24 Ex. 252. No secret agenda, Colello Tr., Pauley Tr.; Hummel Decl.

25 15. To achieve an MOU that would benefit the entire group of US Airways pilots,  
26 the East Pilots gave up the change of control provisions in their collective bargaining  
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1 agreement. SF ¶76; Ex. 24; Holmes Tr.; Colello Tr.; Colello Dep.; Owens Tr..Ex. 96

2 16. Plaintiffs' witness acknowledged the change of control provisions that were  
3 given up by the East Pilots had "monetary value." Holmes Tr. That value was estimated  
4 by USAPA to be upwards of 63% to the pay of the East Pilots who qualified (which was  
5 all of the active East Pilots with the exception of approximately 200 E190 pilots). Ex. 96;  
6 Owens Tr.; De Vicq Tr. Mr. Holmes agreed that the change of control provisions that  
7 were given up by the East Pilots is part of the give and take involved in the MOU  
8 negotiations. Holmes Tr.

9 17. The MOU included unprecedented and previously unattainable improvements  
10 in wages and benefits for all US Airways Pilots. SF¶¶98-99. USAPA projects that the  
11 total economic impact of MOU II and the JCBA after the Effective Date of the POR will  
12 be approximately \$1.6 Billion for the US Airways pilots over the next six years. (SF  
13 ¶110) In addition, the MOU puts US Airways pilots on an even level with American  
14 Pilots going into the seniority integration proceeding thus undercutting an argument by  
15 the Allied Pilots Association that their pilots would be entitled to some "credit" with  
16 respect to their placement on a combined seniority list because they were responsible for  
17 improving wages and benefits for US Airways Pilots. Pauley Dep.; Owens Tr. ; Holmes  
18 Tr.; Scherff Tr.

19 20 18. There was no discussion with the BPR after MOU I with regard to seniority.  
21 Holmes Tr.; Colello Tr. The NAC was not tasked to discuss seniority with MOU I and  
22 agreed that the NAC does not address seniority issues. Holmes Tr., Colello Tr. As  
23 members of the NAC, Mr. Holmes and Mr. Calveri had the ability to bring proposals  
24 forward and mention concerns they had. Holmes Tr.; see also Colello Tr.. Neither Mr.  
25 Holmes nor Mr. Calveri , the two West Pilots on the NAC proposed that the Nicolau list  
26 be included in the MOU. HolmesTr. The Merger Committee addresses seniority issues.  
27 Tr. It is the responsibility of the Merger Committee to facilitate merging the pilots.  
28

1 Holmes Tr.

2 19. Mr. Holmes, along with the other members of the NAC, prepared explanatory  
3 materials that were presented to the membership to educate the pilots, inter alia,  
4 concerning the terms and conditions and other matters set forth in the MOU. Holmes Tr.  
5 These materials were mailed to pilots' homes. Colello Tr. The materials the NAC  
6 prepared stated that seniority will be handled in accordance with McCaskill-Bond and  
7 made no reference to the Nicolau Award. Holmes Tr.; Ex. 233) In addition, prior to the  
8 ratification vote, USAPA made known that the MOU modifies or could modify the TA.  
9 Ex. 112 (NAC Question Bank on the MOU): "Q. Does the MOU replace the current  
10 TA? A. The MTA (consisting of the MOU and the 2012 AA-APA agreement) will  
11 replace the TA when implemented on and after the effective date."  
12

13 20. There were approximately 20 separate "roadshow" sessions held at the various  
14 domiciles to explain the MOU. The NAC distributed explanatory materials at each  
15 session. These materials were available on the website along with an extensive set of  
16 QandAs. Colello Tr. No one from the NAC or members of the BPR (including Mr.  
17 Scherff who attended all of the roadshow sessions) raised any question about termination  
18 of the TA or ¶10.(h). Colello Tr.

19 21. Under the balloting process, any pilot who voted was entitled to change their  
20 vote up until the close of balloting on February 8, 2013. Holmes Tr. Mr. Holmes ran the  
21 Leonidas website. Holmes Tr. Several updates encouraging West Pilots to vote to ratify  
22 the MOU were issued by Leonidas. Holmes Tr. Mr. Holmes indicated that he informed  
23 Leonidas members of discussions at the Road Show and that they were in possession of  
24 the information that Mr. Holmes had regarding discussions at the Road Shows and before  
25 balloting closed. Leonidas sent out several communications urging ratification of the  
26 MOU in February 2013, after the Road Shows and before balloting closed. Holmes Tr.;  
27 Exs. 258, 259.  
28

1           22. The Nicolau Award was issued in 2007 as the result of an internal Air Line  
2 Pilots Association process known as the ALPA Merger Policy that was revised following  
3 that proceeding. At the time ALPA Merger Policy did not expressly allow the arbitrator  
4 to take into account a pilot's length of service. SF ¶¶17,18,32; Ex. 203 (ALPA Merger  
5 Policy (2005)); Ex. 210 (ALPA Merger Policy 2009); Ex. 204 (Nicolau Award, pp. 1-2,  
6 Bruscia Dissent, p. 3 ("the US Airways pilots, who had already received notice of their  
7 opportunity to return to work from furlough, should have received some consideration for  
8 the substantial time they have already invested in their airline")). Subsequent arbitration  
9 decisions on pilot seniority integration have criticized Nicolau and rejected efforts by  
10 pilots to argue for similar results. Ex. 324 (UAL-CAL Decision, , pp. 11-12 ("Following  
11 Arbitrator Nicolau's decision in US Airways and America West Airlines, ALPA revised  
12 its merger policy. . . . The most significant change in the policy, particularly in light of  
13 the decision that prompted the revision [the Nicolau Award], was the addition of  
14 'longevity.'"), pp. 22 (rejecting as unfair, inequitable and creating windfalls any  
15 integration methodology that ignores longevity)).

17           23. Jess Pauley's placement on the Nicolau list presents a compelling illustration  
18 of the inequity of that list. He had never been furloughed. Nevertheless, the Nicolau  
19 Award placed him below an America West pilot ad 16.4 less service than he had and was  
20 15 years younger than he was. Pauley Tr. It gave former America West pilots windfall  
21 gains in seniority and career earnings at the expense of former US Airways pilots. The  
22 US Airways MEC and the pilots it represented opposed the Nicolau Award because it  
23 violated ALPA Merger Policy. Pauley Tr.; Ex. 205 (US Airways MEC presentation to  
24 ALPA); Ex. 206 (US Airways MEC letter to ALPA); Ex. 207 (US Airways MEC  
25 complaint to set aside the Nicolau Award); Ex. 204 (Nicolau Award, pp. 1-2, Bruscia  
26 Dissent).

27           24. The Nicolau Award was at best an ALPA proposal that might have been  
28

1 included in a collective bargaining agreement that would be negotiated between the  
2 merged carrier (US Airways) and ALPA to govern the combined operations of US  
3 Airways and America West. Ex. 208, 223.

4 25. The Nicolau Award has never been ratified and has never been embodied in  
5 any applicable collective bargaining agreement. Ex. 113 (TA); Ex. 223. With respect to  
6 seniority, the status quo is a two list system, one list for the former America West Pilots  
7 and one list for the former US Airways Pilots. SF ¶8. The list for the former US  
8 Airways Pilots (known as the East List) includes several hundred new hires. The Nicolau  
9 Award is not an actual working condition and is not part of the status quo at US Airways  
10 as the Company pointedly noted in denying several challenges to the publication of a  
11 seniority list that did not reflect the Nicolau Award. SF30, ¶176; Ex. 251.

12 26. There is plainly no merit to Plaintiffs' attempt to assert at trial (not contained  
13 in any pre-trial filings) that they were somehow misled by USAPA or any of its  
14 representatives about the MOU or its effects.<sup>2</sup> USAPA has never been in favor of the  
15 Nicolau Award. Plaintiffs and the Leonidas litigation control group were well aware  
16 before referendum balloting began that USAPA opposed the Nicolau Award, and had  
17 proposed a different form of seniority integration in its bargaining with US Airways. It  
18 was clear that the Nicolau Award was not included in the MOU, that the MOU was  
19 neutral with respect to the seniority dispute, that the MOU amended the 2005 TA and that  
20 the MOU left resolution of the seniority dispute to a process consistent with the  
21 McCaskill-Bond Amendment. Critically, Plaintiffs did not offer any credible evidence  
22  
23

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24 <sup>2</sup> Defendants' first interrogatory asked Plaintiffs to identify each reason USAPA  
25 acted in bad faith when it entered into the MOU, including every instance of fraud,  
26 deceitful conduct and dishonest conduct. Plaintiffs said nothing about being misled as to  
27 the list that would be used in the McCaskill-Bond process and, in fact acknowledged that  
28 USAPA consistently stated it would be date of hire. Plaintiffs stated as follows: "This is  
evidenced by the fact that USAPA has repeatedly announced in connection with the  
implementation of the McCaskill-Bond provisions in the MOU that it intends to use a  
date-of-hire seniority order for the US Airways pilots when those pilots integrate  
seniority with the American Airlines pilots." Ex. 296

1 that USAPA had somehow misrepresented that the Nicolau Award was included in the  
2 MOU or was going to be used in the seniority integration process. Koontz Tr.; Holmes  
3 Tr.; Holmes Dep.; Koontz Dep.; Scherff Dep.; Iranpour Dep.; Exs. 308 and 310 (email  
4 messages among Plaintiffs and Leonidas Members); Ex. 333 (NAC QandAs); Stockdell  
5 Dep. Throughout the discussion of what position Leonidas should take on the MOU, the  
6 Plaintiffs and leaders of Leonidas were consulting with counsel representing Plaintiffs in  
7 this case, i.e., “Marty,” “PS” [Posinelli Shugart] and “Posinelli.” Exs. 308, 310.

8  
9 27. USAPA was clear about what seniority list would be used in seniority  
10 integration with APA and, equally important, what list would not be used. Ex. 112 (NAC  
11 Question Bank on the MOU: “We will make proposals to the APA, and will propose  
12 integrating the lists based on date of hire.” The January 23, 2103 edition of Iron  
13 Compass (Ex. 236), an official USAPA communication, contained a Q & A section from  
14 the Merger Committee, including the question “What list will USAPA present in the  
15 McCaskill-Bond process?”. The first line of the response provides, “The short answer is  
16 that USAPA will propose a DOH integration in accord with the USAPA Constitution.”  
17 The response goes on to expand on this first line, concluding as follows: “In accord with  
18 the USAPA Constitution, our Merger Committee will propose a DOH method for  
19 integrating seniority.”

20 28. A January 23, 2013 email discussion amongst Plaintiffs and Leonidas  
21 member states as follows: “The MOU is worthless especially when taking into account  
22 all we have suffered in one form or another over the past eight years. This MOU is even  
23 more worthless without the Nicolau Award....” Ex. 310.

24 29. Plaintiffs and the Leonidas litigation control group, with the participation of  
25 their lawyers, made a deliberate and calculated decision to support the MOU even though  
26 they knew that it did not include the Nicolau Award. See testimony, deposition excerpts  
27 and exhibits cited in ¶¶ 35-38, *supra*. Throughout the ratification process, they raised no  
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1 objection to statements that the MOU was neutral with respect to seniority and did not  
2 take any action to include the Nicolau Award in the MOU. Holmes Tr.; Colello Tr.;  
3 Holmes Dep., Scherff Dep., Koontz Dep.

4 30. It was unlikely that any agreement that included the Nicolau Award would  
5 have been ratified. See documents referenced in ¶¶ 35-36, *supra*; Hummel Decl.;  
6 Plaintiffs' Reply re: Class Certification, Doc. 136 pp. 5-6 (arguing election in which East  
7 Pilot Hummel defeated West Pilot Ferguson by votes of 1269 to 2165 represented a  
8 referendum on use of the Nicolau list).

9 31. There was opposition to the MOU and/or provisions of the MOU. Owens Tr.;  
10 Crimi Dep.; Ciabattoni Dep.; Ex. 34.

11 32. The MOU was ratified by a vote of 75-25 by the Pilots voting on the explicit  
12 understanding that it would not put the Nicolau Award into the effect. SF ¶127; Ex. 137  
13 previously cited evidence that the MOU was neutral re seniority and did not include the  
14 Nicolau Award.

15 33. When he took office as the president and principal executive officer of  
16 USAPA in 2012, Capt. Gary Hummel reached out to the base representatives in Phoenix.  
17 When he took office, Capt. Hummel appointed West Pilots to all of USAPA's  
18 committees including appointing two experienced West Pilots to the Merger Committee  
19 charged with the seniority integration process. After consultation with the Phoenix base  
20 reps and other so called West Pilots, Capt. Hummel appointed more than 25 Phoenix-  
21 based pilots to USAPA committees. These appointments included Phoenix-based pilots  
22 who had run in the election against the candidates who had run with Capt. Hummel.  
23 Hummel Dep.; *see also* Hummel Decl.

24 34. There are currently more than 40 Phoenix-based pilots serving on USAPA  
25 Committees. Hummel Decl. .

26 35. There are currently two Phoenix-based pilots on the Merger Committee. SF  
27  
28

1 One is Capt. Ken Stravers who was the chairman of the America West Merger  
2 Committee throughout the ALPA process that resulted in the Nicolau Award. The other  
3 is Rocky Calveri who was a member of the NAC throughout the process that led to the  
4 MOU. The Merger Committee members represent a cross-section of the US Airways  
5 pilots. Approximately one-third of US Airways pilots are former America West pilots  
6 based in Phoenix. One-third of the Merger Committee is comprised of Phoenix-based  
7 pilots. There are two members on the Committee from each of the major domiciles  
8 (Charlotte, Philadelphia and Phoenix). There are an equal number of captains and first  
9 officers. There are pilots from every section of the seniority lists. SF, ¶155.

10  
11 36. The Merger Committee will start the seniority integration process by providing  
12 the APA with information concerning the status quo at US Airways, namely two lists,  
13 one East and one West, with all relevant seniority information for each pilots on those  
14 lists, including name, employee number, date of birth, date of hire, current base, current  
15 equipment, current status (captain or first officer) and any furlough periods. Pauley Tr.;  
16 Pauley Dep.; Davison Tr.

17 37. The purpose of the Merger Committee is to obtain the best possible outcome  
18 for all US Airways Pilots in the seniority integration proceeding. In this respect neither  
19 the Merger Committee, Capt. Hummel or members of the BPR believe that Article I,  
20 Section 8.D of the USAPA Constitution limits the range of potential proposals that can be  
21 considered. Hummel Dep.; Pauley Tr.; Pauley Dep.; Crimi Dep.; DiOrio Dep. *See also*  
22 Hummel Declaration. Hummel Decl.

23 38. Article I, Section 8.D of the USAPA Constitution states that one of the  
24 “objectives” of USAPA is “To maintain uniform principles of seniority based on date of  
25 hire and the perpetuation thereof, with reasonable conditions and restrictions to preserve  
26 each pilot’s un-merged career expectations.” In testimony, USAPA officers and  
27 representatives stated that this provision does not require USAPA to adhere to a date of  
28

1 hire list or regime but, in reaction to the Nicolau Award and the ALPA Merger Policy  
2 that was then in effect, requires USAPA to consider date of hire principals and premerger  
3 career expectations in any seniority integration proceeding. USAPA officer, BPR  
4 members and Merger Committee members believe that this includes a wide range of  
5 potential methods of merging seniority including status and category ratios, date of hire,  
6 “pull and plug” and dynamic lists to name but a few. Several of these methods are  
7 illustrated in the recent decision issued by a three-member arbitration panel in the  
8 seniority integration proceeding involving the pilots at United and Continental. Ex. 117  
9 (USAPA Constitution); Pauley Tr.; Crimi Dep.; DiOrio Dep.; Bradford Dep.  
10

11 39. The Merger Committee is in the process of developing various proposals to  
12 discuss with the BPR. The Committee has examined proposals that start from an updated  
13 Nicolau list, that start from a date of hire list and that start from the two existing lists. A  
14 proposal that starts from the two existing lists offers the most flexibility. Pauley Tr.;  
15 Davison Tr.

16 40. Capt. Hummel and the other USAPA officers, board members and  
17 representatives are committed to continuing to represent all US Airways Pilots fairly.  
18 Pauley Tr.; Colello Dep.; Hummel Dep.; *see also* Hummel Decl.

19 41. The Merger Committee unanimously believes that it can fairly represent all US  
20 Airways pilots and that dividing the pilots group in any way will weaken its ability to  
21 represent all the US Airways Pilots. Pauley Tr.; *see also* Hummel Decl.

22 42. USAPA has fully and fairly represented all US Airways Pilots (both “East  
23 Pilots” and “West Pilots”) with respect to all issues and grievances. Colello Tr.; Koontz  
24 Tr.; Hummel Decl.

25 Respectfully submitted this 31<sup>st</sup> day of October 2013.  
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28 **Martin & Bonnett, P.L.L.C.**

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**CERTIFICATE OF SERVICE**

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I hereby certify that on October 31, 2013, I electronically transmitted the attached document to the Clerk's Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to the following CM/ECF registrants:

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