

1 US Airways, Inc.
KAREN GILLEN, State Bar No. 018008
2 karen.gillen@usairways.com
111 West Rio Salado Parkway
3 Tempe, AZ 85281
Telephone: (480) 693-0800
4 Facsimile: (480) 693-5932

5 O'Melveny & Myers LLP
ROBERT A. SIEGEL (*pro hac vice*)
6 CHRIS A. HOLLINGER (*pro hac vice*)
rsiegel@omm.com
7 chollinger@omm.com
400 South Hope Street
8 Los Angeles, CA 90071-2899
Telephone: (213) 430-6000
9 Facsimile: (213) 430-6407

10 Attorneys for Intervenor
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
MOTION FOR INJUNCTION
AGAINST USAPA PURSUANT TO THE
ALL WRITS ACT**

1 Intervenor US Airways, Inc. (“US Airways”) hereby moves this Court for an
2 injunction pursuant to the All Writs Act, 28 U.S.C. § 1651, to prevent Defendant
3 US Airline Pilots Association (“USAPA”) from pursuing arbitration of its December 24,
4 2013 grievance in MTA Dispute #2 with respect to whether, absent an order from this
5 Court, the Plaintiff West Pilot Class is entitled to participate through separate
6 representation in the seniority-integration process arising from the merger involving
7 US Airways and American Airlines, Inc. (“American”). Such arbitration should be
8 enjoined because the arbitral ruling sought by USAPA would interfere with and encroach
9 upon this Court’s determination of the West Pilots’ right to separate participation pursuant
10 to federal law (i.e., the McCaskill-Bond statute), as established in US Airways’
11 Intervention Pleading and Motion for Summary Judgment and in Claim Four of Plaintiffs’
12 First Amended Complaint. (*See* US Airways’ Intervention Pleading (Doc. No. 197)
13 ¶¶ 11-16; US Airways’ Motion For Summary Judgment – Claim Regarding McCaskill-
14 Bond Statute (Doc. No. 212); First Amended Complaint (Doc. No. 134) ¶¶ 120-134.)

15 US Airways bases this motion on the following Memorandum of Points and
16 Authorities and the attached Exhibit.

17 Dated: January 7, 2014.

O’Melveny & Myers LLP

18 By: /s/ Robert A. Siegel _____
19 Robert A. Siegel (*pro hac vice*)
20 Chris A. Hollinger (*pro hac vice*)
21 400 South Hope Street, Suite 1500
22 Los Angeles, CA 90071-2899

23 US Airways, Inc.
24 Karen Gillen, State Bar No. 018008
25 111 W. Rio Salado Parkway
26 Tempe, AZ 85281

27 Attorneys for Intervenor US Airways, Inc.
28

MEMORANDUM OF POINTS AND AUTHORITIES**I. PRELIMINARY STATEMENT**

After extensive briefing before this Court regarding whether the West Pilot Class has the right under the McCaskill-Bond statute to separate participation through their own representatives in the US Airways-American seniority-integration process, and while this Court's decision is still pending, USAPA has sought an expedited ruling from a labor arbitrator that the West Pilots have no such right unless and until this Court issues a decision otherwise. USAPA contends that the Memorandum Of Understanding Regarding Contingent Collective Bargaining Agreement ("MOU"), entered into between US Airways, American, USAPA, and the Allied Pilots Association ("APA"), contractually limits the participants in the post-merger seniority-integration process to the parties to the MOU, absent an order from this Court to the contrary. But USAPA's position ignores: (i) the indisputable legal principle that participation in the seniority-integration process is subject to the requirements of a federal statute (i.e., the McCaskill-Bond amendment), a point that is recognized by the MOU and, in any event, could not be circumvented by private agreement; and (ii) the stipulated fact in this litigation that US Airways did not agree in the MOU to preclude West Pilot participation in the seniority-integration process, but instead "US Airways has stated that if the issue of separate representation for the West Pilots is not resolved by time of the Effective Date of the merger, then, as part of negotiating the 'Seniority Integration Protocol Agreement' required by paragraph 10.f of [the MOU], it will insist that the West Pilots be given separate representation in the seniority integration proceeding through a representative of their own choosing." (Joint Pre-Trial Order (Doc. No. 206-1) ¶ 159.)

A labor arbitrator has no authority to adjudicate rights arising under federal law. Moreover, USAPA's pursuit of an expedited arbitral adjudication of the West Pilots' rights encroaches upon this Court's jurisdiction to decide the question of McCaskill-Bond statutory interpretation that is pending before the Court. And it is no answer for USAPA

1 to say that it is only requesting an arbitral ruling that would be controlling during the
2 period of time between closing of the US Airways-American merger and issuance by this
3 Court of a plenary ruling on the McCaskill-Bond issue. If USAPA wants an interim
4 ruling on an issue arising under federal law, it must seek that ruling from this Court and
5 not an arbitrator.

6 Accordingly, an injunction pursuant to the All Writs Act, which grants this Court
7 broad authority to preserve its jurisdiction and to effectuate its judgments, is necessary to
8 prevent USAPA from pursuing arbitration of an issue that is squarely and properly before
9 this Court.

10 **II. PROCEDURAL BACKGROUND**

11 This lawsuit involves the rights of the West Pilot Class in the seniority-integration
12 process following the US Airways-American merger. Certain aspects of that process are
13 addressed in the MOU. Paragraph 10 of the MOU provides generally that the seniority of
14 the American pilots and the US Airways (East and West) pilots shall be integrated on a
15 “final and binding” basis in a manner consistent with McCaskill-Bond.¹ (MOU ¶ 10(a).)
16 Paragraph 10(e) states that the provisions of MOU Paragraph 10 may be enforced through
17 expedited arbitration, with the following proviso: “the obligations imposed by McCaskill-
18 Bond may be enforced in a court of competent jurisdiction.” (MOU ¶ 10(e).)

19 On May 14, 2013, this Court held a hearing on several pending motions in this
20 action. During the course of that hearing, the Court directed the parties to submit briefing
21 on the question of whether the decisions of the Civil Aeronautics Board (“CAB”)
22 applying the CAB’s *Allegheny-Mohawk* Labor Protective Provisions (“LPPs”) provided
23 authority for the Court to order that the West Pilots were entitled to participate through

24
25 ¹ The McCaskill-Bond amendment requires that, in airline mergers involving
26 employee groups represented by different unions, post-merger seniority integration of
27 affected employee groups proceed in accordance with “sections 3 and 13 of the labor
28 protective provisions [“LPPs”] imposed by the Civil Aeronautics Board [“CAB”] in the
Allegheny-Mohawk merger (as published at 59 C.A.B. 45). 49 U.S.C. § 42112, note
§117(a). Section 3 of the LPPs requires that seniority integration be conducted in a “fair
and equitable manner.” *Allegheny-Mohawk*, 59 C.A.B. 45, 45 (1972).

1 separate representation in the post-merger US Airways-American seniority-integration
2 process. (*See* Transcript of May 14, 2013 Preliminary Injunction Hearing, at pp. 79:17-
3 80:13.) Accordingly, the West Pilots, USAPA and US Airways submitted opening briefs
4 on this issue on May 17, 2013 (Doc. Nos. 97, 95 & 98), and response briefs on May 24,
5 2013. (Doc. Nos. 106, 108 & 110.) US Airways and the West Pilots argued that CAB
6 decisions provided support for the West Pilots' separate participation, and USAPA argued
7 to the contrary.

8 Thereafter, on August 2, 2013, Plaintiffs filed their First Amended Complaint
9 ("FAC"). (Doc. No. 134.) In their FAC, Plaintiffs added Claim Four, which sought a
10 declaratory judgment that, pursuant to the requirements of McCaskill-Bond, the West
11 Pilots "have party status and the right (but not the obligation) to participate fully (with
12 counsel of their own choice) in the MOU Seniority Integration process." (FAC ¶¶ 120-
13 132.)

14 On September 20, 2013, following the Court's order granting its Motion to
15 Intervene (Doc. No. 194), US Airways filed its Intervention Pleading in which it also
16 stated that the Court should issue a declaration that the West Pilots have the right under
17 McCaskill-Bond to separate participation in the seniority-integration process. (Doc.
18 No. 197 ¶ 14.) In addition, US Airways set forth its interest in the prompt resolution of
19 the West Pilots' right to participate, in order to avoid "delay or disruption to the process of
20 integrating US Airways and American pilots following the merger – a process that is
21 central to the airline's realization of the operational and financial benefits from a
22 combined pilot workforce." (*Id.* at ¶ 15.)

23 On October 11, 2013, US Airways filed a Motion for Summary Judgment "on the
24 claim in its Intervention Pleading for a determination that the West Pilots have the right
25 under the federal McCaskill-Bond statute to full and separate representation in the
26 upcoming seniority-integration proceedings." (Doc. No. 212 at p. 2:1-9 of the ECF
27 filing.) On the same date, USAPA filed a Motion for Summary Judgment on all claims in
28

1 this case, arguing with respect to Plaintiffs' Claim Four that the West Pilots were not
2 entitled to separate participation in the seniority-integration process under McCaskill-
3 Bond, based largely on the incorrect contention that McCaskill-Bond recognizes the
4 exclusive right of affected employees' collective bargaining representatives to represent
5 them in post-merger seniority integration proceedings. (Doc. No. 211 at 10:23-15:3.)

6 A trial on the merits took place before the Court from October 22-23, 2013. Prior
7 to the trial, the parties (including USAPA) submitted a Joint Pre-Trial Order (Doc.
8 No. 206-1) containing the following stipulated facts:

9 Since at least April 2012, US Airways has maintained that the West Pilots are
10 entitled to participate in the seniority integration proceeding established by [the
11 MOU] through a representative of their own choosing.

12 US Airways has stated that if the issue of separate representation for the West
13 Pilots is not resolved by time of the Effective Date of the merger, then, as part of
14 negotiating the "Seniority Integration Protocol Agreement" required by paragraph
15 10.f of [the MOU], it will insist that the West Pilots be given separate
16 representation in the seniority integration proceeding through a representative of
17 their own choosing. (*Id.* at ¶¶ 158-159.)

18 Following the trial, on October 25, 2013, the Court ordered expedited, streamlined
19 briefing on the respective motions for summary judgment. (Doc. No. 250.) In accordance
20 with that order, on November 13, 2013, Plaintiffs responded in support (Doc. No. 266) of,
21 and USAPA responded in opposition (Doc. No. 279) to, US Airways' McCaskill-Bond
22 Motion for Summary Judgment. US Airways filed a reply on November 18, 2011. (Doc.
23 No. 277.)

24 The merger of US Airways and American closed on December 9, 2013 (both
25 airlines are hereinafter referred to collectively as "the Company"). (Doc. No. 292 at 1:25-
26 2:2.) Following the merger, the Company sent an e-mail to counsel for the APA, USAPA,
27 and the West Pilots, proposing a meeting in Washington, D.C. on December 20, 2013 to
28 initiate the process of establishing a seniority-integration protocol. (*See* Declaration by
Andrew Jacob ("Jacob Decl.") (Doc. No. 295) ¶¶ 2-3, Ex. A.) The Company's invitation

1 to the West Pilots was consistent with, indeed mandated by, the legal position taken by the
2 Company before this Court, and the timing of the December 20 meeting was consistent
3 with the MOU provision mandating expedited negotiations for a Seniority Integration
4 Protocol Agreement. (*See* MOU ¶ 10(f).) APA and the West Pilots accepted the
5 Company’s invitation. (*Id.* ¶ 4-5, Ex. A.) USAPA responded on the evening of
6 December 19, 2013 that it would not attend the December 20 meeting, asserting that any
7 meeting that included representatives of the West Pilots would violate the Railway Labor
8 Act (the “RLA”). (*Id.* ¶¶ 7-10, Ex. B.) The Company and its counsel met with
9 representatives of the APA and the West Pilots on December 20, 2013 as scheduled. (*Id.*
10 ¶¶ 12-13.) USAPA did not attend the meeting. (*Id.* ¶ 14.)

11 On December 24, 2013, USAPA filed a grievance in “MTA Dispute #2” raising
12 two issues, one of which is based on its claim that the Company violated the MOU by
13 meeting with representatives of the West Pilots on December 20, 2013 to discuss the
14 seniority-integration process as contemplated by Paragraph 10 of the MOU. (*Id.* ¶¶ 24-25,
15 Ex. E.) On December 27, 2013, the Company advised USAPA that it would not agree to
16 submit this issue to arbitration because “a federal district court, and not an MOU
17 arbitrator, has the jurisdiction to decide whether the West Pilots have the right to separate
18 participation in the seniority-integration process under the McCaskill-Bond statute.”
19 (USAPA’s Response To Plaintiffs’ Notice Of Post-Trial Events That Are Relevant To
20 Remedy (Doc. No. 296) at 2:9-12 & Ex. A.) On January 3, 2014, Pat Szymanski (merger
21 counsel for USAPA) responded, stating that the issue presented by USAPA’s grievance
22 was whether the MOU recognizes “any party to the seniority integration proceeding other
23 than New American, APA and USAPA and [whether] [the Company is] free to include
24 any other party in the seniority integration process until there is a ruling by the court.”
25 (Attached hereto as Exhibit 1.) Mr. Szymanski characterized that issue as a dispute “over
26 the interpretation or application of [the MOU]” and requested that the arbitration proceed
27 on January 14, 15, or 16, 2014. (*Id.*)
28

1 **III. ARGUMENT**

2 **A. An Injunction Under The All Writs Act Is Warranted Because**
3 **USAPA's Arbitration Request Threatens The Jurisdiction Of This**
4 **Court To Determine The West Pilots' Rights Under Federal Law.**

5 This Court has broad authority under the All Writs Act, 28 U.S.C. § 1651, to issue
6 an injunction to preserve its jurisdiction to resolve the claims in this action. *See, e.g.,*
7 *Adams v. U.S. ex rel. McCann*, 317 U.S. 269, 273 (1942) (“Unless appropriately confined
8 by Congress, a federal court may avail itself of all auxiliary writs as aids in the
9 performance of its duties, when the use of such historic aids is calculated in its sound
10 judgment to achieve the ends of justice entrusted to it.”); *Hamilton v. Nakai*,
11 453 F.2d 152, 157 (9th Cir. 1972) (“powers under [the All Writs Act] should be broadly
12 construed”); *Klay v. United Healthgrp., Inc.*, 376 F.3d 1092, 1099 (11th Cir. 2004) (“In
13 allowing courts to protect their ‘respective jurisdictions,’ the Act allows them to safeguard
14 not only ongoing proceedings, but potential future proceedings, as well as already-issued
15 orders and judgments.”) (footnotes omitted). This authority includes the ability to enjoin
16 arbitration proceedings. *See In re Am. Exp. Fin. Advisors Sec. Litig.*, 672 F.3d 113, 142
17 (2nd Cir. 2011) (“a district court may properly enjoin arbitration proceedings that are not
18 covered by a valid and binding arbitration agreement”); *Liberty Mut. Ins. Co. v. Aventura*
19 *Eng'g & Const. Corp.*, 534 F. Supp. 2d 1290, 1324-25 (S.D. Fla. 2008).

20 Contrary to USAPA's recent assertion that US Airways' invitation to the West
21 Pilots to participate in the December 20 meeting “encroach[es] upon the authority of this
22 Court” (*see* Doc. No. 296 at 2:15-16), it is USAPA's arbitration request that poses a threat
23 to this Court's jurisdiction to determine the question presented in Claim Four of Plaintiffs'
24 FAC and in US Airways' Intervention Pleading and Motion for Summary Judgment –
25 namely, whether the West Pilots are entitled to separate representation in the seniority-
26 integration proceedings pursuant to federal law. Resolving this question requires
27 interpretation of McCaskill-Bond, not the MOU, and that is equally true whether USAPA
28 is asking an arbitrator to decide the West Pilots' status for all time or only for the interim

1 period before this Court issues a definitive ruling on the same issue. Therefore, the proper
2 forum for resolution of this contested issue is federal court – and not a board of
3 adjustment whose jurisdiction is limited to resolving contractual disputes arising out of the
4 “interpretation or application” of the provisions of the MOU. (MOU ¶ 20.) An injunction
5 under the All Writs Act is thus necessary to preserve this Court’s authority.

6 The jurisdiction of the system board to resolve disputes submitted pursuant to
7 Paragraph 20 of the MOU is also circumscribed by the RLA, which generally excludes
8 jurisdiction on the part of the system board to adjudicate rights that do not arise under the
9 collectively-bargained agreement. The RLA provides that

10 disputes between an employee or group of employees and a carrier or carriers by
11 air growing out of grievances, or out of the interpretation or application of
12 agreements concerning rates of pay, rules, or working conditions, . . . may be
13 referred by petition of the parties or by either party to an appropriate adjustment
board. 45 U.S.C. § 184.

14 The Supreme Court has held that despite the potential breadth of the term
15 “grievances,” which could include any dispute between a carrier and union or employee,
16 “the most natural reading of the term ‘grievances’ in this context is as a synonym for
17 disputes involving the application or interpretation of a CBA.” *Hawaiian Airlines, Inc. v.*
18 *Norris*, 512 U.S. 246, 255 (1994). Thus, the jurisdiction of an adjustment board extends
19 only to interpretation or application of the collective bargaining agreement, and does not
20 extend to independent issues of state or federal law. *Id.* at 259 (state law); *Atchison, T. &*
21 *S. F. R. Co. v. Buell*, 480 U.S. 557, 564-65 (1987) (federal law); *see also CareFlite v.*
22 *Office And Professional Employees Intern. Union*, 612 F.3d 314, 320-21 (5th Cir. 2010)
23 (“The assertion of any right that is not created by a CBA is therefore not subject to
24 binding arbitration under the [RLA].”).

25 The arbitration requested by USAPA falls outside of the system board’s RLA
26 jurisdiction. USAPA seeks a decision from an arbitrator that, absent a federal court order,
27 the West Pilots do not have the right to separate participation in the McCaskill-Bond
28

1 process and that, therefore, the Company violated the MOU by meeting with the West
2 Pilots on December 20, 2013 while the decision of this Court was still pending. However,
3 as USAPA itself stipulated in the Joint Pre-Trial Order in this case (*see* Doc. No. 206-1
4 ¶¶ 158-159), US Airways has long insisted and expressed to USAPA its view that the
5 West Pilots are entitled to participate separately according to the “fair and equitable”
6 standard mandated by McCaskill-Bond. The Company’s invitation to the West Pilots to
7 participate in the December 20 meeting was no more than an effort to comply with its
8 perceived obligations under federal law in a manner consistent with the expedited
9 schedule in the MOU – given the position already taken by US Airways in this litigation,
10 a refusal to allow the West Pilots to attend the December 20 meeting would have exposed
11 US Airways to liability vis-à-vis the West Pilots. For the system board to conclude that
12 this meeting was a violation of the MOU, because the West Pilots did not have the right to
13 participate absent a federal court order, necessarily would require the board to adjudicate
14 the West Pilots’ rights under McCaskill-Bond.² A decision by the system board, as
15 requested by USAPA, would therefore be outside of the board’s jurisdiction.

16 Injunctive relief under the All Writs Act is, thus, required to prevent improper
17 litigation of a statutory issue before the system board arbitrator and to preserve this
18 Court’s ability to resolve the West Pilots’ McCaskill-Bond participation rights. *See, e.g.,*
19 *Liberty Mut.*, 534 F. Supp. 2d at 1324-25 (enjoining ongoing arbitration proceedings after
20 the arbitration panel issued a decision that conflicted with a decision of the court, because
21 “[a]ny further decisions by the arbitration panel threaten [the court’s] ability to try the
22 issues before [it] and to effectuate [its] judgments”); *In re Am. Honda Motor Co., Inc.*,
23 315 F.3d 417, 438, 441 (4th Cir. 2003) (affirming district court’s injunction preventing

24 ² Putting aside the fact that a private agreement such as the MOU could not over-ride
25 the requirements of McCaskill-Bond and that, therefore, it is the statute and not the terms
26 of the MOU that govern who is entitled to participate in the seniority-integration process,
27 there is no merit to USAPA’s contention that the terms of the MOU limit the seniority-
28 integration participants to the MOU parties only. There is no such limitation in
Paragraph 10 of the MOU. To the contrary, Paragraph 10(f) of the MOU, which sets out
the procedure for establishing a Seniority Integration Protocol Agreement, specifically
refers to “merger representatives” without limitation. (MOU at ¶ 10(f).)

1 enforcement of an arbitration award because the injunction “was necessary to vindicate
 2 the district court’s exclusive jurisdiction to resolve interpretive questions under [a
 3 settlement agreement]”); *In re Jamster Mktg. Litig.*, 2008 WL 4482307, at *10 (S.D. Cal.
 4 Sept. 29, 2008) (partially enjoining parallel state court proceeding where federal court
 5 action was “sufficiently advanced and present[ed] unique circumstances,” such that an
 6 injunction was “necessary to aid th[e] court’s jurisdiction”).³

7 **IV. CONCLUSION**

8 For the foregoing reasons, US Airways respectfully requests that the Court grant its
 9 motion for an injunction pursuant to the All Writs Act, prohibiting USAPA from pursuing
 10 arbitration of its grievance in “MTA Dispute #2” regarding whether the West Pilots are
 11 entitled to separate participation in the US Airways-American seniority integration
 12 process prior to this Court’s plenary ruling on that issue.

13
 14 Dated: January 7, 2014.

O’Melveny & Myers LLP

15
 16 By: /s/Robert A. Siegel _____
 17 Robert A. Siegel (*pro hac vice*)
 18 Chris A. Hollinger (*pro hac vice*)
 400 South Hope Street, Suite 1500
 Los Angeles, California 90071-2899

19
 20 US Airways, Inc.
 Karen Gillen, State Bar No. 018008
 111 W. Rio Salado Parkway
 Tempe, AZ 85281

21
 22
 23 Attorneys for Intervenor US Airways, Inc.

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 25 ³ In addition to being needless and improper, if the ruling sought by USAPA were
 26 (incorrectly) granted by an arbitrator and then effectively reversed by this Court, the
 27 seniority-integration activities that had occurred in the interim without the West Pilots’
 28 participation would have to be repeated. Such a result would be directly at odds with the
 purpose of US Airways’ intervention, which was, in part, to protect its interest in the
 prompt completion of the seniority-integration process. (*See* Doc. No. 197 ¶ 15.)

