

1 Marty Harper (003416)  
2 [marty.harper@asualumni.org](mailto:marty.harper@asualumni.org)  
3 Kelly J. Flood (019772)  
4 [kelly.flood@asualumni.org](mailto:kelly.flood@asualumni.org)  
5 ASU ALUMNI LAW GROUP  
6 Two North Central, Ste. 1600  
7 Phoenix, AZ 85004  
8 Telephone: 602-251-3620  
9 Fax: 602-251-8055

Attorneys for Plaintiffs

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

12 Don Addington; *et al*,  
13 Plaintiffs,  
14 vs.  
15 US Airline Pilots Ass’n; and US Airways,  
16 Inc.,  
17 Defendants.

CASE NO. 2:13-CV-00471-ROS

**MOTION FOR RULE 25(C)  
JOINDER OF ALLIED PILOTS  
ASSOCIATION (APA) AND FOR  
ISSUANCE OF PERMANENT  
INJUNCTION**

**ORAL ARGUMENT REQUESTED**

**EXPEDITED CONSIDERATION  
REQUESTED**

18  
19 Plaintiffs, on behalf of a class of former America West pilots, move for the Court to  
20 join the Allied Pilots Association (“APA”) as a defendant, pursuant to Rule 25(c), and to  
21 enter a permanent injunction directed at both Defendant US Airline Pilots Association  
22 (“USAPA”) and APA that is consistent with the mandate of the Ninth Circuit and Rule  
23 65(b)(1)(A). This motion is supported by the Memorandum of Points and Authorities  
24 that follows.<sup>1</sup>  
25  
26  
27

28 <sup>1</sup> All references to “Rules” are to the Federal Rules of Civil Procedure.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**MEMORANDUM OF POINTS AND AUTHORITIES**

**I. Factual Background**

US Airways and American Airlines merged in 2013 to form New American. On September 16, 2014, APA became the exclusive bargaining representative for all New American pilots. As such, it succeeded USAPA as the exclusive bargaining representative of the former US Airways pilots, East and West.

On June 26, 2015, the Ninth Circuit issued an Opinion that reversed judgment on Claim One for breach of duty of fair representation [Doc. 134 at ¶¶ 96-100] and held that the US Airline Pilots Association (“USAPA”) breached its duty of fair representation because it had no “legitimate union purpose” for entering into a contract, the Memorandum of Understanding, which abandoned the Transition Agreement process for implementing the Nicolau Award. *Addington v. US Airline Pilots Ass’n*, No. 14-15757, slip op. at \*51 (9th Cir. Jun. 26, 2015) (filed here as Doc. 59-1).

The Opinion instructs this Court to enjoin USAPA from participating in the seniority integration process unless it advocates the Nicolau Award:

We thus remand this case with instructions to the district Court to enter an order enjoining USAPA from participating in the [US Airways-American Airlines pilots] McCaskill-Bond proceedings, including any seniority-related discussions leading up to those proceedings, except to the extent that USAPA advocates the Nicolau Award.

Id. at \*48-49.

The Court of Appeals noted further that “injunctive relief is necessary and appropriate in this case to **prevent the East Pilots from continuing to enjoy the benefits of USAPA’s breach at the expense of the West Pilots.**” (Emphasis added). Id. at \*54.

1 Immediately after the Ninth Circuit filed the Order in this case, USAPA and the  
2 East Pilots took their first steps to find a “work around” of the pending injunction after  
3 remand by (1) first disclaiming on June 29, 2015, that USAPA and the USAPA East  
4 Merger Committee would represent any pilots in the seniority integration proceedings by  
5 unequivocally withdrawing from the SLI arbitration [See June 29, 2015 letter from  
6 William Wilder for the USAPA Merger Committee, and July 2, 2015 letter from USAPA  
7 ratifying the Merger Committee’s withdrawal of June 29, at Exhibit A] and (2) then  
8 immediately demanding through the Chairs and Vice Chairs of the Philadelphia and  
9 Charlotte domiciles of APA that APA arrange for the appointment of a new committee of  
10 East Pilots to represent the East Pilots in the pending SLI process. [See “Never Forget”  
11 Update, enclosing demand to APA, at Exhibit B]. Shortly thereafter, APA tasked the  
12 pilot representatives in the Philadelphia and Charlotte<sup>2</sup> APA domiciles to staff a new East  
13 Merger Committee, after being requested by the SLI Arbitration Board to use its “best  
14 efforts to establish a new merger committee to represent legacy U.S. Airways East  
15 pilots.” [See excerpt of SLI Panel Decision dated July 5, 2015, at Exhibit C.] The  
16 “new” East Merger Committee was announced on July 17, 2015. [See messages from  
17 Your PHL Leadership, at Exhibit D.]

18 When the new East Merger Committee was announced, the Philadelphia and  
19 Charlotte domicile representatives also announced that it was “in our [East] best interests  
20 to retain the Merger Counsel of Baptiste and Wilder” to represent the new East Merger  
21 Committee in the ongoing SLI arbitration. Bill Wilder of the Baptiste & Wilder firm was  
22 the lead Merger Counsel for the former USAPA Merger Committee, a position he held  
23 for several years. Roland Wilder, also from the Baptiste & Wilder firm, currently  
24 represents USAPA, taking the lead in USAPA’s recent Petition for Rehearing En Banc to  
25

---

26  
27 <sup>2</sup> The pilot representatives in these domiciles are Paul DiOrio, Paul Music, Bob  
28 Frear and Ron Nelson, all of whom previously held leadership positions at USAPA. The  
pilots domiciled in Philadelphia and Charlotte are almost exclusively legacy East Pilots.

1 the Ninth Circuit in *Addington*.<sup>3</sup> So, by July 18, 2015, a new APA East Merger  
2 Committee replaced the USAPA East Merger Committee, and started work to prepare to  
3 participate in the SLI arbitration, which begins on September 29, 2015<sup>4</sup>, utilizing the  
4 services of the same lawyer and law firm that the USAPA East Merger Committee had  
5 used. [See new East Merger Committee Update dated July 30, 2015, at Exhibit E.] APA  
6 formally recognized this new East Merger Committee on August 3, 2015. [See letter from  
7 E. James, dated August 3, 2015, at Exhibit F.]

8 The new East Merger Committee recently confirmed that, in addition to using the  
9 same law firm that the USAPA merger committee had used, it would use two of the same  
10 experts: Bill Campbell and Michael Tannen.<sup>5</sup> [See USAPA Merger Committee Proposed  
11 List dated June 19, 2015, and August 30, 2015 email from Bill Wilder on behalf of the  
12 new East Merger Committee, at Exhibit G.]

13 During the pendency of the *Addington* appeal at the Ninth Circuit, three West pilots  
14 filed an action in District Court in North Carolina under Section V of the Labor  
15 Management Reporting and Disclosure Act (LMRDA), 29 U.S.C. §501, against the  
16 officers and directors of USAPA. *See Bollmeier v. Hummel, et al*, Case No. 14-577  
17 (WDNC). The *Bollmeier* plaintiffs sought an injunction against the officers and directors  
18 of USAPA to stop their wrongful spending of USAPA treasury funds on efforts that  
19 benefited only the East Pilots to the detriment of the West Pilots. The North Carolina  
20

---

21  
22 <sup>3</sup> USAPA reported in its most recent financial disclosure to the Department of  
23 Labor (for the period 04/04/2014-03/31/2015) that it had paid the firm Baptiste & Wilder  
24 \$447,658 for various legal services, including multiple merger- and seniority-related  
services.

25 <sup>4</sup> Predictably, the new East Merger Committee had attempted to delay the SLI  
26 proceedings until January of 2016, but the SLI board denied their motion to postpone the  
27 proceedings, and confirmed that they will commence September 29, 2015. [See Exhibit 1  
to Motion to Expedite, filed contemporaneously herewith.]

28 <sup>5</sup> USAPA reported that it had paid Mr. Campbell's consulting firm, Campbell-Hill  
\$11,060, and Michael Tannen \$36,263 as of March 31, 2015.

1 District Court, after briefing and oral argument, recently issued an injunction against  
2 officers and directors of USAPA, enjoining them from authorizing the use of any USAPA  
3 treasury funds on

4 [A]ny type of expenditure relating to, whether directly or indirectly, any  
5 merger- or seniority-related matter, including but not limited to any  
6 litigation directly or indirectly related to any merger- or seniority-related  
7 matter, during the pendency of this case...

8 [See Order dated August 27, 2015, by Hon. Robert J. Conrad, Jr., United States District  
9 Judge, Western District of North Carolina, at Exhibit H, Conclusion at page 14.]

10 USAPA's update regarding Judge Conrad's injunction claimed victory with respect  
11 to its ability to share merger committee "work product." [See USAPA Update, dated  
12 August 27, 2015, at Exhibit I.] It seems apparent, or at least logical, from the fact that  
13 the new East Merger Committee is using the same experts and lawyers for which USAPA  
14 paid that the new East Merger Committee is merely a continuation of the USAPA Merger  
15 Committee; i.e., the new East Merger Committee is just wearing a new nametag ("APA")  
16 that it believes will allow it to skirt the Ninth Circuit's opinion regarding who should be  
17 enjoined from presenting a seniority scheme other than the Nicolau list.

18 There should be no question that the APA Merger Committee is the direct  
19 successor to the USAPA merger committee – no less than USAPA was the successor to  
20 ALPA back in 2008 and no less than APA is the successor to USAPA today. As the  
21 direct successor to USAPA, APA and its committees are just as bound by the Ninth  
22 Circuit ruling (and the pending injunction from this Court) as USAPA and its  
23 committees.

24 By this motion, the West Pilots ask the Court to enter a permanent injunction  
25 consistent with the Ninth Circuit's mandate. The most efficient way to do so is for the  
26 Court to join APA, which succeeded USAPA as the exclusive bargaining representative  
27 of all of the American Airlines pilots, including legacy U.S. Airways pilots, on  
28

1 September 16, 2014, as USAPA’s successor, pursuant to Rule 25(c). This will allow the  
2 Court to direct its injunction to both USAPA and APA with respect to participation  
3 and/or support, directly or indirectly, of legacy U.S. Airways East pilots in the SLI  
4 proceedings.

5 **II. Legal Argument**

6 **A. The injunction should be directed against officers, agents, servants,**  
7 **employees, and attorneys, and upon those persons in active concert or**  
8 **participation with them.**

9 The Ninth Circuit remanded this case with instructions to enter an injunction that  
10 would require USAPA to advocate for the Nicolau Award if it participates in the  
11 McCaskill-Bond SLI process. Pursuant to Rule 65(d)(2), this injunction must state that it  
12 applies not just to USAPA but also to USAPA’s “officers, agents, servants, employees,  
13 and attorneys, and upon those persons in active concert or participation with them who  
14 receive actual notice of the order.” *Regal Knitwear Co. v. NLRB*, 324 U.S. 9, 14 (1945).

15 As explained here, Rule 65 merely states a principle of common law (and common  
16 sense):

17 [A]n injunction binds not only the parties to the injunction but also  
18 nonparties who act with the named part(ies). ... [This] rule is derived from  
19 the common law doctrine that a decree of injunction not only binds the  
20 parties defendant but also those identified with them in interest, in ‘privity’  
with them, represented by them or subject to their control. In  
essence...defendants may not nullify a decree by carrying out prohibited  
acts through aiders and abettors, although they were not parties to the  
original proceeding.

21 *S.E.C. v. Homa*, 514 F.3d 661, 674 (7th Cir. 2008).

22 Hence, at a minimum, the Court should use the language in Rule 65(d)(2) in its  
23 injunction.

24 **B. The injunction should be directed against APA and its committee.**

25 As explained above, it is quite apparent that the USAPA withdrew from the  
26 McCaskill-Bond SLI process so that the East Pilots could participate without advocating  
27 the Nicolau Award under the guise of being an APA committee. But notwithstanding that  
28

1 it is technically an APA committee, the APA East Merger Committee would be acting in  
2 concert with USAPA (and in contempt) if it carries out that plan. *See Additive Controls &*  
3 *Measurement Sys. v. Flowdata*, 96 F. 3d 1390, 1397 (Fed. Cir. 1996) (“[A] successor  
4 entity that has been created in order to evade the original injunction . . . may be found to  
5 be acting ‘in active concert or participation’ with the enjoined party and thus subject to  
6 contempt under Rule 65(d).”). A rational party, therefore, would not try this. There  
7 should be little doubt that the East Pilots will, and the evidence discussed herein amply  
8 demonstrates that. They are using the same experts and attorneys, paid for by USAPA  
9 treasury funds, including dues paid by West Pilots, and they recently boasted about their  
10 unfettered ability to transfer all of the merger work product they already amassed to the  
11 new East Merger Committee. This Court, therefore, should use Rule 25(c) to join APA  
12 to this action so as to make it crystal clear that APA and its East Merger Committee are  
13 bound by the injunction.

14 Rule 25(c) provides: “If an interest is transferred, the action may be continued by or  
15 against the original party unless the Court, on motion, orders the transferee to be  
16 substituted in the action or joined with the original party. . . .” (Emphasis added.) In this  
17 context, the Ninth Circuit treats a successor labor union, such as APA, as a transferee of  
18 an interest. *See Lynn v. Sheet Metal Workers’ Int’l Ass’n*, 804 F. 2d 1472, 1477, n.2 (9th  
19 Cir. 1986) (recognizing application of Rule 25(c) to successor labor unions); *see also*  
20 *Screen Actors Guild, Inc. v. Federal Ins. Co.*, 957 F. Supp. 2d 1157, 1165-66 (C.D. Cal.  
21 2013) (allowing substitution of a labor union that merged with the original party). The  
22 Rule allows a court to order such joinder “for the purpose of subsequent proceedings to  
23 enforce judgment.” *JATSB, LLC v. Timeshare Beat, Inc.*, 2008 WL 4809484, at \*2 (D.  
24 Haw. Nov. 4, 2008) (*quoting Explosives Corp. of Am. v. Garlam Enters. Corp.*, 817 F.2d  
25 894, 907 (1st Cir. 1987)).

1 In matters such as this, joinder of a successor-in-interest such as APA and its East  
2 Merger Committee merely operates to clarify that a judgment or injunction will be  
3 binding on the successor-in-interest.

4 The most significant feature of Rule 25(c) is that it does not require that anything be  
5 done after an interest has been transferred. The action may be continued by or against the  
6 original party, and the judgment will be binding on his successor in interest even though  
7 he is not named. An order of joinder is merely a discretionary determination by the trial  
8 court that the transferee's presence would facilitate the conduct of the litigation. *See*  
9 *generally Educ. Credit Management Corp, v. Bernal (In re Bernal)*, 207 F.3d 595, 598  
10 *(9th Cir. 2000)*.

11 Applying Rule 25(c), the court in *Air Line Pilots Ass'n. Int'l v. Texas Int'l Airlines,*  
12 *Inc.*, 567 F. Supp. 78 (S.D. Tex. 1983), joined a labor union that succeeded to another  
13 union's interest after an airline merger. In that case, the Union of Flight Attendants "was  
14 certified as the bargaining representative for the combined" group of flight attendants and  
15 "ha[d] sole responsibility for enforcing the . . . collective bargaining agreement" between  
16 Texas international and the predecessor union. *Id.* at 81. Hence, the successor union was  
17 properly joined to make clear that it was bound by the judgment against the predecessor  
18 union.

19 In this matter, APA has sole responsibility for enforcing pre-merger collective  
20 bargaining agreements that were previously enforced by USAPA. Rule 25(c), therefore,  
21 allows the Court to join APA and to name it as a party directly bound by the injunction.

22 Even without applying Rule 25(c) and without naming APA or its committees in the  
23 injunction, the injunction applies to APA, the APA East Merger Committee, the members  
24 of that committee, Mr. Wilder, and other attorneys of Baptiste & Wilder. This is so  
25 because they all fall within the meaning of "officers, agents, servants, employees, and  
26 attorneys, and upon those persons in active concert or participation with them who  
27 receive actual notice of the order."  
28



1 But, it is apparent that the East Pilots, through Mr. Wilder, intend to act otherwise.  
2 It is apparent that the APA East Merger Committee feels free to participate in the SLI  
3 process without advocating the Nicolau Award.

4 With such overt actions evidencing the East Pilots' intent to flout the Ninth  
5 Circuit's opinion regarding the injunction, this Court must be painstakingly clear.  
6 Otherwise, the APA East Merger Committee (supported by USAPA's attorneys) will  
7 refuse to advocate the Nicolau Award. That will surely lead to further litigation  
8 "regarding the scope and application of the injunction." *See E. & J. Gallo Winery v.*  
9 *Gallo Cattle Co.*, 967 F. 2d 1280, 1298 (9th Cir. 1992). Rule 25(c) provides a means to  
10 avoid such litigation. It provides the Court the means to be painstakingly clear. It allows  
11 the Court to join APA and make it directly liable on the judgment and subject to the  
12 injunction. *See generally In re Bernal*, 207 F.3d at 598.

13 It has been clear for just shy of a decade that we are dealing here with people who  
14 believe they can disregard legal duties merely by changing their representative. They  
15 tried to do this in 2007 by creating USAPA to take the place of ALPA when they wanted  
16 to disregard their commitment to treat the Nicolau Award as final and binding. They are  
17 trying the same thing here by participating in the SLI process as an "APA" merger  
18 committee rather than a "USAPA" merger committee. This Court, therefore, must join  
19 APA as USAPA's successor in interest and direct the injunction against USAPA, APA,  
20 and any entity representing East Pilot interests in the SLI process.

21 The Court, therefore, should join APA as a defendant and should issue an injunction  
22 with the following language:

23 **USAPA, APA, and their officers, agents, servants, employees, and attorneys,**  
24 **and those persons in active concert or participation with them who receive actual**  
25 **notice of this order are hereby enjoined from taking any action on behalf of legacy**  
26 **US Airways East pilots in the McCaskill-Bond proceedings, including any seniority-**  
27  
28

1 related discussions leading up to those proceedings, except to the extent that they  
2 advocate the Nicolau Award.

3  
4 **III. Conclusion**

5 It is extremely important to the SLI process going forward for the injunction issued  
6 by the Court to be as clear as possible on its scope and the entities and individuals subject  
7 to it. As we all have experienced in the past, any ambiguous words or phrases may be  
8 used by someone later to argue that they or it are not covered by the Court's Order. So  
9 the West Pilots respectfully request that the injunction clearly and precisely identify  
10 exactly who is bound by the Court's injunction. The West Pilots respectfully request that  
11 the Court join APA as a defendant and issue an injunction using the language set out  
12 above.

13 Respectfully submitted this 4<sup>th</sup> day of September, 2015.

14  
15 *s/Kelly J. Flood* \_\_\_\_\_  
16 Marty Harper  
17 Kelly J. Flood  
18 ASU ALUMNI LAW GROUP  
19 Two North Central, Suite 600  
20 Phoenix, AZ 85004  
21 (602) 251-3621  
22 (602) 251-3622  
23 marty.harper@asualumnilawgroup.org  
24 kelly.flood@asualumnilawgroup.org  
25  
26  
27  
28

**CERTIFICATE OF SERVICE**

I hereby certify that on September 4, 2015, I electronically filed the foregoing with the Clerk of the Court and electronically served a copy of the same upon all parties by using the CM/ECF system. In addition, I transmitted the foregoing via email and US Mail Service to the following:

Susan Martin  
Jennifer Kroll  
MARTIN & BONNETT, PLLC  
1850 N. Central Ave., Ste. 2010  
Phoenix, AZ 85004  
[smartin@martinbonnett.com](mailto:smartin@martinbonnett.com)  
[jkroll@martinbonnett.com](mailto:jkroll@martinbonnett.com)  
Attorneys for US Airline Pilots Association

Patrick J. Szymanski  
PATRICK J. SZYMANSKI, PLLC  
1900 L Street, NW, Ste. 900  
Washington, DC 20036  
[szymanski@msn.com](mailto:szymanski@msn.com)  
Attorneys for US Airline Pilots Association

Brian J. O'Dwyer  
Gary Silverman  
Joy K. Mele  
O'DWYER & BERNSTIEN, LLP  
52 Duane Street, 5<sup>th</sup> Floor  
New York, NY 10007  
[bodwyer@odblaw.com](mailto:bodwyer@odblaw.com)  
[gsilverman@odblaw.com](mailto:gsilverman@odblaw.com)  
[jmele@odblaw.com](mailto:jmele@odblaw.com)  
Attorneys for US Airline Pilots Association

Roland P. Wilder, Jr.  
BAPTISTE & WILDER, PC  
1150 Connecticut Avenue, NW, Ste. 315  
Washington, DC 20036  
[rpwilderjr@bapwild.com](mailto:rpwilderjr@bapwild.com)  
Attorney for US Airline Pilots Association

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

Karen Gillen  
US AIRWAYS INC.  
111 West Rio Salado Parkway  
Tempe, AZ 85281  
[karen.gillen@usairways.com](mailto:karen.gillen@usairways.com)  
Attorneys for Intervenor US Airways, Inc.

Robert A. Siegel  
O'MELVENY & MYERS LLP  
400 South Hope Street, Ste. 1500  
Los Angeles, CA 90071-2899  
[rsiegel@omm.com](mailto:rsiegel@omm.com)  
Attorneys for Intervenor US Airways, Inc.

Edgar N. James  
JAMES & HOFFMAN, PC  
1130 Connecticut Avenue, NW Suite 950  
Washington, DC 20036-3904  
[www.jamhoff.com](http://www.jamhoff.com)  
Attorneys for Allied Pilots Association

Stanley Lubin  
Lubin & Enoch, P.C.  
349 North 4th Avenue  
Phoenix, Arizona 85003-1505  
[stan@lubinandenoch.com](mailto:stan@lubinandenoch.com)  
Local counsel for Allied Pilots Association

By: s/Kelly J. Flood