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IN THE UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

Don Addington, *et. al.*,

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

Plaintiffs,

**SECOND DECLARATION OF
JOHN OWENS**

v.

US Airline Pilots Association, *et. al.*,

Defendants.

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1 JOHN OWENS, declares as follows under penalty of perjury pursuant to 28
2 U.S.C. § 1746:

3 1. I previously submitted a declaration in this case in support of USAPA's
4 Opposition to Plaintiffs' Motion for Preliminary Injunction (Doc. 48-1, "Owens Decl.>").
5 I make this declaration as a supplement to my original declaration.

6 2. I have personal knowledge of the facts set forth herein, and if called as a
7 witness in this matter, could competently testify regarding same.

8 3. On or about May 19, 2005, US Airways Group and America West Holding
9 Corporation ("AWHC") entered into an Agreement and Plan of Merger. At the time, US
10 Airways Group owned US Airways, Inc., and AWHC owned America West Airlines, Inc.
11 ("America West"). Among other things, the Agreement and Plan of Merger provided
12 that US Airways Group would be reorganized, that US Airways Group would own and
13 control both America West and US Airways, and that operations of US Airways and
14 America West would be combined into a single carrier operating under the name US
15 Airways.

16 4. At the time the merger was announced in May 2005, both US Airways and
17 America West were experiencing financial difficulties associated with the post September
18 11, 2001 economic downturn of the airline industry.

19 5. The merger between America West Holdings Corporation and US Airways
20 became effective on September 27, 2005. US Airways Group reported financial data
21 separately for America West Airlines and US Airways on its 10-K (annual) and 10-Q
22 (quarterly) filings with the United States Securities and Exchange Commission through
23 June 30, 2007. On the 2006 10-K filing, US Airways Group reported that for calendar
24 year 2006, America West Airlines incurred an operating loss of \$35 million and US
25 Airways had net income of \$345 million. (Exhibit 140, USAPA Exhibit List) On the 10-
26 Q filing for the second quarter of 2007, US Airways Group reported that for the first six
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1 months of 2007 America West Airlines had operating income of \$22 million and US
2 Airways had net income of \$211 million. (Ex. 141, USAPA Exhibit List) For the 18
3 month period from January 1, 2006, through June 30, 2007, this amounts to an operating
4 loss for America West of \$13 million and net income for US Airways of \$556 million.

5 6. As a member of the NAC and Chairman of the USAPA Business
6 Intelligence Committee, I also have personal knowledge of the provisions of the
7 Memorandum of Understanding regarding Contingent Collective Bargaining Agreement
8 (“MOU”), and the effect of the MOU on terms and conditions of employment for US
9 Airways pilots.

10 7. USAPA negotiated substantial economic improvements equally for all US
11 Airways pilots into the MOU. These economic improvements were discussed with the
12 pilots of US Airways at the NAC roadshows in January 2013 (Owens Decl. ¶¶ 18-19),
13 and described in a publication from the NAC entitled “What the Memorandum of
14 Understanding Means to You,” which was distributed at the NAC roadshows and made
15 available electronically to the pilots in good standing. (Ex. 133, USAPA Exhibit List)

16 8. Specifically, in the event of a successful Plan of Reorganization (“POR”),
17 the MOU makes the pay rates and other economic benefits for US Airways pilots equal to
18 those provided to American Airlines (“American”) pilots. The MOU also includes an
19 industry average pay parity adjustment effective on January 1, 2016, which would bring
20 pay for all the pilots of New American¹ into line with the two other major domestic
21 carriers – Delta Airlines and United Airlines.

22 9. If a merger occurs with American in bankruptcy, at the approved POR, the
23 economic effects of the MOU described above will result in substantial pay raises for all
24 US Airways pilots. For example, the immediate pay increase on the Effective Date of the
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28 ¹ “New American” is the name used for the carrier that will exist after the merger between US Airways and American.

1 POR for 12-year captains operating the Airbus A320 aircraft would be more than \$40,000
2 annually for those pilots flying under the East CBA, and more than \$20,000 annually for
3 those pilots flying under the West CBA. Since there was never a single contract
4 integrating the East and West pilot groups, the pilots flying under the East CBA will
5 receive a higher dollar amount raise, as their existing CBA contains lower pay rates than
6 the West CBA (e.g. approximately \$20,000 less annually under the East CBA for 12-year
7 captains on the A320).

8
9 10. As of the Effective Date of the POR, the pension contribution rate (made by
10 the Company to a 401(k) account for each eligible pilot) will increase from the current
11 rate of 10% to 14% for all US Airways pilots in addition to the above pay increases.

12 11. On January 1, 2014, the pay rates for all pilots will increase an additional 8%
13 and the pension rate will increase to 16%.

14 12. The MOU also provides for a \$40 million lump sum payment to be
15 distributed amongst all US Airways pilots on the Effective Date of the POR.

16 13. The MOU also states that the pay increases implemented upon the Effective
17 Date of the POR would be retroactive to February 8, 2013, the date the MOU was
18 overwhelming ratified by the pilots.

19 14. The estimated total economic impact of the MOU and the Joint Collective
20 Bargaining Agreement that will be negotiated (“JBCA”) after the Effective Date of the
21 POR is projected to be approximately \$1.6 billion for the US Airways pilots over the next
22 six years.

23 15. In order to obtain the above-referenced economic benefits for all US
24 Airways pilots, it was, in the judgment of the Union’s leadership, necessary for the MOU
25 to be “seniority-neutral.” The necessity of a seniority-neutral MOU is further explained
26 in paragraph 9 of my original declaration and below.

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28 16. At the time MOU negotiations were ongoing, it was made clear to USAPA

1 by the Company and American that the MOU needed to be approved by the US Airways
2 pilots in an expedient fashion due to various time-sensitive matters, including, but not
3 limited to, the pending merger between the Company and American, and AMR's
4 reorganization in bankruptcy court.

5 17. Specifically, if the MOU presented to the US Airways pilots was not ratified,
6 the MOU would simply be entered into by the Company, American, and the Allied Pilots
7 Association ("APA"), and the US Airways pilots would be forced to continue flying
8 under their existing, sub-industry standard CBAs until such time that a single collective
9 bargaining agent was named, and (potentially) a subsequent seniority integration process
10 was completed.

11 18. Additionally, it was vital for USAPA to negotiate economic terms with the
12 Company prior to the Effective Date of the POR due to the "Change of Control"
13 provisions in Section 1(D) of the East CBA.

14 19. The Change of Control provisions in the East CBA require, in the event US
15 Airways enters into a merger or other corporate transaction with American or AMR that
16 satisfies the requirements of Section 1(J)(1) of the East CBA, that hourly pay rates for
17 East pilots automatically increase to the "Book Rates." The "Book Rates" are the hourly
18 pay rates in effect as of June 30, 2002. These rates are dramatically higher than the
19 current pay rates under the East CBA.

20 21. A potential dispute between USAPA and US Airways over whether the
21 Change of Control provisions were triggered would be subject to arbitration pursuant to
22 Section 1(I) of the East CBA.

23 24. In or around May 2012, USAPA published an update regarding Change of
25 Control that contained the applicable "Book Rates" and relevant provisions from the East
26 CBA. (Ex. 139, USAPA Exhibit List)

27 22. The pay increases that would occur if the Change of Control provisions in
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1 the East CBA were triggered did not apply to pilots covered by the West CBA. The West
2 CBA did not contain any comparable protections in the event of a change of control.

3 23. If USAPA did not agree to waive the Change of Control provisions in the
4 East CBA, the announced merger with American could potentially trigger said provisions
5 and result in substantial pay increases for the pilots flying under the East CBA.

6 24. In an effort to benefit all US Airways pilots equally, rather than just the East
7 pilots, USAPA decided to enter into MOU negotiations and bargain for the economic
8 package described above in paragraphs 7-14 in exchange for waiving the Change of
9 Control provisions in the East CBA. Paragraph 14 of the MOU contains a waiver by
10 USAPA of, among other things, “all change of control provisions, including, but not
11 limited to, Section 1.D in the East collective bargaining agreement ...”
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13 25. The decision to waive the Change of Control provisions in the East CBA in
14 exchange for the economic terms in the MOU was made by USAPA after a deliberation
15 and analysis of relevant information and projections of the effects of each scenario over
16 an 18-24 month period.

17 26. The MOU, including the Change of Control waiver in paragraph 14, was
18 overwhelming ratified by the pilots on February 8, 2013. (Ex. “A” to Owens Decl.)

19 27. The pay increases negotiated into the MOU are substantial, but less than the
20 increases the pilots flying under the East CBA would have been entitled to in the event of
21 a triggering of the Change of Control provisions.

22 28. Entering into and negotiating a ratifiable MOU that was in the best interest
23 of all US Airways pilots was the most economically sound and equitable method for
24 USAPA to ensure pilots flying under both the East and West CBAs received substantial
25 economic increases. USAPA had a very small window to negotiate the terms of the
26 MOU and present same to the membership for ratification.
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29. These circumstances required USAPA to insist on a seniority-neutral MOU, as attempting to resolve the ongoing seniority dispute in MOU negotiations would have most likely resulted in the other parties entering into the agreement without USAPA, the East pilots Change of Control provisions potentially being triggered upon the effective date of the POR, and the West pilots being stuck with the sub-standard pay rates and benefits under the existing West CBA until a much later date in time as described in paragraph 17 above.

I declare under penalty of perjury under the laws of the United States that the foregoing statements are true and correct

Executed this 9th day of May, 2013.



JOHN OWENS

CERTIFICATE OF SERVICE

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I hereby certify that on May 10, 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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s/T. Mahabir