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

14 Don ADDINGTON; *et al.*,

15 Plaintiffs,

16 vs.

17 US AIRLINE PILOTS ASS'N, *et al.*,

18 Defendants.

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

**PLAINTIFFS' PROPOSED
STIPULATED FACTS**

22
23 Pursuant to the Court's May 14, 2013 Order, Plaintiffs file the following proposed
24 stipulated facts. Defendant US Airways, Inc. does not object to the proposed stipulated
25 facts. Defendant US Airline Pilots Association failed to provide its position on the
26 proposed facts because it did not interpret the Court to require that the parties stipulate to
27 any facts today. A copy of the correspondence with USAPA is attached hereto. At
28

1 present, USAPA has indicated only that it is willing to work together on a stipulated set
 2 of facts but was unable to provide a proposed set of stipulated facts today (or review
 3 those provided by Plaintiffs in this document) because they did not have sufficient time.
 4 As indicated to counsel for USAPA, Plaintiffs will review and consider any stipulated
 5 facts or proposals regarding a joint pretrial statement as soon as they are made by
 6 USAPA.

7 The below facts represent the attempt by Plaintiffs to comply with the Court's order
 8 and provide uncontested issues of fact material to its application for preliminary
 9 injunction. There are many additional facts that could be relevant to Plaintiffs' motion
 10 for preliminary injunction, as indicated in Plaintiffs' Statement of Facts in Support of
 11 Motion for a Preliminary Injunction ("Statement of Facts"), Doc. 14, with its Motion for
 12 Preliminary Injunction on March 26, 2013 along with several other declarations filed in
 13 anticipation of the May 14, 2013 hearing, including Docs. 61, 61-1, 62, 62-1, 62-2, and
 14 62-3, none of which were controverted by USAPA. To the extent that the Court intends
 15 to take additional evidence regarding Plaintiffs' Motion for Preliminary Injunction,
 16 Plaintiffs reserve the right to provide additional evidence to the Court and to respond to
 17 any additional evidence that USAPA may determine to introduce.

Abbreviation	Reference
App. xxx	Page in Appendix of Exhibits (at upper right corner) where cited document is reproduced.
Doc.	Document number in a related action otherwise indicated.
Ex. xx	Exhibit number of document admitted into evidence in Case No. 2:08-cv-01633-NVW-PHX.
MP	ALPA Merger Policy.
Nic. Award	The Nicolau Opinion and Award.
RT at xx:xx	Page and line numbers from the reporter's transcript of testimony in case no. 2:08-cv-01633-NVW.

TA

Transition Agreement.

1
2
3 1. In May 2005, two airlines, America West and US Airways, agreed to merge to
4 become a single airline known as US Airways.¹

5 2. At the time of the merger, including pilots on furlough, there were about 5,100
6 pilots who came from Old US Airways (“East Pilots”) and 1,900 pilots who came from
7 America West (“West Pilots.”)²

8 3. At the time of the merger, all West Pilots were actively flying.³

9 4. At the time of the merger, approximately 1700 East Pilots were inactive (on
10 furlough).⁴

11 5. At the time of the merger, Air Line Pilots Association (“ALPA”) represented
12 both pilot groups.⁵

13 6. On September 23, 2005, ALPA and the two merging airlines entered into the
14 Transition Agreement approved by the Bankruptcy Court overseeing US Airways
15 bankruptcy.⁶

16 7. The Transition Agreement provides that the pilot groups would integrate their
17 seniority lists according to defined procedures set out in detail in the ALPA constitution
18 and called “ALPA Merger Policy.”⁷

19
20
21 ¹ *Nic. Award*, 1 (May 1, 2007) (Ex. 2) [App. 001].

22 ² *Nic. Award*, 5 [App. 005].

23 ³ *Id.* 28 [App. 028] (noting that on West side, “furloughs ceased to exist long before
the merger took place.”); *see also id.*, 5.

24 ⁴ *Id.* 4-5 [App. 004-005] (noting that 33% of East Pilots were on furlough at the
25 time of the merger and that the most senior East furloughee was hired in 1988 and went
on furlough in 2003).

26 ⁵ *Id.* 1 [App. 001].

27 ⁶ TA (Ex. 21) [App. 087-113].

1 8. By the terms of the Transition Agreement, US Airways agreed in advance
2 (subject to predefined conditions that protected its economic interests) to accept the
3 outcome of the arbitration as the final resolution of this seniority integration dispute.⁸

4 9. Pursuant to ALPA Merger Policy, the single integrated seniority list would be
5 created by two Merger Committees, representing the two pilot groups.⁹

6 10. The two Merger Committees tried but failed to negotiate or mediate a single
7 integrated seniority list, beginning in August 2005.¹⁰

8 11. Due to that failure, ALPA Merger Policy required that the Merger Committees
9 arbitrate a single integrated seniority list.¹¹

10 12. ALPA Merger Policy stated: “The Award of the Arbitration Board shall be
11 final and binding on all parties to the arbitration and shall be defended by ALPA.”¹²

12 13. ALPA Merger Policy stated: “The purpose of arbitration shall be to reach a
13 fair and equitable resolution consistent with ALPA policy.”¹³

14 14. Both pilot groups hired independent outside counsel to represent their interests
15 and eventually proceeded to arbitration.¹⁴

16 15. In the course of the Arbitration, there were 18 days of hearings, 20 witnesses,
17 and 14 volumes of exhibits.¹⁵

18 ⁷ *Id.* at § IV.A [App. 092] (“The seniority lists of America West pilots and US
19 Airways pilots will be integrated in accordance with ALPA Merger Policy and submitted
20 to the Airline Parties for acceptance.”).

21 ⁸ TA, § IV.A [App 092].

22 ⁹ MP, pt.1 ¶ D.3 (Aug. 10, 2005) (Ex. 3) [App. 116].

23 ¹⁰ RT, 395:24 to 396:7 (West Pilot Ken Stravers) [App. 292-293].

24 ¹¹ MP, pt.1.H.1.b & c [App. 119].

25 ¹² *Id.* pt.1.H.5 [App. 121].

26 ¹³ *Id.* pt.1.H.1.b [App. 119].

27 ¹⁴ *Nic. Award*, 1 [App. 001].

28 ¹⁵ *Id.* 3 [App. 003].

1 16. The two Merger Committees filed comprehensive post-hearing briefs.¹⁶

2 17. The East Merger Committee's position, among other things, was that East
3 Pilots were entitled to seniority rights based upon their lengths of service (time since hire
4 less time on furlough), including approximately 1700 East Pilots who were on furlough at
5 the time of the merger.¹⁷

6 18. The West Merger Committee's position, among other things, was that
7 approximately 1700 East Pilots who were on furlough at the time of the merger should be
8 placed below all West Pilots because all West Pilots were actively working for America
9 West at the time of the merger.¹⁸

10 19. The Arbitration board issued its award (the "Nicolau Award") on or about
11 May 1, 2007.¹⁹

12 20. The Nicolau Award placed about 500 senior East Pilots at the top of the list
13 because at the time West Pilots were not operating the wide-body international aircraft
14 generally flown by the most senior East Pilots.²⁰

15 21. The Nicolau Award placed the approximately 1700 East Pilots who were
16 furloughed at the time of the merger at the bottom of the list.²¹

17 22. The Nicolau Award expressly found that "merging active pilots with
18 furlougees, despite the length of service of some of the latter, is not at all fair or
19 equitable under any of the stated criteria."²²

20 ¹⁶ *Id.*

21 ¹⁷ *Id.* 4 [App. 004]; *id.*, 8 [App. 008]

22 ¹⁸ *Id.* 14 App. 014].

23 ¹⁹ *Nic. Award*, 35 [App. 035]; *see also id.*, 3 (explaining the procedures followed by
24 the arbitration) [App. 008].

25 ²⁰ *Id.* 31 & 32, n.5 [App. 031-032].

26 ²¹ *Id.* 31 (placing "those who brought jobs to the merger" above those who did not)
[App. 031].

27 ²² *Id.* 28 [App. 028].

28

1 23. The Nicolau Award blended the remainder of the East Pilot list with the West
2 Pilot list according to relative positions on the separate seniority lists.²³

3 24. On December 20, 2007, US Airways accepted the Nicolau Award.²⁴

4 25. Soon after Mr. Nicolau announced his decision, the East MEC appealed to
5 ALPA's Executive Committee to overturn the Nicolau Award.²⁵

6 26. ALPA's Executive Committee "determined that there is no ground under
7 ALPA Merger Policy to set aside the seniority award" and stated that the East MEC
8 "should also adopt a resolution recognizing that the award is to be included in the single
9 agreement to be negotiated under the Transition Agreement and Merger Policy."²⁶

10 27. On May 16, 2007, East Pilot Stephen Bradford wrote an email letter to the
11 ALPA Executive Board stating that it was necessary for East Pilots to replace ALPA so
12 that they could "write our own merger policy into our bylaws" and "just to protect what
13 little we have left."²⁷

14 28. In this email, Mr. Bradford also stated that "we don't not [sic] want to leave
15 ALPA, but we will just to ensure we can have some say in the next merger. We will
16 write our own merger policy into our bylaws and defend it in civil court if we have to."²⁸

17 29. In June 2007, Mr. Bradford and other East Pilots formed a committee.²⁹

19
20 ²³ *Id.* 31-32 [App. 031-032].

21 ²⁴ Doug Parker (Airline's CEO), *Letter to US Airways Pilots* (Dec. 20, 2007) (Ex. 9)
22 [App. 130].

23 ²⁵ Minutes, *MEC Special Meeting Resolutions Passed*, (July 25, 2007) [App. 131].

24 ²⁶ J. Prater, *Letter to J. Stephan*, 2 (Oct. 1, 2007) (Ex. 19) [App. 134-135].

25 ²⁷ S. Bradford, *Letter to Capt. Weber*, 1 (May 16, 2007) [App. 141].

26 ²⁸ *Id.* [App. 141]

27 ²⁹ See S. Bradford Depo., 154:8 to 154:21 (Mar. 19, 2009) (admitting that he was a
28 member of a committee using the name "AAApilots4fairness") [App. 264]; see also
¶¶ 44-46, *infra.*, (showing purpose of committee).

1 30. On June 9, 2007, this committee received advice from a lawyer to take care
2 with “the language you use in setting up your new union” and not to “give the other side
3 a large body of evidence that the sole reason for the new union is to abrogate an
4 arbitration, the Nicolau award, that in the opinions of most judges, should be allowed to
5 stand due to no gross negligence or fraud.”³⁰

6 31. On June 14, 2007, this group met with another law firm to inquire whether
7 “formation of a new bargaining agent” could prevent implementation of the Nicolau
8 Award.³¹

9 32. By August 2007, USAPA had retained counsel who provided an opinion letter
10 that USAPA published to the East Pilots, stating

11 You have asked us to provide our legal opinion concerning whether
12 Arbitrator Nicolau’s seniority integration arbitration award could be
13 overturned or otherwise modified via litigation or subsequent
14 negotiation. Federal case law supports the conclusion that any effort to
15 overturn the Nicolau award via litigation would be fruitless. By contrast,
16 we believe that a successor union would be free to negotiate with US
17 Airways concerning the terms of any seniority integration.³²

18 33. In addition to a single seniority list, integration of flight operations required a
19 single collective bargaining agreement (“CBA”) for pilots. The TA referred to this as a
20 “Single Agreement.”³³

21 ³⁰ Aapilots4fairness committee member, *A Conversation with an Attorney* (Ex. 14)
22 [App. 143-144]; *see also Order*, 1-2 (Doc. 386, 2:08-cv-01633-NVW) (Apr. 23, 2009)
23 (denying motion to exclude as privileged) [App. 145-146]; S. Bradford Depo., 161:7 to
161:16 (admitting that he interviewed law firms in June 2007) [App. 271].

24 ³¹ Aapilots4fairness Leadership Committee, *Lawyer Meeting* (June 14, 2007)
25 [App. 147-150]; *see also* S. Bradford, Depo., 158:6 to 158:22 (admitting he authored this
26 document) [App. 268].

27 ³² L. Seham, *Letter to Interim President*, 1 (Aug. 20, 2007) [App. 151].

28 ³³ MP, pt.1.N.1 & 2 (Ex. 3) [App. 119];

1 34. Each MEC appointed representatives to a single Joint Negotiating Committee
2 (“JNC”) charged with negotiating with US Airways the Single Agreement needed to
3 integrate pilot operations.³⁴

4 35. On August 15, 2007, the East MEC formally resolved to boycott joint contract
5 negotiations: “BE IT FURTHER RESOLVED that our members of the JNC will not
6 reengage in Joint Contract Negotiations. . .”³⁵

7 36. On January 23, 2008, the National Mediation Board found a single
8 transportation system and an election contest between ALPA and USAPA followed.³⁶

9 37. During the election, USAPA’s campaign materials equated retaining ALPA
10 with implementation of the Nicolau Award.³⁷

11 38. On December 8, 2007, USAPA’s website stated as follows:

12 Will electing a new bargaining agent enhance our ability to redress the
13 inequities of the Nicolau award?

14 Yes. The Nicolau is the product of an ALPA-mandated process and
15 ALPA is bound to defend that process. The ALPA-US Airways MEC
16 cannot prevail in its current litigation because it voluntarily submitted to
17 the ALPA mandated process.

18 USAPA, however, is not bound by ALPA’s Constitution and cannot be
19 subjected to ALPA’s political control. USAPA will assert its right under
20 the Railway Labor Act to negotiate over the terms of any seniority

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22 ³⁴ RT, 295:2 to 295:12 (West Pilot Douglas Dotter) [App. 286].

23 ³⁵ East MEC, *Resolution*, at 3 (Aug. 15, 2007) [App. 183]; Jack Stephan Depo.,
24 100:19 to 101:4 (identifying document) [App. 311-312].

25 ³⁶ US Airways/America West Airlines, 35 NMB 65 (2008).

26 ³⁷ D. Mowrey, *Letter to “Gentlemen”* (Mar. 6, 2008) (Ex. 20) (“‘Separate
27 Operations’ is not possible if we stick with ALPA. If we vote ALPA in, we will be forced
28 to eat the Nicolau award in the not too distant future. ALPA=Nicolau.”) [App. 154-56].

1 integration. Under the RLA, seniority is a mandatory subject of
2 bargaining.³⁸

3 39. In the course of the representation election, USAPA circulated messages that
4 referred to its “goal of utilizing DOH [date-of-hire] as the lodestar for seniority
5 integration.”³⁹

6 40. During the election, USAPA stated that it would negotiate for a date-of-hire
7 seniority integration rather than the Nicolau Award.⁴⁰

8 41. In a letter to East Pilots, addressed to “Fellow US Airways Pilots” and dated
9 February 2, 2008, Mr. Bradford (by then the President of USAPA) wrote, “the question
10 of East West will be decided by a vote for ALPA or USAPA. If USAPA becomes the
11 bargaining agent, there is no west and a simple majority can re-negotiate the Nicolau
12 award.”⁴¹

13 42. USAPA won the election.⁴²

14
15 ³⁸ USAPA, *Freq. Asked Questions*, Q#16 (Dec. 8, 2007) (Ex. 104) [App. 164-165];
16 *see* RT at 712:16 to 713:16 (John Bostic authenticating) [App. 296-97]; Bradford Depo.,
33:11-34:11 (authenticating) [App. 296-97].

17 ³⁹ S. Bradford, *USAPA, President’s Message* (Mar. 20, 2007) [sic, proper date is
18 2008] (Ex. 29)] (“By voting for USAPA, you vote for a Constitution with . . . a merger
19 policy based on a pilot’s date of hire with conditions and restrictions to protect all pilot’s
pre-merged career expectations.”) [App. 157-58].

20 ⁴⁰ USAPA, *Letter* (undated) (“Concerning future mergers with USAPA there is no
21 Nic [Nicolau Award], it does not exist.”) [App. 159]; S. Bradford, *AAA-AWA MEC Joint*
22 *Chairman’s Msg.* (Jan. 31, 2008) (Ex. 33) [App. 161] (stating that the Nicolau Award
23 “can be negotiated away by USAPA whether the West agrees or not! It really is that
simple.”) (emphasis in original); *see* Bradford Depo., 89:12 to 90:9 (authenticating and
24 establishing foundation) [App. 260-261].

25 ⁴¹ S. Bradford, *Letter to “Fellow US Airways Pilots,”* (Feb. 2, 2008) (Ex. 34)
26 (stating, “the question of East West will be decided by a vote for ALPA or USAPA. If
USAPA becomes the bargaining agent, there is no west and a simple majority can re-
27 negotiate the Nicolau award.”) [App. 173].

28 ⁴² Uncontested.

1 43. The National Mediation Board certified USAPA as the collective bargaining
2 representative for the entire pilot craft or class (East and West) on April 18, 2008.
3 (“Craft” is the RLA term for a “bargaining unit.”)

4 44. USAPA’s Constitution states that one of the union’s objectives is “[t]o
5 maintain uniform principles of seniority based on date of hire and the perpetuation
6 thereof, with reasonable conditions and restrictions to preserve each pilot’s un-merged
7 career expectations.”⁴³

8 45. In September 2008, USAPA proposed a date-of-hire seniority list to US
9 Airways (the “USAPA List”).⁴⁴

10 46. The USAPA List combines the existing East and West lists by date-of-hire
11 (“DOH”), without regard to whether a pilot was on furlough at the time of the merger.⁴⁵

12 47. On the USAPA List, a majority of West Pilots are at or close to the bottom of
13 the list.⁴⁶

14 48. A September 25, 2010, update from the USAPA Charlotte domicile stated
15 “Our goal to ratify a contract that ensures a date-of-hire seniority solution with conditions
16 and restrictions that protect all US Airways pilots is a USAPA Constitutional mandate.”

17 ⁴⁷

18 49. This Update also states: “Beyond the obvious seniority issues we must realize
19 that we all have a common purpose and cause. That purpose is stated clearly above, an
20
21

22 ⁴³ See USAPA Constitution [App. 200].

23 ⁴⁴ RT, at 1607:7 to 1607:13 (USAPA Vice President Randal Mowrey) [App. 305]
24 (identifying USAPA, *US Airways Seniority Integration* (Ex. 329) [App. 186-95]); see
25 *also id.*, at 1606:10 to 1601:23 (explaining exhibit) [App. 304].

26 ⁴⁵ RT, at 766:9 to 766:11 (West Pilot Brian Stockdell) [App. 301].

27 ⁴⁶ *Id.*

28 ⁴⁷ Charlotte Domicile Update Saturday, at 1 (Sept. 25, 2010) [App. 226].

1 industry standard contract that contains a fair and equitable date-of-hire seniority solution
2 that protects the entire US Airways Pilot Group.”⁴⁸

3 50. The minutes from a meeting of the USAPA Charlotte domicile reflect that on
4 March 31, 2011, USAPA President Michael Cleary “[a]ssured the audience that we will
5 not be distracted from our focus on our goals of completing a contract, fixing seniority
6 and leaving the union in a place to operate after present leadership is gone.”⁴⁹

7 51. The minutes from a meeting of the USAPA Charlotte domicile also reflect that
8 on March 31, 2011, USAPA Vice President Randy Mowrey “reminded everyone why we
9 are fighting this battle and that we should never forget to remember the core values of
10 seniority.”⁵⁰

11 52. Former counsel for USAPA stated that USAPA will never voluntarily
12 implement the Nicolau Award.⁵¹

13 53. On July 27, 2010, US Airways filed a declaratory judgment action, claiming
14 that it required guidance, inter alia, as to whether it would be liable if it entered into a
15 collective bargaining agreement with USAPA that did not implement the Nicolau
16 Award.⁵²

17 54. The District Court ruled “[T]he best ‘declaratory judgment’ the Court can
18 offer is that USAPA’s seniority proposal does not automatically breach its duty of fair
19 representation.”⁵³

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21 ⁴⁸ *Id.* at 2 [App. 227].

22 ⁴⁹ Charlotte Domicile Meeting Minutes, at 2 (Mar. 31, 2011) [App. 246].

23 ⁵⁰ *Id.*

24 ⁵¹ RT, at 1047:1 to 1047:7 (USAPA attorney Nick Granath) [App. 302].

25 ⁵² *US Airways, Inc. v. Addington*, No. CV-10-01570-PHX-ROS (D. Ariz. Jul. 26,
26 2010) (Doc. 1, Complaint) [App. 314].

27 ⁵³ *US Airways, Inc. v. Addington*, No. CV-10-01570-PHX-ROS, Order (Doc. 14-3)
28 at 8:5 to 8:7 (emphasis added) [App. 357].

1 55. The District Court ruled that USAPA’s date-of-hire “seniority proposal does
2 not breach its duty of fair representation provided it is supported by a legitimate union
3 purpose.”⁵⁴

4 56. The District Court ruled: “[D]ecertification of ALPA and the certification of
5 USAPA did not change the binding nature of the Transition Agreement.”⁵⁵

6 57. The District Court ruled: “Discarding the Nicolau Award places USAPA on
7 dangerous ground.”⁵⁶

8 58. The District Court ruled: “When the collective bargaining agreement is
9 finalized individuals will be able to determine whether USAPA’s abandonment of the
10 Nicolau Award was permissible, *i.e.*, supported by a legitimate union purpose.”⁵⁷

11 59. After Judge Silver made her final order, USAPA’s leadership offered seven
12 reasons it claimed were legitimate for using a date-of-hire seniority list rather than the
13 Nicolau Award list:

- 14 a. “USAPA has a duty to fairly represent not only former America West
15 Pilots, but all US Airways pilots.”
- 16 b. “It is legitimate to integrate seniority based on date of hire.”
- 17 c. “It is legitimate to respect pre-merger career expectations.”
- 18 d. “It is legitimate to take into account changed circumstances including the
19 relative economic strength and viability of America West flying vs US
20 Airways flying.”

23 ⁵⁴ *US Airways, Inc. v. Addington*, No. CV-10-01570-PHX-ROS (D. Ariz. Jul. 26,
24 2010) Amended Judgment, at 1:17 to 1:19 (Dec. 4, 2012) (Doc. 206) [App. 359].

25 ⁵⁵ *US Airways, Inc. v. Addington*, No. CV-10-01570-PHX-ROS (D. Ariz. Jul. 26,
26 2010), Order, at 6:6 to 6:10 (Doc. 14-3) [App. 355].

27 ⁵⁶ *Id.* at 7:18 to 7:19 [App. 356].

28 ⁵⁷ *Id.* at 8:3 to 8:5 [App. 357].

1 e. “USAPA is not required to follow the ALPA Merger Policy in effect at
2 the time of the Nicolau Award, which eliminated length of service as a
3 relevant consideration, but is entitled to pursue a ‘fair and equitable’
4 integration.”

5 f. “It is legitimate to place a pilot with 25 years of seniority above a pilot
6 with 9 years, or a pilot with 15-16 years seniority above a pilot still in
7 ground school.”

8 g. “Each of the other crafts on the property integrated seniority based on
9 date of hire, and no case-precedent holds that DOH integration violates
10 the duty of fair representation.”⁵⁸

11 60. After the Court’s October 2012 Order, USAPA never made a proposal to the
12 West Pilots to use anything other than the date of hire for purposes of seniority
13 integration.

14 61. AMR Corporation (“AMR”), the holding company which owned American
15 Airlines, Inc. (“American”) filed a Chapter 11 petition on November 29, 2011.⁵⁹

16 62. At some point thereafter, US Airways began entertaining a merger with
17 AMR.⁶⁰

18 63. Defendants, American and Allied Pilots Association (“APA”), the bargaining
19 representative for AMR’s pilots, entered into an agreement called the “Memorandum of
20 Understanding Regarding Contingent Collective Bargaining Agreement,” (the “MOU”)
21 that sets the stage for a merger between US Airways and AMR.⁶¹

22
23 ⁵⁸ *CLT Domicile Update*, at 3 (Oct. 29, 2012) [App. 365]. See J. Scherff, *Decl.*, at
24 ¶ 8 (authenticating) [App. 360].

25 ⁵⁹ *In re AMR Corporation, et al.*, Case No. 11-15463 (SHL) (Bankr. S.D.N.Y.).

26 ⁶⁰ See Memorandum of Understanding Regarding Contingent Collective Bargaining
27 Agreement (“MOU”). [App. 367]. See J. Scherff, *Aff.*, at ¶ 9 (authenticating) [App. 360].

28 ⁶¹ *Id.*

1 64. In January 2013, USAPA sent a brochure to its members entitled “Flight Plan
2 to a Merger” that went through the terms of the MOU and compared them to the previous
3 East and West collective bargaining agreements with US Airways.⁶²

4 65. Specifically, the MOU establishes changes to the following terms and
5 conditions of the East and West CBA’s:

6 66. Pay Rates

7 67. Increased Retirement Contribution

8 68. Interim flying protections

9 69. Pay protection for pilots subject to displacements

10 70. First Year Pay – All Aircraft

11 71. 3 Year Parity Review

12 72. DC Contribution

13 73. Per Diem

14 74. Profit Sharing

15 75. International Override Pay

16 76. Monthly Line Bid Range

17 77. Lineholder Monthly Guarantee

18 78. Line Constructoin Minimum Value

19 79. Voluntary Pick Up Maximum

20 80. Individual Monthly Maximum (IMAX)

21 81. Home Base Concept

22 82. Bidding System

23 83. Trip Trade System

24 84. Duty Period

25 85. Time Away From Base

27 ⁶² See Flight Plan to a Merger, Doc. 61-1.

- 1 86. Sit Time
- 2 87. Long Rate
- 3 88. Reserve Days of Availability
- 4 89. Reserve Guarantee
- 5 90. Reserve Maximum
- 6 91. Reserve Callout
- 7 92. Distance Learning Pay
- 8 93. Training Pay
- 9 94. Check Airman Pay
- 10 95. CK Days Scheduled
- 11 96. Fatigue Calls Paid
- 12 97. Furlough Protection
- 13 98. Sick Leave
- 14 99. Sick Rapid Accrual
- 15 100. Sick Leave Sell Back
- 16 101. Short Term Disability Benefit
- 17 102. Long Term Disability Benefit Premium
- 18 103. Long Term Disability Benefit
- 19 104. Medical Contribution Percentage
- 20 105. Survivor Income
- 21 106. Company Paid Life Insurance
- 22 107. Retiree Medical⁶³
- 23 108. On January 23, 2013, in a message to its members, USAPA stated that it
- 24 would propose DOH integration in accord with the USAPA Constitution as part of the
- 25 McCaskill-Bond process.⁶⁴

27 ⁶³ *Id.*

1 109. On January 23, 2013, in a message to its members, USAPA stated:

2 The MOU is completely neutral with respect to the Nicolau Award. In
3 fact, Paragraph 10.h of the MOU says explicitly that neither the MOU
4 nor the JCBA “shall provide a basis for changing the seniority lists
5 currently in effect at US Airways” other than through the McCaskill-
6 Bond process. So, no East pilot should vote against the MOU because
7 they fear that ratifying the MOU will implement the Nicolau Award, and
8 no West pilot should vote for the MOU because they believe the MOU
9 will implement the Nicolau Award.⁶⁵

10 110. USAPA also stated that after MOU ratification:

11 USAPA will propose a DOH integration in accord with the USAPA
12 Constitution. At the outset of the McCaskill-Bond process, the parties
13 exchange accurate information about their current seniority lists and with
14 respect to each of the currently employed pilots (DOH, DOB, current bid
15 and so forth). Based on this information, the pilot groups attempt to
16 negotiate a mutually agreeable merged seniority list and, if they are
17 unsuccessful, the issue is submitted to a panel of one or three neutral
18 arbitrators who are required to issue a decision that ingrates [sic]
19 seniority “in a fair and equitable manner.” As provided in the MOU,
20 APA and USAPA have agreed that, if there is an arbitration proceeding,
21 it will be a panel of three neutral arbitrators. In accord with the USAPA
22 Constitution, our Merger Committee will propose a DOH method for
23 integrating seniority.⁶⁶

24 111. On February 7, 2013, USAPA’s Merger Committee stated as follows:

25 West pilots should not vote in favor of the MOU because they believe it
26 will revive the Nicolau Award, and the East pilots should not vote
27 against it because they are concerned it will cause the Nicolau Award to
28 be implemented. Merger Counsel reminds us that no agreement can
prevent any person from filing a lawsuit or grievance, but these and other

24 ⁶⁴ USAPA, *Iron Compass*, at 4-5 (Jan. 23, 2013) (“What’s Up on the Line?”) [App.
25 389-90]. [App. 389-90]. See See J. Scherff, *Aff.*, at ¶ 11 (authenticating) [App. 360].

26 ⁶⁵ USAPA, *Iron Compass*, at 4-5 (Jan. 23, 2013) (“What’s Up on the Line?”) [App.
27 389-90]. [App. 389-90]. See See J. Scherff, *Aff.*, at ¶ 11 (authenticating) [App. 360].

28 ⁶⁶ *Id.* at 5 [App. 390].

1 provisions of the MOU clearly negate any claim that ratifying the MOU
2 would provide a basis for implementing the Nicolau Award.⁶⁷

3 112. The MOU was ratified by 75% of USAPA's membership on February 8,
4 2013.⁶⁸

5 113. From this point forward, all aspects of the new collective bargaining
6 agreement will be determined and implemented without ratification.⁶⁹

7 114. The MOU provides immediate pay benefits to East Pilots:

8 If the MOU is approved and the merger goes forward, all US Airways
9 pilots will receive retrospective pay from the date of ratification
10 (February 8), a \$40 million lump sum payment, American pay rates as of
11 the POR date (estimated to be July 1) and an increase in pension
12 contributions to 14%, also as of the POR date.⁷⁰

13 115. The MOU provides that pilot seniority integration will be conducted according
14 to the McCaskill-Bond Amendment to the Federal Aviation Act, 49 U.S.C. § 42112, note,
15 § 117(a).⁷¹

16 ⁶⁷ USAPA Merger Committee, *Merger Committee Update*, at 1 (Feb. 7, 2013) [App.
17 391]. See J. Scherff, *Aff.*, at ¶ 12 (authenticating) [App. 360].

18 ⁶⁸ Gary Hummel, *President's Message* (Feb. 8, 2013) [App. 384]. See J. Scherff,
19 *Aff.*, at ¶ 10 (authenticating) [App. 361].

20 ⁶⁹ MOU, at ¶ 27 (providing, in the event that New American and its pilots union
21 cannot complete all negotiations of a joint CBA ("JCBA") "within 30 days of the NMB's
22 certification [of single carrier status], New American Airlines will offer final and binding
23 interest arbitration under Section 7 of the RLA, and the organization [the union] will
24 accept such proffer, to resolve once and for all the terms of the JCBA. The arbitration
25 decision shall be issued no later than 60 days after the close of the 30-day negotiation
26 period.") [App. 378].

27 ⁷⁰ USAPA Negotiating Advisory Committee, *NAC Update – Q&A, and PHL
28 Roadshow Reminder*, at *1 (Jan. 25, 2013) [App. 393-94]; see also J. Scherff, *Aff.*, at ¶ 13
(authenticating) [App. 361].

⁷¹ MOU, at ¶ 10(a) ("A seniority integration process consistent with McCaskill-
Bond shall begin as soon as possible after the Effective Date. If, on the date ninety (90)
days following the Effective Date, direct negotiations have failed to result in a merged
seniority list acceptable to the pilots at both airlines, a panel of three neutral arbitrators

1 116. The MOU is silent on seniority integration for purposes of East Pilots and
2 West Pilots.

3 117. On February 21, 2013, the President of USAPA, Gary Hummel told the
4 USAPA membership as follows:

5 Our union, our lawyers and our merger counsel have been advised that
6 USAPA will begin the seniority integration process with APA by
7 pursuing what Article I, Section 8 D of our Constitution requires, “To
8 maintain uniform principles of seniority based on date of hire and the
perpetuation thereof, with reasonable conditions and restrictions to
preserve each pilot’s un-merged career expectations.”

9 This merger provides substantial and life changing benefits to all
10 USAPA pilots, including those based in Phoenix. USAPA will
11 aggressively oppose any efforts to slow down or stop the merger process
12 and will be equally vigilant in adhering to our constitutionally mandated
principles that reject the Nicolau Award in its entirety.⁷²

13 118. On March 6, 2013, USAPA filed an adversary proceeding against Leonidas,
14 LLC, (not these Plaintiffs or the West Pilot Class) in the AMR Chapter 11 proceedings
15 (the “Adversary Proceeding”) seeking a preliminary and permanent injunction against
16 Leonidas, LLC that restrained it from filing any action against USAPA regarding the
17 seniority dispute.⁷³

18 119. On March 28, 2013, USAPA filed an amended complaint in the Adversary
19 Proceeding, naming Plaintiffs in this action as defendants.⁷⁴

20 will be designated within fifteen (15) days to resolve the dispute, pursuant to the
21 authority and requirements of McCaskill-Bond.”) [App. 372]; *see also Committee of*
22 *Concerned Midwest Flight Attendants v. Int’l Bd. Of Teamsters*, 742 F. Supp. 2d 1035,
1040 (E.D. Wis. 2010) (setting out relevant language).

23 ⁷² G. Hummel, *President’s Message*, at 2 (Feb. 21, 2013) [App. 457] (self-
24 authenticating).

25 ⁷³ *USAPA v. Leonidas*, Bankruptcy Court for the Southern District of New York,
Case No. 11-15463-SHL, Doc. 1.

26 ⁷⁴ *USAPA v. Leonidas*, Bankruptcy Court for the Southern District of New York,
27 Case No. 11-15463-SHL, Doc. 11 at pg. 22.

28

1 120. The Amended Complaint requested that the bankruptcy court enter an
2 injunction precluding Plaintiffs from continuing prosecution of its claims in this action.⁷⁵

3 121. On April 22, 2013, American and the Official Committee of Unsecured
4 Creditors filed a motion to dismiss the Adversary Proceeding, asserting that “[t]his
5 Adversary Proceeding has no place on the Court’s docket.”⁷⁶

6 122. USAPA later dismissed the Adversary Proceeding.⁷⁷

7 123. The MOU provides that any disputes over interpretation of its provisions shall
8 be resolved by expedited arbitration between the parties.⁷⁸

9 124. The MOU provides that the first step in pilot seniority integration will be to
10 make a “Protocol Agreement [that] will set forth the process and protocol for conducting
11 negotiations and arbitration, if applicable, and will include a methodology for allocating
12 the reimbursement provided for in Paragraph 7.”⁷⁹

13 125. The MOU provides that a total sum of \$5.5 million will be available to defray
14 the expenses incurred by pilot merger representatives and unions.⁸⁰

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17 ⁷⁵ *Id.*

18 ⁷⁶ *See* Adversary Proceeding, Doc. 20.

19 ⁷⁷ *See* Adversary Proceeding, Doc. 21.

20 ⁷⁸ MOU, ¶ 20 (providing that “any dispute over the interpretation or application of
21 this Memorandum shall be . . . arbitrated on an expedited basis directly before a
22 specially-created one-person System Board of Adjustment.”) [App. 377].

23 ⁷⁹ *Id.* at ¶ 10(f) [App. 374].

24 ⁸⁰ *Id.* at ¶ 7 (“US Airways shall reimburse USAPA for expenses incurred after May
25 1, 2012, as well as for all flight pay loss, incurred in developing and carrying out the
26 functions specified in this Memorandum. The reimbursement provided to USAPA
27 pursuant to the preceding provisions shall not be more than \$1.5 million. In addition,
28 New American Airlines and US Airways shall reimburse the merger representatives
involved in the seniority integration process in an aggregate not to exceed \$4 million.”)
[App. 369].

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Dated this 17th day of May, 2013.

POLSINELLI PC

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CERTIFICATE OF SERVICE

I hereby certify that on this 17th day of May 2013, I electronically transmitted the foregoing document to the U.S. District Court Clerk's Office by using the ECF System for filing and transmittal.

By: /s/ Jennifer J. Axel