

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

Circuit Mediation Office

Phone (415) 355-7900 Fax (415) 355-8566

<http://www.ca9.uscourts.gov/mediation>

MEDIATION QUESTIONNAIRE

The purpose of this questionnaire is to help the court's mediators provide the best possible mediation service in this case; it serves no other function. Responses to this questionnaire are *not* confidential. Appellants/Petitioners must electronically file this document within 7 days of the docketing of the case. 9th Cir. R. 3-4 and 15-2. Appellees/Respondents may file the questionnaire, but are not required to do so.

9th Circuit Case Number(s):	14-15892 (14-15757, 14-15874)	
District Court/Agency Case Number(s):	2:13-cv-00471-ROS	
District Court/Agency Location:	US District Court for the District of Arizona - Phoenix, AZ	
Case Name:	Don Addington, et al.	v. US Airline Pilots Association, et al.
If District Court, docket entry number(s) of order(s) appealed from:	Doc. Nos. 298, 299, 304 & 305, among others.	
Name of party/parties submitting this form:	US Airways, Inc.	

Please briefly describe the dispute that gave rise to this lawsuit.

This lawsuit is one of many in the long-running seniority dispute between two groups of pilots following the merger of US Airways, Inc. and America West Airlines, Inc. ("America West") in 2005 that created a single airline known as US Airways. On August 2, 2013, plaintiffs-appellees, who are all former America West pilots ("West Pilots"), filed an amended complaint alleging that defendant US Airline Pilots Association ("USAPA"), the union currently certified to represent all US Airways pilots (both East and West), breached its duty of fair representation ("DFR") to the West Pilots by entering into a Memorandum of Understanding ("MOU") with US Airways, American Airlines, Inc. ("American") and the Allied Pilots Association ("APA") (the American pilots' union), which adopted a process for integrating the US Airways and American pilot seniority lists following the then-anticipated (and now-completed) US Airways-American merger that was perceived by the West Pilots to be less favorable to them and more favorable to the East Pilots. The West Pilots also sought a declaratory judgment that, pursuant to a federal statute known as "McCaskill-Bond," they have the right to separate representation (vis-a-vis their union, USAPA) in the US Airways/American pilot seniority-integration process. US Airways filed a motion to intervene, which was granted by the district court, in order to protect its significant interests in a prompt resolution of the merits of the West Pilots' DFR claim against USAPA and in a determination that the West Pilots have a right under McCaskill-Bond to separate participation in the seniority-integration process.

Briefly describe the result below and the main issues on appeal.

On October 11, 2013, US Airways filed a motion for summary judgment regarding the West Pilots' right under McCaskill-Bond to participate separately in the seniority-integration process. In a January 10, 2014 Order (Doc. 298), following a bench trial, the district court denied US Airways' motion and agreed with USAPA that the West Pilots were not entitled to separate participation because only certified union(s) could represent affected employee groups in proceedings under McCaskill-Bond. The court stated that if and when USAPA was replaced by APA as

the certified union for all of the pre-merger US Airways pilots, USAPA would have to immediately stop participating in the seniority-integration proceedings. In footnote 15 of the January 10 Order, the court made certain comments (which US Airways contends are incorrect) about how an integrated seniority list would be generated once the APA had replaced USAPA. On February 7, 2014, US Airways filed a motion to modify the January 10 Order by, inter alia, deleting footnote 15. The West Pilots and USAPA agreed with the deletion of footnote 15, and USAPA also requested the deletion of a number of other statements in the January 10 Order regarding USAPA's right to participate in the seniority-integration proceeding after it was decertified. The district court denied US Airways' and USAPA's requested modifications of the January 10 Order.

The main issues for US Airways' appeal involve whether, and if so, how, the West Pilots' discrete seniority interests are entitled to separate representation in the US Airways-American seniority-integration process.

Describe any proceedings remaining below or any related proceedings in other tribunals.

On February 27, 2014, USAPA filed a lawsuit in the United States District Court for the District of Columbia against the APA, US Airways and American, seeking to repudiate the MOU seniority-integration provisions to which USAPA had agreed, and which US Airways, American and APA all contend are valid and enforceable pursuant to McCaskill-Bond, and to compel utilization of a different set of seniority-integration procedures (see Case No. 1:14-cv-00328-BAH). APA and US Airways/American have filed motions to compel arbitration and stay USAPA's lawsuit; the briefing on those motions is not yet complete.

Provide any other thoughts you would like to bring to the attention of the mediator.

The seniority dispute between the West Pilots and USAPA has spanned many years and many lawsuits. It has never before been capable of a negotiated resolution. There is no reason to believe that this dispute can be settled now.

Any party may provide additional information *in confidence* directly to the Circuit Mediation Office at ca09_mediation@ca9.uscourts.gov. Please provide the case name and Ninth Circuit case number in your message. Additional information might include interest in including this case in the mediation program, the case's settlement history, issues beyond the litigation that the parties might address in a settlement context, or future events that might affect the parties' willingness or ability to mediate the case.

CERTIFICATION OF COUNSEL

I certify that:

a current service list with telephone and fax numbers and email addresses is attached

(see 9th Circuit Rule 3-2).

I understand that failure to provide the Court with a completed form and service list

may result in sanctions, including dismissal of the appeal.

Signature

("s/" plus attorney name may be used in lieu of a manual signature on electronically-filed documents.)

Counsel for

Note: Use of the Appellate ECF system is mandatory for all attorneys filing in this Court, unless they are granted an exemption from using the system. **To file this form electronically** in Appellate ECF, complete the form, and then print the filled-in form to PDF (File > Print > PDF Printer/Creator). Then log into Appellate ECF and choose Forms/Notices/Disclosure > File a Mediation Questionnaire.

SERVICE LIST

9th Circuit Case Numbers: 14-15892, 14-15874, 14-15757

The parties to this action are as follows:

Intervenor/Appellant

US Airways, Inc.

Attorneys for Intervenor/Appellant:

Karen Gillen
US Airways, Inc.
111 West Rio Salado Parkway
Tempe, AZ 85281
Telephone: (480) 693-0800
Facsimile: (480) 693-5932
Karen.gillen@usairways.com

Robert A. Siegel
O'Melveny & Myers LLP
400 South Hope Street, Suite 1500
Los Angeles, CA 90071-2899
Telephone: (415) 984-8700
Facsimile: (415) 984-8701
rsiegel@omm.com

Plaintiffs/Appellees:

Don Addington
John Bostic
Mark Burman
Afshin Iranpour
Roger Velez
Steve Wargocki
Michael J. Soha
Rodney Albert Brackin
George Maliga

Attorneys for Plaintiffs/Appellees:

Andrew S. Jacob
Jennifer Axel
Polsinelli P.C.
CityScape
One East Washington St., Suite 1200
Phoenix, AZ 85004

Telephone: (602) 650-2000
Facsimile: (602) 264-7033
ajacob@polsinelli.com
jaxel@polsinelli.com

Marty Harper
Marty Harper, PLLC
One East Washington St., Suite 1200
Phoenix, AZ 85004
Telephone: (602) 650-2000
Facsimile: (602) 264-7033
mharper@polsinelli.com

Defendant:

US Airline Pilots Association

Attorneys for Defendant:

Susan Martin
Jennifer L. Kroll
Martin & Bonnett, PLLC
1850 N. Central Ave., Suite 2010
Phoenix, AZ 85004
Telephone: (602) 240-6900
Facsimile: (602) 240-2345
smartin@martinbonnett.com
jkroll@martinbonnett.com

Patrick J. Szymanski
Patrick J. Szymanski, PLLC
1900 L Street, NW, Suite 900
Washington, DC 20036
Telephone: (202) 721-6035
szymanskip@msn.com

Brian J. O'Dwyer
Gary Silverman
Joy K. Mele
O'Dwyer & Bernstein, LLP
52 Duane Street, 5th Floor
New York, NY 10007
Telephone: (212) 571-7100
Facsimile: (212) 571-7124
bodwyer@odblaw.com
gsilverman@odblaw.com
jmele@odblaw.com

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system on May 21, 2014.

Dated: May 21, 2014

By: /s/ Robert A. Siegel